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FROM FILE

Contract No.: 162-9545

Agreement : SELF-FUNDED GROUP HEALTH PLAN THIRD PARTY ADMINISTRATIVE SERVICES

This agreement, made and entered into this the 1st day of January, 2007, is by and between the CITY OF

FORT LAUDERDALE, a Florida municipality, City Hall, 100 North Andrews Avenue, Fort Lauderdale, FL 33301, hereinafter called the "City" and Name of CONTRACTOR: AvMed, Inc., d/b/a AvMed Health Plans

Address: 9400 South Dadeland Blvd. City: Miami, State: FL Zip: 33156-9004

A Corporation  A Partnership  An Individual  Other: \_\_\_\_\_

authorized to do business in the State of Florida, hereinafter called the "Company" or "Contractor." Witnesseth that: Whereas, the City did advertise and issue a Request for Proposal (RFP) for supplying the requirements of the City for the items and/or service listed above for a period of **five years** and the Contractor submitted a proposal that was accepted and approved by the City.

Formal authorization of this contract was adopted by the City Commission on: November 7, 2006, PUR-05

Now, therefore, for and in consideration of the premises and the mutual covenants herein contained, the parties covenant and agree as follows:

1. The Company agrees to provide to the City self-funded group health plan third party administrative services during the period beginning 01/01/07 and ending 12/31/12 for the requirements listed above and in accordance with the following specifications, terms, covenants, and conditions:

a. This contract form G-110, the Request for Proposal containing General Conditions, Special Conditions, Specifications, addenda, if any, and other attachments forming a part of RFP Number 162-9545, Administrative Services Agreement, Summary Plan Description Option 1, Option 2 and Choice, and the Contractor's proposal in response to the RFP, form a part of this contract and by reference are incorporated herein.

b. In construing the rights and obligations between the parties, the order of priority in cases of conflict between the documents shall be as follows:

- 1) This contract Form G-110, Rev. 12/00
- 2) The City's RFP and all addenda thereto
- 3) The Administrative Services Agreement, Summary Plan Description Options 1, 2, and Choice
- 4) Contractor's proposal in response to the City's RFP

c. **Warranty:** The Company by executing this contract embodying the terms herein warrants that the product and/or service that is supplied to the City shall remain fully in accord with the specifications and be of the highest quality. In the event any product and/or service as supplied to the City is found to be defective or does not conform to specifications the City reserves the right to cancel that order upon written notice to the Contractor and to adjust billing accordingly.

d. **Cancellation:** The City may cancel this contract upon notice in writing should the Contractor fail to reasonably perform the service of furnishing the products and/or services as specified herein upon 30 days written notice. This applies to all items of goods or services.

e. **Taxes Exempt:** State Sales (#16-03-196479-54C) and Federal Excise (#59-600319) Taxes are normally exempt, however, certain transactions are taxable. Consult your tax practitioner for guidance where necessary.

f. **Invoicing:** Contractor will forward all invoices in duplicate for payment to the following: Finance Department, 100 N. Andrews Avenue, 6th Floor, Fort Lauderdale, FL 33301. If discount, other than prompt payment terms applies, such discount MUST appear on the invoice.

**2. Contract Special Conditions:** The following special conditions are made a part of and modify the standard provisions contained in this contract Form G-110.

Administrative services fees for EPO and POS will increase by 3% for the year beginning January 1, 2008, and 3% for the year beginning January 1, 2009.

AvMed shall aggressively market for inclusion in AvMed's Open Access POS network providers that are members of the City's previous PPO network but are not current members of AvMed's Open Access POS network.

All references in the Contractor's response to the RFP to "Trade Secret/Proprietary Information" and any other language contained in the Contractor's response to the RFP suggesting that the Contractor's response to the RFP contains trade secrets or other information exempt from the Florida public records law are deleted.

The following language, contained in AvMed's Response to Section 9.27 in Section V of AvMed's response to the RFP, shown as stricken through, is deleted: "and would add: The City agrees to indemnify and hold AvMed Health Plans harmless from any claims, actions, judgements, settlements and costs, or expenses arising there from which may result from any negligent act or omission by City, its employees, officers or agents involving any persons or organizations who may bring an action or make any claim against AvMed Health Plans."

The Summary Plan Description for the Point of Service (Choice) Plan marked "SF-CHOICE-Sample-06 SF- (10/06)" and "DRAFT," contained in AvMed's response to the RFP, is deleted and replaced by the Summary Plan Description for the Point of Service (Choice) Plan marked "SF-CHOICE City of Fort Lauderdale-07 SF-3394 (01/07)."

The Administrative Services Agreement marked "DRAFT," contained in AvMed's response to the RFP, is deleted and replaced by the attached Administrative Services Agreement marked "L:\PGB\Purchasing\AvMed.4.4.8.doc."

This Agreement constitutes the entire agreement between the City and the Contractor. No modification of this Agreement shall be of any force or effect unless it is in writing and signed by both parties.

**3. Contract Summary:**

a. Attachments:

A copy of the RFP, Administrative Services Agreement, Summary Plan Description Options 1, 2 and Choice, and AvMed, Inc., d/b/a AvMed Health Plan's response to the RFP

b. Payment Terms: Per RFP

c. Delivery: Per RFP

d. Insurance: Yes  No

e. Performance Bond/Letter of Credit: Yes  No

f. Procurement Specialist's Initials: MW

**4. Contractor's Phone Numbers:** Office: 305-671-5437 Mobile: \_\_\_\_\_

**5. Contractor's Fax Number:** 305-671-4764

**6. Contractor's E-Mail Address:** Ed.Hannum@avmed.org Website: www.avmed.org

**City of Fort Lauderdale**

By: [Signature]  
Director of Procurement Services (City Manager's Designee)

Auth: Sec. 2-180(8) of Code and Procurement Memo No. 04-03

Date: 7/7/08

Approved as to form:

[Signature]  
Senior Assistant City Attorney

**Contractor/Vendor**

Michael P. Gallagher

Name of Company Officer (please type or print)

By:



Authorized Officer's Signature



Title:

President

Date:

6/30/2008

Stephen J. demontmollin

Secretary (please type or print)

Attest:

Stephen J. demontmollin  
ASST

Signature of Secretary

**Administrative Services Agreement**  
**Relative to the EPN and Choice Benefit Plan**

**Between**

**AvMed, Inc. d/b/a AvMed Health Plans**

**And**

**City of Fort Lauderdale**

**Effective January 1, 2007**

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**AvMed CORPORATE OFFICE**  
9400 S. DADELAND BLVD.  
P.O. BOX 569004  
MIAMI, FL 33256-9004

**SERVICE AREAS**

**MIAMI**  
9400 South Dadeland Blvd.  
Miami, FL 33156-9004  
(305) 671-5437  
(800) 432-6676  
Miami-Dade

**FT. LAUDERDALE**  
13450 West Sunrise Blvd.  
Suite 370  
Sunrise, FL 33323-2947  
(954) 462-2520  
(800) 368-9189  
**Broward**  
**Palm Beach**

**JACKSONVILLE**  
1300 Riverplace Blvd.  
Suite 640  
(904) 858-1300  
(800) 227-4184  
**Baker**  
**Clay**  
**Duval**  
**Nassau**  
**St. Johns**

**GAINESVILLE**  
4300 NW 89TH Blvd  
P. O. Box 749  
Gainesville, FL 32606-0749  
(352) 372-8400  
(800) 346-0231

**Alachua**  
**Bradford**  
**Citrus**  
**Columbia**  
**Dixie**  
**Gilchrist**  
**Hamilton**  
**Levy**  
**Marion**  
**Suwannee**  
**Union**

**ALL AREAS**  
**1-800-88 AvMed**  
**(1-800-882-8633)**

**ORLANDO**  
1800 Pembroke Drive.  
Suite 190  
Orlando, FL 32810  
(407) 539-0007  
(800) 227-4848

**Lake\***  
**Orange**  
**Osceola**  
**Seminole**

**TAMPA BAY/  
SOUTHWEST FLORIDA**  
1511 N. Westshore Blvd.  
Suite 450  
Tampa, FL 33607  
(813) 281-5650  
(800) 257-2273  
**Hernando**  
**Hillsboro**  
**Lee**  
**Pasco**  
**Pinellas**  
**Polk**  
**Sarasota**

\* Coverage available in the following Lake County zip codes: 34736, 34711, 34712, 34713, 34714, 34715 and 34756.

