

# COBRA SERVICE AGREEMENT

This COBRA Service Agreement ("Agreement") specifies the services to be provided by Higginbotham Insurance Agency, Inc. ("Higginbotham") to Client in connection with eligibility processing beginning on the effective date of the Purchase Order.

WHEREAS, Client desires to retain Higginbotham COBRA Services to assist with the compliance requirements of the continuation coverage provisions of the Consolidated Omnibus Reconciliation Act of 1985, as amended, ("COBRA") and the Health Insurance Portability and Accountability Act of 1996, as amended, ("HIPAA"), (both COBRA and HIPAA are referred to in this Agreement together as "the Acts") with respect to Employer's benefit plans listed in the Purchase Order (referred to in this Agreement as the "Covered Benefit Plans");

In consideration of the promises and mutual promises contained in this Agreement, the parties agree as follows:

Client retains Higginbotham to provide the services listed below, as applicable, for all plans listed in Purchase Order:

## COBRA Processing

- Initial Notification by First Class Mail with Proof of Mailing to:
  - Employees who first become eligible under Covered Benefit Plans after the effective date of this Agreement.
  - All employees who are participants under Covered Benefit Plans on the effective date of this Agreement.
- Qualifying Event Notification by First Class Mail with Proof of Mailing to Qualified Beneficiaries for Qualifying Events occurring after the effective date of this Agreement.
- Texas State Continuation Notification (if applicable) by First Class Mail with Proof of Mailing to participant, if the Client is not subject to COBRA or a COBRA participant reaches the end of the maximum required COBRA continuation period.
- Update Notifications by First Class Mail to Covered Employees and Qualified Beneficiaries as may be required by amendments to the Acts and the regulations, or changes to Covered Benefit Plans.
- Termination or Non-Payment Notifications upon non-payment of premium or end of COBRA term.
- Notices of Unavailability of COBRA Coverage

The fee for Higginbotham to perform the services above is shown on the Purchase Order (referred to in this Agreement as the Fee Schedule). The Fee Schedule is subject to periodic review by Higginbotham. Higginbotham shall provide Client 60-days' notice of a change in the Fee Schedule, and Client shall have 7 days from the date of receipt to request an appeal. If Client does not request an appeal within the specified time period, the Fee Schedule shall be deemed approved by Client. Further, the Fee Schedule is dependent upon FBS-HIA, LLC remaining the agent of record. Additional fees may be due if Client's agent of record changes.

This Agreement shall automatically renew for one-year terms on the expiration date stated above at the rates stated in the Purchase Order, unless modified in writing by mutual agreement of both parties prior to the expiration date, or terminated in accordance with the termination provision below. Client shall pay to Higginbotham all fees specified in the Fee Schedule.

**A. Higginbotham Responsibilities and Duties in addition to Services Above:**

1. Higginbotham shall act as Client's directed Third Party Administrator ("TPA") to act on behalf of the Client to perform all functions necessary to process COBRA or other notifications as needed by Client. As the TPA of Client, Higginbotham shall operate under the express terms of this Agreement and Client's benefit plans listed in the Purchase Order.
2. Higginbotham shall monitor and act on requests successfully emailed to [cobra@higginbotham.net](mailto:cobra@higginbotham.net) Attn: COBRA Department or by processing a request in THE*benefits*HUB.
3. Higginbotham's project administrator will maintain a working knowledge of relevant statutory schemes that affect the processing of Client' eligibility requests. **HIGGINBOTHAM IS NOT A LAW FIRM AND DOES NOT GIVE LEGAL ADVICE.**
4. Higginbotham and Client shall enter into a Business Associate Agreement ("BAA").
5. Higginbotham shall provide certain record keeping services for the duration of the Agreement. "Records" include the usual and customary books, records and documents, including electronic records, that relate to Client's benefit plans and participants that Higginbotham has prepared or that has otherwise come within Higginbotham's possession. These records are the property of Client, and Client has the right of continuing access to them during normal business hours at Higginbotham's offices with reasonable prior notice. Document retention, dissemination, and destruction will be subject to Client and Higginbotham's signed Business Associate Agreement.
6. Higginbotham shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If Higginbotham processes any improper eligibility change under this Agreement Higginbotham shall make a diligent effort to recover any loss experienced by Client related to the change. **HIGGINBOTHAM SHALL NOT BE LIABLE FOR SUCH LOSS, EVEN IF HIGGINBOTHAM WAS NEGLIGENT IN PERFORMING SUCH CHANGE, UNLESS HIGGINBOTHAM WOULD OTHERWISE BE LIABLE UNDER ANOTHER PROVISION OF THIS AGREEMENT.**

**B. Client Responsibilities, Duties, and Obligations:**

1. Client retains Higginbotham as a directed TPA and authorizes Higginbotham to act on behalf of the Client to perform all functions necessary to process COBRA or other notifications as needed by Client.
2. Client shall furnish the information requested by Higginbotham to perform Higginbotham's functions, including, but not limited to, the participants':
  - a. Names;
  - b. Addresses