## **ADMINISTRATIVE SERVICES AGREEMENT**

This Agreement, made effective this 1st day of January 2007, by and between City of Fort Lauderdale, (the "Employer") and AvMed, Inc., a Florida corporation, d/b/a AvMed Health Plans ("AvMed").

### **WITNESSETH:**

WHEREAS, the Employer, in its role as plan sponsor, has adopted and self-insures the program of employee health benefits described in Exhibit A (the "Plan") for the benefit of its eligible employees and their eligible dependents; and

WHEREAS, the Employer has requested AvMed to furnish certain administrative services to the Plan, including (i) receiving and processing claims for benefits under the Plan, (ii) disbursing claim payments under the Plan, and (iii) performing Plan-related administrative duties specified in Exhibit B "Basic Administrative Services"; and

WHEREAS, except as otherwise specifically provided herein, the Employer is to retain all liabilities under the Plan and AvMed is to provide the agreed upon services to the Plan without assuming any such liability.

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, it is hereby agreed as follows:

### **I. GENERAL**

The Employer engages AvMed to arrange for the provision of medical services or benefits which are Medically Necessary for the diagnosis and treatment of Participants of the Employer through a network of contracted independent physicians and hospitals and other health care providers. Said services are provided in accordance with the covenants and conditions contained in this Agreement.

This Agreement is not intended to and does not cover or provide any medical services or benefits which are not Medically Necessary for the diagnosis and treatment of the Participant. The determination as to which services are Medically Necessary shall be made by AvMed subject to the terms and conditions of this Agreement.

AvMed reserves the right to make changes in coverage criteria for covered products and services. Coverage criteria are medical and pharmaceutical protocols used to determine payment of products and services and are based on independent clinical practice guidelines and standards of care established by government agencies and medical/pharmaceutical societies.

The medical and hospital services covered by this Agreement shall be provided without regard to the race, color, religion, physical handicap, or national origin of the Participant in the diagnosis and treatment of patients; in the use of equipment and other facilities; or in the assignment of personnel to provide services, pursuant to the provisions of Title VI of the Civil Rights Act of 1964, as amended, and the Americans with Disabilities Act of 1990.

## II. INTERPRETATION

In order to provide the advantages of medical and hospital facilities and of the Participating Providers, AvMed operates on a direct service rather than indemnity basis. The interpretation of this Agreement shall be guided by the direct service nature of AvMed's program and the definitions and other provisions contained herein.

## III. DEFINITIONS

As used in this Agreement, each of the following terms shall have the meaning indicated:

- 3.01 **"Agreement"** means this administrative services agreement between the parties and all amendments, addenda, exhibits, supplemental agreements, and schedules which are or may be incorporated in this Agreement from time to time.
- 3.02 **"AvMed, Inc."**, otherwise known as "AvMed", means a private, not-for-profit Florida corporation, state licensed as a health maintenance organization and a third party administrator under Chapters 641 and 626, Florida Statutes, which has contracted with the Employer to provide or arrange for health care services to its Participants under the terms and conditions set forth in this Agreement.
- 3.03 **"Covered Dependent"** means any Participant of a Covered Employee's family who meets all applicable requirements of the Plan and is enrolled in the Plan.
- 3.04 **"Covered Employee"** means an employee of the City who meets all of the applicable requirements of the Plan and is enrolled in the Plan.
- 3.05 **"Hospital"** means any general acute care facility that is licensed by the state.
- 3.06 **"Hospital Services"** (except as expressly limited or excluded by this Agreement or the Plan) means those services for registered bed patients which are:
- 3.06.01 Generally and customarily provided by acute general Hospitals within the Service Area;
  - 3.06.02 Performed, prescribed, or directed by plan providers for the EPN plan; and directed by attending physicians for the Choice plan.
  - 3.06.03 Medically Necessary for conditions which cannot be adequately treated in Other Health Care Facilities or with Home Health Care Services or on an ambulatory basis.
- 3.07 **"Medically Necessary"** means the use of any appropriate medical treatment, service, equipment, and/or supply as provided by a hospital, skilled nursing facility, physician, or other provider which is necessary for the diagnosis, care, and/or treatment of a Participant's illness or injury, and which is:
- 3.07.01 Consistent with the symptom, diagnosis, and treatment of the Participant's condition;

- 3.07.02 The most appropriate level of supply and/or service for the diagnosis and treatment of the Participant's condition;
  - 3.07.03 In accordance with standards of acceptable community practice;
  - 3.07.04 Not primarily intended for the personal comfort or convenience of the Participant, the Participant's family, the physician, or health care provider;
  - 3.07.05 Approved by the appropriate medical body or health care specialty involved as effective, appropriate, and essential for the care and treatment of the Participant's condition;
  - 3.07.06 Prescribed, directed, authorized, and/or rendered by a participating or authorized provider, except in case of an emergency; and
  - 3.07.07 Not experimental or investigational.
- 3.08 **"Medical Services"** (except as limited or excluded by this Agreement or the Plan) means those professional services of Physicians and other Health Professionals including medical, surgical, diagnostic, therapeutic, and preventive services which are:
- 3.08.01 Generally and customarily provided in the Service Area;
  - 3.08.02 Performed, prescribed, or directed by plan providers for the EPN plan; and directed by attending physicians for the Choice plan
  - 3.08.03 Medically Necessary (except for preventive services as stated herein) for the diagnosis and treatment of injury or illness.
- 3.09 **"Participant"** means any Subscriber or a Covered Dependent, including any individual continuing coverage under the Plan in accordance with the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended from time to time ("COBRA"), and shall at times be referred herein to as a "Participant" or "Plan Participant."
- 3.10 **"Physician"** means any participating physician licensed under Chapter 458 (physician), 459 (osteopath), 460 (chiropractor), 461 (podiatrist), or 457 (acupuncturist) Florida Statutes, and shall at times be referred to as "Plan Physician." "Attending Physician" means the Participating Provider Physician primarily responsible for the care of a Participant with respect to any particular injury or illness.
- 3.11 **"Plan"** means the City of Fort Lauderdale Employee Health Plan, as described in Exhibit A, maintained by the Employer for the benefit of Employer's eligible Subscribers and their eligible dependents.
- 3.12 **"Service Area"** means those counties in the state of Florida where AvMed conducts business, as listed in the summary plan description for the Plan.
- 3.13 **"Specialty Health Care Professional"** means a Health Professional other than the Participant's chosen primary care physician.

- 3.14 **"Subscriber"** means a person who meets all applicable requirements of the Plan, enrolls in AvMed and for whom administrative service fee required by Part V has been received by AvMed.
- 3.15 **"Summary Plan Description (SPD)"** means a written explanation of the eligibility for and benefits available to employees required by the Employee Retirement Income Security Act of 1974 (ERISA).

#### IV. ELIGIBILITY AND ENROLLMENT

- 4.01 Employer shall:
- (i) respond to all routine inquiries from Participants concerning enrollment in the Plan and its terms, conditions, and operations;
  - (ii) handle all enrollment activity using enrollment forms approved by AvMed, as amended from time to time by AvMed; and
  - (iii) notify Participants of their right to apply for benefits and supply them with claim filing instructions, if required.
- 4.02 In determining any person's right to benefits under the Plan, AvMed shall rely upon eligibility information furnished by the Employer. It is mutually understood that the effective performance of this Agreement by AvMed will require that it be advised on a timely basis by the Employer during the continuance of this Agreement of the identity of individuals eligible for benefits under the Plan. Such information shall identify the effective date of eligibility and the termination date of eligibility and shall be provided promptly to AvMed in a form and with such other information as reasonably may be required by AvMed for the proper administration of the Plan. Employer represents and warrants that its eligibility determinations shall be in accordance with the terms of the Plan. AvMed will assist Employer in screening new entrants for validation of dependent eligibility, including newly acquired dependents and continued monitoring of dependent child eligibility in accordance with the Plan provisions.
- 4.03 Employer acknowledges that its prompt furnishing of complete and accurate eligibility and benefit information is essential to the timely and efficient administration by AvMed of claims for benefits under the Plan. If Employer, or any party designated by Employer, fails to provide AvMed with accurate eligibility information, benefit design requirements, or other agreed-upon data, including but not limited to electronic data, tapes, or software, in an accessible and readable format, and in the time frame and format prescribed by AvMed ("Required Data"), AvMed shall have no liability whatsoever under this Agreement for any act or omission by AvMed, or its employees, affiliates, subcontractors, agents, or representatives, which is directly caused by such failure.
- 4.04 Employer shall notify AvMed of the termination of eligibility of any Participant immediately but not later than sixty (60) days after the loss of eligibility. AvMed shall process forthwith any such notice of termination of eligibility. Employer shall remain responsible for all fees, charges, and claims with respect to such terminated individual incurred or charged until such time as Employer notifies AvMed of such termination of eligibility. In addition, all authorizations provided prior to such notice of termination will be honored and will remain the responsibility of the Employer if AvMed is unable to recover funds in accordance with the Florida Prompt Payment legislation. If

AvMed is unable to recover funds on behalf of Employer in accordance with the Florida Prompt Payment legislation, the Employer has the right to recover funds from the Subscriber on behalf of any payment made on behalf of Subscriber or his dependent.

- 4.05 The eligibility requirements set forth in the Plan shall at all times control and no coverage contrary thereto shall be effective. Coverage shall not be implied due to clerical or administrative errors if such coverage would be contrary to the terms of the Plan.

## V. ADMINISTRATIVE FEES

- 5.01 On or before the first day of each month for which coverage is sought, Employer shall remit to AvMed, on behalf of each Participant and his Dependents, the monthly charges set forth in Exhibit B, Part II. Only Participants for whom the stipulated payment is actually received by AvMed shall be entitled to the health services covered under this Agreement and then only for the period for which such payment is applicable. Failure of the Employer to pay fees and charges under the Agreement by the first of the month and not later than the end of the grace period (as provided in Section 5.02) may result in retroactive termination of the Agreement, effective at 12:00 a.m. (midnight) on the last day of the month for which such amounts were paid, unless the payment of amounts due has otherwise been contractually adjusted and specified by the parties in a fully executed addendum to this Agreement. Employer will be responsible for payment of any assessment of applicable tax or deficiency issued by a state or other jurisdiction that is assessed for services provided to Employer. Notwithstanding the foregoing, Employer shall not be responsible for any tax or assessment that AvMed would otherwise incur pursuant to its business functions unrelated to its business relationship with Employer under this Agreement, including but not limited to (i) any real, tangible, or intangible property-related taxes; (ii) any franchise and privilege taxes on Employer's business; (iii) any taxes based on the gross or net income received by Employer; and (iv) any taxes based on the licensing of AvMed, its affiliates or subsidiaries as a third party administrator.
- 5.02 Grace Period. This Agreement has a thirty (30) day grace period. This provision means that if any required fees and charges are not paid on or before the date they are due, they must be paid during the 30-day grace period. During the grace period, the Agreement will stay in force. However, if payment is not received by the last day of the grace period, termination of this Agreement for nonpayment of fees may be retroactive to 12:00 a.m. (midnight) on the last day of the month for which fees were paid. Note: Certain provisions in Section 5.01 may apply if the parties have executed an addendum affecting charges.
- 5.03 Refund of fees paid to AvMed by the Employer for any Participant after the date on which that Participant's eligibility ceased or the Participant was terminated shall be limited to the total excess fees paid up to a maximum of one hundred eighty (180) days from the date of such ineligibility or termination, provided there are no claims incurred subsequent to the effective date of termination. AvMed shall not be liable for any preauthorization of services or supplies or claims paid on behalf of individuals who are retroactively determined to be ineligible for benefits under the Plan, if at the time of such preauthorization or payment, AvMed had reason to believe that such individual was eligible to participate in the Plan. No retroactive terminations of Participants will be made beyond one hundred eighty (180) days from notification of the terminating event.
- 5.04 In the event of the retroactive termination of an individual Participant, AvMed shall not be responsible for expenses incurred by AvMed in providing benefits to the Participant under the

terms of this Agreement after the effective date of termination (due to the Employer's nonpayment of fees or failure to timely notify AvMed of Person's ineligibility). See Exhibit E for payment recovery options.

## VI. TERMINATION

All rights and benefits under this Agreement shall cease as of the effective date of termination, unless otherwise provided herein.

This Agreement shall continue in effect for five years from the effective date hereof and may be renewed for up to five one-year terms in accordance with the terms of the RFP. All rights to benefits under this Agreement shall cease at 12:00 a.m. (midnight) on the effective date of termination.

### 6.01 Reasons for Termination:

#### 6.01.01 Loss of Eligibility:

- a) Upon a loss of the Participant's eligibility as defined under the Plan, including but not limited to the Participant's permanent relocation of residence outside Service Area, coverage under the EPN plan shall automatically terminate on the last day of the month for which the monthly administrative fee was paid unless otherwise agreed to by the parties. If the Participant relocates residence and no longer meets the Service Area requirement, the Participant may enroll in another benefit plan sponsored by the City of Fort Lauderdale. However, upon loss of eligibility due to dependent's attainment of limiting age, coverage shall extend to the last day of the calendar year if agreed to by the parties.
- b) Coverage for all Dependents shall automatically terminate on the last day of the month for which the monthly administrative fee was paid upon a loss of the Participant's eligibility, as defined under the Plan, unless otherwise agreed to by the parties.

6.01.02 Failure to Pay Fees -Upon failure of the Employer to pay any fees under the Agreement within thirty (30) days following the due date specified herein, benefits hereunder shall terminate for all Subscribers and any Dependents for whom such payment has not been received, at 12:00 a.m. (midnight), on the last day of the month for which the monthly fees were paid. AvMed may retroactively cancel the Agreement to the last day of the period for which fees have been paid.

6.01.03 Termination of Agreement by Either Party – Employer or AvMed may terminate this Agreement on the anniversary date by giving written notice to the other party sixty (60) days prior to Agreement anniversary date. In such event, benefits hereunder shall terminate for all Participants at 12:00 a.m. (midnight) on Agreement expiration date.

6.01.04 Termination of Agreement by AvMed – AvMed may choose not to renew or discontinue this Agreement based on one or more of the following conditions. In such event, benefits hereunder shall terminate for all Participants at 12:00 a.m. (midnight) on Agreement expiration date as described below.

- a) Employer has failed to pay fees or contributions in accordance with the terms of this Agreement or AvMed has not received timely payments (See Part III, Administrative Fees and Subsection 4.01.02). Termination of coverage will be effective on the last day of the month for which payments were received by AvMed.
- b) Employer has failed to provide funds in accordance with Section II.
- c) Employer had performed an act or practice that constitutes fraud or made an intentional misrepresentation of material fact under the terms of this Agreement. This will result in immediate termination of the Agreement.
- d) There is no longer any enrollee in connection with the Plan who lives, resides, or works in the Service Area. Termination of coverage will be effective on the last day of the month for which payments were received by AvMed.
- e) AvMed ceases to provide services in the applicable market. Termination will be effective upon one-hundred and eighty (180) days written notice from AvMed to Employer.
- f) The Employer voluntarily or involuntarily files for bankruptcy.

6.01.05 Termination of Membership for Cause – Subject to the Employer’s approval or disapproval, and after providing a Participant an opportunity to cure and an opportunity to be heard, AvMed may terminate any Participant upon written notice for the following reasons which lead to a loss of eligibility of the Participant:

- a) fraud, material misrepresentation, or omission in applying for membership, benefits, or coverage under the Plan;
- b) misuse of AvMed’s Membership Card furnished to the Participant;
- c) furnishing to AvMed incorrect or incomplete information for the purpose of obtaining coverage or benefits under this Agreement or the Plan;
- d) behavior which is disruptive, unruly, abusive, or uncooperative to the extent that the Participant’s continuing coverage under this Plan seriously impairs AvMed’s ability to administer this Plan or to arrange for the delivery of health care services to the Participant or other Participants after AvMed has attempted to resolve the Participant’s Problem.

At the effective date of such termination, fees received by AvMed on account of such termination shall be refunded on a pro rata basis, and AvMed shall have no further liability or responsibility for the Participant(s) under this Agreement or the Plan.

## 6.02 Notification Requirements:

6.02.01 Loss of Eligibility of Covered Person – It is the responsibility of Employer to notify AvMed in writing within sixty (60) days from the effective date of termination regarding any Covered Person who becomes ineligible to participate in the Plan. Failure of the Employer to provide timely written notice as described above may lead to retroactive termination of the Covered Person. The effective date for such retroactive termination will be the last day of the month for which an administrative fee was paid and during which the Covered Person was eligible for coverage.

6.02.02 Agreement Termination – In the event this Agreement is terminated, the employer agrees that it shall provide sixty (60) days prior written notification of the date of such termination to Covered Persons who are covered under the Plan.

In no event will any retroactive termination of a Covered Person be made beyond one hundred eighty (180) days from notification of the terminating event.

6.03 Claims Run-Out Upon Agreement Termination

6.03.01 Claims Run-Out – Upon termination of this Agreement, AvMed will continue to process and review claims incurred during the contract period for up to twelve (12) months. Because AvMed will not relinquish the administration of its provider network contracts to a third party, AvMed agrees to receive, process, and review claims from AvMed contracted providers for twelve (12) months following the termination of this Agreement. The Employer is expected to fund the claims presented by AvMed within the same timeframes as agreed to for claims paid during this Agreement period. If this agreement terminates due to non-funding of claims, bankruptcy or other reasons stated in Section 6.01.01, AvMed may notify the healthcare providers as to revised process for obtaining payment. AvMed will not charge an additional claims administration fee for providing this service. If after the above runout period the parties mutually agree to have AvMed continue to process any runout claims on behalf of Employer, then AvMed will charge a per claim fee, as found in Exhibit B. AvMed will provide Employer with a listing of all claims adjudicated for the extra month(s). Standard monthly reports will not be generated.

**VII. DISCLAIMER OF LIABILITY**

7.01 AvMed’s health care providers are independent contractors and not the agents or employees of AvMed. Therefore, neither Employer nor its agents, servants or employees, nor any Participant is the agent or representative of AvMed, and none of them shall be liable for any acts or omissions of AvMed, AvMed’s agents or employees, or of a Plan Hospital, or a Plan physician, or any other son or organization with which AvMed has made or hereafter shall make arrangements for the performance of services under this Agreement.

7.02 Neither AvMed nor its agents, servants or employees, nor any Participant is the agent or representative of the Employer except as set forth in this Agreement, and none of them shall be liable for any acts or omissions of Employer, Employer’s agents or employees, or any other person representing or acting on behalf of Employer.

- 7.03 AvMed shall not be liable for any negligent act or omission committed by any independent licensed practicing physicians, nurses, or medical personnel, nor any licensed hospital or health care facility, its personnel, other licensed health care professionals or any of their employees or agents who may, from time to time, provide medical services to a Participant under the Plan. Furthermore, AvMed shall not be vicariously liable for any negligent act or omission of any of these licensed health care professionals who treat a Participant under the Plan.

#### **VIII. CLAIM ADMINISTRATION**

- 8.01 AvMed shall, in accordance with applicable law, consistent with the general standards in the industry for third party administration and consistent with the terms of the Plan and the Plan administration policies and procedures adopted by Employer and provided to AvMed:
- (i) receive claims for Plan benefits and timely review such claims and requests to determine what amount, if any, is due, payable and/ or allowable with respect thereto in accordance with the terms and conditions of the Plan in accordance with Florida Prompt payment of claims legislation, Sections 641.3155 and 627.6131, Florida Statutes; and
  - (ii) disburse or provide, to the person entitled thereto, benefit payments that it determines to be due in accordance with the provisions of the Plan; and
- 8.02 Employer, acting as fiduciary to The Plan, reserves to itself the authority and responsibility to make a full and fair review of each claim denial and to notify the claimant in writing of its decision on review. Employer acknowledges that this reservation of authority is reflected in the governing document(s) of the Plan and the summary plan description provided to Plan participants.
- 8.03 AvMed will make initial claims determinations pursuant to the Plan terms. The foregoing is subject to Employer's retention of full responsibility, as Plan Administrator and as named fiduciary, for the final review of denied claims appealed in writing by a Plan participant or beneficiary holding a valid assignment of benefits under the Plan. AvMed agrees to cooperate with Employer in establishing a procedure whereby AvMed notifies Plan participants and beneficiaries of the right to address a final written appeal to the Employer in circumstances where AvMed makes an initial claim denial pursuant to the terms of the Plan. AvMed further agrees to cooperate with Employer by providing, in a timely manner, all information in its possession or control necessary for Employer to review the final appeal of a denied claim.

#### **IX. FUNDING AND PAYMENT OF CLAIMS**

- 9.01 AvMed will notify Employer either by facsimile or email of the total dollar amount of claims and/or prescription drug payments to be paid. This notification will be sent to Employer no less than weekly or as often as a "claims and/or prescription drug payments to be funded report" is available. The Employer may authorize AvMed to initiate an ACH (Automated Clearing House) transfer of funds or the Employer may initiate an ACH transfer of funds. The funds must be received by AvMed within two (2) business days of the original notification. If neither of these ACH methods is acceptable, Employer may wire transfer funds into AvMed's account within the required two (2) business days. If any other funding mechanism is to be used, such as payment by check, additional claim deposits will be required so that the flow of claims and/or prescription

drug payments is steady and predictable. In the event a claim exceeds the stop loss deductible amount in a single payment, AvMed and Employer will determine the appropriate manner in which to proceed with such payment.

- 9.02 AvMed, as the provider of the administrative services described in this Agreement, shall issue checks for Plan benefits and Plan-related expenses in the amount AvMed determines to be proper under the Plan and/or under this Agreement. In the event that sufficient funds are not available to pay all Plan benefits and Plan-related expenses when due, then AvMed shall cease to process claims under this Agreement and shall provide notice to the Employer of this action. If the Employer is delinquent in funding the account, the Employer is immediately required to notify all Participants of the delinquency of funding. Such notification shall be in writing and a copy forwarded to AvMed. If the Employer does not provide such notification within five (5) calendar days of such delinquent funding, AvMed has the right, but not the duty, to notify Subscribers and health care providers of the delinquency of funding.
- 9.03 In the event AvMed pays any person less than the amount to which he or she is entitled under the Plan, AvMed will promptly adjust the underpayment by requesting additional funds through the claims funding process. In the event AvMed overpays any person entitled to benefits under the Plan, or pays benefits to any person not entitled to them, AvMed shall take all reasonable steps to recover the overpayment; however, AvMed shall not be required to initiate court proceedings to recover an overpayment. AvMed shall promptly notify the Employer if it is unsuccessful in recovering any overpayment. AvMed shall deposit all amounts recovered in the Employer's account with AvMed. See Exhibit E for payment recovery options. AvMed shall only be liable for overpayments to the extent set forth in Section 11.
- 9.04 The parties acknowledge that the Employer has paid the sum of \$1,000, which is to be used as follows:
- a) A working deposit of \$1,000 for interest payments to providers should they be required under the Florida prompt pay legislation.

If these deposits are used in whole or part AvMed will request the balance as part of the funding request process outlined in Section 9.02. This amount shall be reviewed periodically by AvMed and if it proves insufficient based on an average of three months paid claim data. Employer agrees to increase the deposit accordingly. It is understood that AvMed will not advance its own funds for payment of any medical, interest or pharmacy expenses incurred by the Employer's Participants.

## **X. RECORD RETENTION AND REVIEW**

- 10.01 Employer may perform reasonable audits of AvMed's performance under this Agreement. The audits may be performed by the Employer or its designated agent as determined by the Employer in its discretion. Upon thirty (30) days' advance written request, documents relating to the payment of claims together with any supporting documentation or material necessary in the determination or calculation of all claims and costs charged to the Plan shall be made available to the Employer or its designated agent for its audit or inspection during regular business hours at the place or places of business where it is maintained by AvMed. AvMed shall cooperate fully with any such audit.

Any costs or expenses incurred by AvMed or any delegate of AvMed in conforming to the audit or the request for information by Employer or its agent shall be paid by AvMed. Employer agrees that it shall ensure that any designee or other third party who will have access to such confidential medical records or medical information executes such documentation required by law to effectuate the purpose of this Section.

Upon termination of this Agreement, claim information shall be furnished to Employer for the standard runout period addressed in the Agreement and to the extent administratively feasible based on the standard reporting package provided to Employer before the Agreement was terminated.

- 10.02 AvMed shall provide any information or data required by Employer in connection with any dispute or litigation regarding a claim for benefits under the Plan or in connection with an audit by Employer or Employer's agent of claims or costs charged to the Plan.
- 10.03 All claims data and records shall be maintained by AvMed within the State of Florida for not less than six (6) years and in accordance with the privacy and confidentiality safeguards required by law. AvMed shall maintain all records made or received in connection with this Agreement for the period of time required by the Florida Public Records law and associated retention schedules.
- 10.04 The obligations set forth in this Section shall survive termination of this Agreement.

## **XI. LIABILITY AND INDEMNITY**

- 11.01 In performing its obligations under this Agreement, AvMed neither insures nor underwrites any liability of the Employer under the Plan, but acts only as the provider of the administrative services described in this Agreement.
- 11.02 AvMed shall have no duty or obligation to defend against any action or proceeding brought to recover Plan benefits unless such action or proceeding arises as a result of AvMed's negligent, wrongful, or tortious act or omission. AvMed shall, however, make available to the Employer and its counsel, such evidence relevant to such action or proceeding as AvMed may have as a result of its administration of the contested benefit determination.
- 11.03 Employer shall retain the liability for all Plan benefit claims and all expenses incident to the Plan, including:
  - (i) any applicable state premium, or similar tax, or similar benefit- or plan-related charge, surcharge or assessment, however denominated, including any penalties and interest payable with respect thereto, assessed against the Employer on the basis of and/or measured by the amount of Plan benefits administered by AvMed pursuant to this Agreement;
  - (ii) those arising from any legal action or proceeding to recover benefits under the Plan unless such action or proceeding arose as a result of AvMed's negligent, wrongful, or tortious act or omission;
  - (iii) those arising from any claim, legal action or proceeding, whether made by or on behalf of any Plan participants, any governmental body or bodies, or any other person, regarding unclaimed or abandoned property, or laws relating thereto, or any escheat obligations, as

related to Plan benefits administered pursuant to this Agreement, including any penalties and interest payable with respect thereto; and/or

(iv) those arising out of any illegal use of protected health information by Employer.

11.04 In the event litigation is instituted by a third party against the Employer and/or AvMed concerning any matter under the Plan, including a suit for Plan benefits, each party to this Agreement shall have sole authority to select legal counsel of its choice.

11.05 Employer shall give AvMed prompt and timely notice of any fact or condition which comes to its attention which may give rise to a claim of indemnity under this Section 11.05.

AvMed agrees to indemnify and hold harmless Employer with respect to any and all losses, damages, or expenses (including reasonable attorney's fees) caused by (a) AvMed's breach of any of its undertakings or agreements set forth in this Agreement or (b) any negligence by AvMed in the adjudication of claims, with the exception of any error by Employer on a claim that is a result of the eligibility status of the Subscriber or Dependent.

Nothing in this Agreement shall be construed as a waiver of the limitations of liability set forth in Section 768.28, Florida Statutes, which shall remain in full force and effect. This indemnity shall survive the termination of the Agreement.

11.06 To avoid misunderstanding by third parties concerning the respective duties and liabilities hereunder, except for the purpose of effectuating this Agreement, each party agrees not to use the other's name, logo, service marks, trade marks or other identifying information without the prior written approval of the other.

11.07 Employer retains full discretionary authority to settle or compromise any lawsuit based on a claim for Plan benefits. The Employer's defense and/or settlement, as provided herein, shall be at the Employer's direction and expense, except that the Employer can recover the expenses of the defense and/or settlement if the Employer is entitled to indemnification pursuant to this Agreement. In the event litigation or other legal action is instituted by a third party against Employer and/or AvMed concerning a claim for Plan benefits, the affected party shall give immediate written notice of such litigation or other legal action to the other party. The parties shall cooperate fully to determine the relevant facts within the context of the terms and provisions of this Agreement and the applicable terms of the Plan.

11.08 In the event litigation is instituted by a third party against the Employer and/or AvMed concerning any matter under the Plan or this Agreement, other than a claim for Plan benefits over which the Employer maintains control hereunder; each party to this Agreement shall have sole authority to select legal counsel of its choice. Each party is required to give prompt written notice of such litigation to the other party.

11.09 (Reserved.)

11.10 (Reserved.)

## **XII. MODIFICATION OF PLAN AND ADMINISTRATIVE DUTIES AND CHARGES**

- 12.01 AvMed shall have the right to revise the administration fee charged to the Employer on the first and second anniversaries of this Agreement, in accordance with the Administrative Fees as described in Exhibit B, except as described in Section 12.02.
- 12.02 Modification or amendment of the Plan as described in Exhibit A shall be communicated in writing by the Employer to AvMed at least sixty (60) days prior to the effective date of such change. Implementation of the modification or amendment shall be subject to data processing systems changes, retroactive effective dates, payment by Employer of any increase in administrative fees negotiated by the Employer and AvMed, other adjustments negotiated by the Employer and AvMed, and procedure changes necessitated by the modification or amendment. Notwithstanding the above, changes required under federal law will be implemented on the date required under that federal law. The cost of notification to Plan Participants of changes made by the Employer will be the responsibility of the Employer.
- 12.03 The benefit design of the EPN plan and the Choice plan, as described in the Summary Plan Description in Exhibit A, is based on AvMed's core benefit packages as offered to AvMed's large group clients. AvMed makes changes to these core offerings from time to time. AvMed will give notice to the Employer no later than sixty (60) days prior to any change that affects the administration or benefit design of this plan. Implementation of the modification or amendment shall be subject to mutual agreement by the Employer and AvMed. Notwithstanding the above, changes required under federal law will be implemented on the date required under the federal law. The cost of notification to Plan Participants of changes made by AvMed will be the responsibility of AvMed.
- 12.04 The term "Plan" as used in this Agreement shall include each such modification or amendment as of the implementation date of such modification or amendment agreed upon by the parties.
- 12.05 Modification of the duties as described in Exhibit B shall be by mutual agreement of the Employer and AvMed. Any such modification (and the revised charge, if any, applicable thereto) shall be evidenced by letter agreement between the parties which, upon full execution, shall become a part of this Agreement.

## **XIII. MODIFICATION OF AGREEMENT**

This Agreement constitutes the entire contract between the parties concerning the subject matter hereof. All prior or contemporaneous agreements, promises, negotiations or representations relating to the subject matter of this Agreement not expressly set forth in this Agreement and its Exhibits are of no force or effect. No modifications or amendment hereto shall be valid unless in writing and signed by an authorized representative of each of the parties.

## **XIV. MISCELLANEOUS**

- 14.01 **Summary Plan Description.** AvMed shall make available to the Employer a supply of the Summary Plan Description for distribution. AvMed shall also supply the document in a format to the Employer for posting on the Employer's website.



the Employer without written consent of AvMed.

14.13 **(Reserved.)**

14.14 **Applicability of Law.** The provisions of this Agreement shall be governed by and construed in accordance with the laws and regulations of the State of Florida and the United States. Venue for any lawsuit by either party against the other party, or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or in the event of federal jurisdiction, in the Southern District of Florida.

**EXHIBIT A**  
**PLAN DOCUMENT**

Plan No. [ ]

[Attach Plan Document and Summary Plan Description]

## **EXHIBIT B**

### **BASIC ADMINISTRATIVE SERVICES AND CHARGES**

#### **PART I. BASIC ADMINISTRATIVE SERVICES**

##### **A. CLAIM ADMINISTRATION**

1. Preparation and delivery of standard claim forms to the Employer for issuance to eligible Employees under the Plan (if necessary);
2. Make initial claim determinations;
3. Investigation of claims, as necessary;
4. Discussion of claims, where appropriate, with providers of health services;
5. Performance of internal audits of claim payments on a random sample basis;
6. Application of claim control procedures necessary to the effective implementation of the basic principles of the Plan;
7. Claim Department consultation, as necessary, with its health care and legal consultants in handling claims. (The Employer will be responsible for seeking its own advice if more specific consultative services are required in a particular case);
8. Calculation of benefits, check preparation, and issuance;
9. Notification to claimants of denied claims for which Participant is responsible for payment and the reason for the denial;
10. Notification to providers of denied claims, if provider submitted claim directly to Plan for payment, along with the reason for the denial and whether or not the Participant is responsible for payment;
11. Each AvMed Participating Provider in the EPN, Choice and Expanded Choice network has agreed to accept contractual and negotiated rates as payment in full for services rendered to employer's participants who are covered under the terms of the Employer's benefit plan, provided claims are funded by Employer as soon as presented for payment. Participants are expected to pay the required co-payments, as outlined in the Schedule of Benefits, to the Providers at the time the service is rendered.
12. Issue certificates of creditable coverage pursuant to the requirements of the Health insurance Portability and Accountability Act ("HIPAA");
13. Coordination with stop loss carrier on aggregate and/or specific stop loss, if purchased;

14. Standard Claims and Experience Reporting by the 20th of the following month for both monthly and quarterly reports.
15. Subrogation/Reimbursement Recovery (Services as described in Part III of this Exhibit)

#### B. FINANCIAL

1. Provision of a monthly invoice for services, fees, and premiums;
2. Disbursement of monthly payments for stop loss insurance premiums, fees, etc... to enable continuous provision of services and stop loss insurance coverage's;
3. Provision of annual year-end accounting consisting of a summary of the amount of paid claims at the coverage level and a summary of charges paid.

#### C. BANKING AND ADMINISTRATION

1. Furnishing of bank account activity data (to the extent administratively reasonable) to Employer on a mutually agreed upon frequency; and
2. Preparation for Employer of information reports required in connection with claim payments under the Plan to providers of health care services pursuant to Section 6041 of the Internal Revenue Code (Form 1099).
3. Provision of data maintained by AvMed for Employer's preparation of required governmental filings, upon request.

#### D. NETWORK ACCESS

1. Access to the AvMed Exclusive Provider Network (EPN), AvMed Choice and AvMed Expanded Choice networks which may change from time to time. AvMed Health Plans has also entered into contracts with third parties that may provide a negotiated savings on hospital and other medical services. Use of these additional AvMed contractual arrangements will provide additional savings for the City of Fort Lauderdale Employee Health Plan.
2. Provide Employer a listing of Participating Providers. Such listing shall include the names, specialties, addresses, and phone numbers of such providers. An updated listing shall be posted on AvMed's website at [www.avmed.org](http://www.avmed.org), which is updated weekly.
3. Access to the Transplant Network available for AvMed's self-funded clients.
4. Provide Employer with a Provider Directory for each eligible Participant at the initial enrollment and provide Employer a reasonable supply of Provider Directories upon each reprint (twice yearly) for distribution to new enrollees in the EPN and Choice plans.
5. Employer understands that AvMed may not contract for all services offered by a participating provider. Employer and enrollee should verify with the provider and AvMed that the services to be provided are covered under AvMed's contract with the provider and by the Employer's Plan Document.

6. Network Management Services which include credentialing and recredentialing of providers, contract negotiations and provider servicing.
7. Provide one ID card for each covered Participant upon enrollment and subsequently if there is a material change in benefits. AvMed reserves the right to charge the Plan an amount not to exceed that set forth in Exhibit B for reissuing cards at other times.

#### E. MEDICAL MANAGEMENT

1. AvMed will provide to Employer's Covered Employees and Covered Dependents Utilization Review programs to include: (1) Preauthorization of all SF-City of Fort Lauderdale EPN and Choice ASA-2007 inpatient and certain outpatient and office procedures, (2) Concurrent Review of inpatient stays, (either on-site or telephonically), and (3) Service Plus program which provides nurses and other medical staff available to all providers 24 hours a day, 7 days a week.
2. AvMed will provide to Employer's Covered Employees and Covered Dependents other coordinated medical services: (1) certain Disease Management Programs, (2) Nurse On Call, which is staffed 24 hours a day, 7 days a week to provide immediate information to the participant either by talking to a nurse or by listening to a pre-recorded informational health topic, (3) complex Case Management, when appropriate.
3. AvMed will incorporate the data from the City of Fort. Lauderdale's current PBM vendor for disease management program purposes.

#### F. COMPREHENSIVE ACCOUNT AND PARTICIPANT SERVICE

1. Enrollment and case installation
2. Designated Account Service Team
3. 24 hour Participant Service Staff available via shared toll free telephone number  
AvMed Service Standards are:  
  
Call Completion Rate: 96% Average Speed of Answer: 45 seconds
4. Distribution of participant notices from time to time to improve plan administration or as required by law. Notices specific to City of Fort Lauderdale will be submitted to the Employer for review prior to distribution to participants.
5. Creation of language for SPD.

#### G. ELIGIBILITY

1. Screen new entrants for dependent eligibility, according to the plan document provisions. This may include verification of dependent eligibility by requests for documentation supporting student status or financial dependency, requesting a copy of a marriage license, adoption papers, birth certificates, etc.
2. Periodic screening for continued dependent child eligibility.

4. Transmitting the EPN and Choice eligibility to the City's Pharmacy Benefit Manager, Catalyst RX, on a regular basis, as agreed to by Catalyst RX, and AvMed.

PART II.

CHARGES FOR BASIC ADMINISTRATIVE SERVICES PROVIDED BY AVMED OR A  
SUBCONTRACTOR

BASIC ADMINISTRATIVE SERVICES

AvMed Health Plan

Year 1 01/01/07 – 12/31/07

**\$36.00** Medical and Vision per Participant per month.

Year 2 01/01/08 – 12/31/08

**\$37.08** Medical and Vision per Participant per month.

Year 3 01/01/09 – 12/31/09

**\$38.19** Medical and Vision per Participant per month.

Claims Runout

If Employer and AvMed mutually agree AvMed should continue runout beyond the original runout period, then AvMed will charge a fee to the Employer as follows:

**\$22.00** per adjudicated claim (including claims that are payable, adjusted, denied, or acknowledged as a duplicate submission previously paid or denied).

Reissue of Member ID Cards at Employer's Request

**\$.50** per ID Card

Administrative services should include all utilization network fees, and disease management plans. Also included is AvMed's value added Weight Watchers reimbursement program.

Reinsurance Underwriting Fee Billed by AvMed on Behalf of CMB & Associates for Combined Insurance

**\$.60** per Participant per month.

Capitation Fee(s) Billed by AvMed on Behalf of Provider Vendors

In lieu of medical claims, fixed expenses will include outpatient Laboratory Capitation of **\$2.79** per Participant per month, as per the terms of the AvMed HMO/POS contracts with these service providers. Capitation vendors, services, and rates may change throughout the contract year based on AvMed's Commercial block of business. The rate is subject to change as AvMed's rate is adjusted throughout the year.

**PART III**

**SUBROGATION/REIMBURSEMENT RECOVERY SERVICES**

- A. All subrogation and reimbursement recoveries under the Plan will be handled by the entity checked below;
- \_\_\_\_\_ Employer
- X  AvMed and its subcontractor(s)
- \_\_\_\_\_ An independent recovery vendor whose name and address follow:
- B. If Employer has designated AvMed and its subcontractors to act as its recovery agent in paragraph A. above, then:
1. Employer hereby confers upon AvMed all support services as follows:
    - i. Production of lien amounts
    - ii. Response to Section 768.76, Florida Statute
    - iii. Preparation of case summary
  2. Any settlement proposal shall be conveyed by AvMed via a case summary to:

Name: Guy Hine  
Title: Risk Manager  
Address: 101 NW 3<sup>rd</sup> Avenue, Suite 300  
Fort Lauderdale, FL 33301  
Telephone: 954-828-5494
  3. Settlement authority shall be on a case-by-case basis and conveyed by City to Subrogation Department via fax.
- C. In accordance with state law restrictions, AvMed and its subcontractors shall have no Duty or obligation to represent Employer in any litigation or court proceeding involving any matter which is the subject of this Agreement, but shall make available to Employer and/or Employer's legal counsel such information relevant to such action or proceeding as AvMed and its subcontractors may have as a result of its handling of any matter under this Agreement.

EXHIBIT E

CLAIM PAYMENT OR OVERPAYMENT RECOVERY

If a claim is paid and it becomes necessary to re-claim all or part of the funds from the Participant, AvMed will contact the Participant in writing to request reimbursement of these funds. If there is no response within 30 days AvMed will notify the Employer who will then either handle the recovery itself OR allow AvMed to use its contracted collection agency to try to recover funds on their behalf. The cost of this collection agency is approximately 25% of collected funds and is the responsibility of the Employer.

Employer should indicate which method of collection is required:

- A) Employer handles recovery in all cases
- B) AvMed refers all cases to collection
- X C) Employer determines whether to use A) or B) on case-by-case basis.

## BUSINESS ASSOCIATE AGREEMENT

This Agreement is made and entered into this 1<sup>st</sup> day of January, 2007, by and between the City of Fort Lauderdale, a Florida municipality, (hereinafter referred to as the "Covered Entity" or "City"), and AvMed, Inc., a Florida non-profit corporation, d/b/a AvMed Health Plans, (hereinafter referred to as "Business Associate").

WHEREAS, the Covered Entity and the Business Associate have established a business relationship in which Business Associate, acting for or on behalf of Covered Entity but not as a health care provider, receives Personal Health Information as defined by the Health Insurance Portability and Accountability Act of 1996 ("Act"); and

WHEREAS, the Covered Entity and the Business Associate desire to comply with the requirements of the Act's Privacy Rule as further set out below.

NOW, THEREFORE, in consideration of the mutual covenants, promises and agreements set forth herein, the Covered Entity and the Business Associate agree as follows:

1. Definitions
  - a. Terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms in the Privacy and Security Rules, as codified in 45 Code of Federal Regulations Parts 160 through 164, as may be amended.
2. Obligations and Activities of Business Associate
  - a. Business Associate agrees to not use or disclose Protected Health Information other than as permitted or required by the Agreement or as Required by Law.
  - b. Business Associate agrees to use appropriate safeguards to prevent use or disclosure of the Protected Health Information other than as provided for by this Agreement.
  - c. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
  - d. Business Associate agrees to report to Covered Entity any use or disclosure of the Protected Health Information not provided for by this Agreement of which it becomes aware.

e. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of Covered Entity, agrees to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.

f. Business Associate agrees to provide access, at the request of Covered Entity, and in a reasonable time and manner, to Protected Health Information in a Designated Record Set, to Covered Entity or, as directed by Covered Entity, to an Individual in order to meet the requirements under 45 C.F.R. § 164.524, if the Business Associate has Protected Health Information in a Designated Record Set.

g. Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 at the request of Covered Entity or an Individual, in a reasonable time and manner, if Business Associate has Protected Health Information in a Designated Record Set.

h. Business Associate agrees to make internal practices, books, and records, including policies and procedures and Protected Health Information, relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of, Covered Entity available to the Covered Entity, or to the Secretary, in a reasonable time and manner or as designated by the Secretary, for purposes of the Secretary determining Covered Entity's compliance with the Privacy Rule.

i. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

j. Business Associate agrees to provide to Covered Entity or an Individual, within ten (10) business days of receipt of a written request from the Covered Entity or an Individual, information collected in accordance with Section 2.i of this Agreement, to permit Covered Entity to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528.

### 3. Permitted Uses and Disclosures by Business Associate

a. Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, Covered Entity as specified in the Self-Funded Group Health Plan Third Party Administrative Services Agreement having an effective date of

January 1, 2007, between the City of Fort Lauderdale and the Business Associate ("Original Contract"), provided that such use or disclosure would not violate the Privacy Rule if done by Covered Entity or the minimum necessary policies and procedures of the Covered Entity.

#### 4. Specific Use and Disclosure Provisions

a. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate.

b. Except as otherwise limited in this Agreement, Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate, provided that disclosures are Required By Law, or Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required By Law or for the purpose for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

c. Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide Data Aggregation services to Covered Entity as permitted by 45 C.F.R. § 164.504(e)(2)(i)(B).

d. Business Associate may use Protected Health Information to report violations of law to appropriate Federal and State authorities, consistent with 45 C.F.R. § 164.502(j)(1).

#### 5. Obligations of Covered Entity

a. Covered Entity shall notify Business Associate of any limitation(s) in its notice of privacy practices of Covered Entity in accordance with 45 C.F.R. § 164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information.

b. Covered Entity shall notify Business Associate of any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, to the extent that such changes may affect Business Associate's use or disclosure of Protected Health Information.

c. Covered Entity shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that Covered Entity has agreed to

in accordance with 45 C.F.R. § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of Protected Health Information.

6. Permissible Requests by Covered Entity

a. Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except that Business Associate may use or disclose Protected Health Information for data aggregation or management and administrative activities of Business Associate if required by the terms of the Original Contract.

7. Term and Termination

a. The Term of this Agreement shall be effective as of the effective date of the Original Contract, and shall terminate when all of the Protected Health Information provided by Covered Entity to Business Associate, or created or received by Business Associate on behalf of Covered Entity, is destroyed or returned to Covered Entity, or, if it is infeasible to return or destroy Protected Health Information, or if it is illegal to destroy Protected Health Information, the protections are extended to such information, in accordance with the termination provisions in this Section.

b. Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity shall either:

1. Provide an opportunity for Business Associate to cure the breach or end the violation and terminate this Agreement and the Original Contract if Business Associate does not cure the breach or end the violation within the time specified by Covered Entity;

2. Immediately terminate this Agreement and the Original Contract if Business Associate has breached a material term of this Agreement and cure is not possible; or

3. If neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.

c. Effect of Termination

1. Except as provided in paragraph (2) of this section, upon termination of this Agreement, for any reason, Business Associate shall return, or destroy, except as prohibited by the Florida public records law, all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall apply to Protected Health Information

that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.

2. In the event that Business Associate's return or destruction of the Protected Health Information would be infeasible or illegal, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible or illegal. Upon Covered Entity's counsel's concurrence that return or destruction of the Protected Health Information would be infeasible or illegal, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible or illegal, for so long as Business Associate maintains such Protected Health Information. At all times Business Associate shall comply with the Florida public records law and exemptions therefrom, and applicable Florida records retention requirements.

## 8. Miscellaneous

a. A reference in this Agreement to a section in the Privacy Rule means the section as in effect or as amended or revised.

b. The Parties agree to take such action as is necessary to amend this Agreement from time to time as is necessary for Covered Entity to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act of 1996, Pub. L. No. 104-191.

c. The respective rights and obligations of Business Associate under Sections 7(c)(1) and 7(c)(2) of this Agreement shall survive the termination of this Agreement.

d. Any ambiguity in this Agreement shall be resolved to permit Covered Entity to comply with the Privacy Rule.

e. Business Associate shall indemnify, hold harmless, and defend, at Business Associate's expense, counsel being subject to Covered Entity's approval, the Covered Entity, and the Covered Entity's officers, employees, and agents, ("indemnitees"), against any and all claims, actions, lawsuits, damages, losses, liabilities, judgments, fines, penalties, costs, and expenses, incurred by any of the indemnitees, and all liability to third parties, including the United States Government, arising out of or in connection with Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or any act or omission by Business Associate or by any of Business Associate's officers, employees, agents, or subcontractors, including Business Associate's failure to perform any of its obligations under the Privacy and Security Rules. Business Associate shall pay any and all expenses, fines, judgments, and penalties, including court costs and attorney

fees, which may be imposed upon any of the indemnitees resulting from or arising out of Business Associate's or any of Business Associate's officers', employees', agents', or subcontractors' breach of this Agreement or other act or omission.

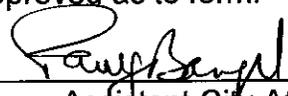
f. Venue for any lawsuit brought by either party against the other party or otherwise arising out of this Agreement, and for any other legal proceeding, shall be in Broward County, Florida, or, in the event of federal jurisdiction, in the United States District Court for the Southern District of Florida, with appellate jurisdiction in the respective corresponding appellate tribunals.

IN WITNESS WHEREOF, the City of Fort Lauderdale and AvMed, Inc. d/b/a AvMed Health Plans execute this Business Associate Agreement as follows:

CITY OF FORT LAUDERDALE

By:   
Director  
Procurement Services Dept.

Approved as to form:

  
Assistant City Attorney

AVMED, INC. d/b/a AVMED HEALTH PLANS

WITNESSES:



By:   
Michael P. Gallagher  
President & CEO

ATTEST:

(CORPORATE SEAL)

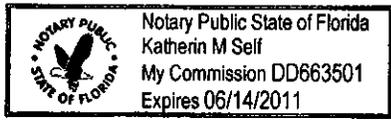
  
Stephen J. deMontmollin  
Assistant Secretary

STATE OF FLORIDA )

COUNTY OF ALACHUA )

22 The foregoing Business Associate Agreement was acknowledged before me this day of may, 2008, by Michael P. Gallagher, as President & CEO and Stephen J. deMontmollin, as Assistant Secretary, for AvMed, Inc. d/b/a AvMed Health Plans.

(SEAL)



*Katherin m self*

Notary Public, State of Florida  
(Signature of Notary Public - State of Florida)

*Katherin M. Self*

(Print, Type, or Stamp Commissioned Name of Notary Public)

Personally Known OR Produced Identification

Type of Identification Produced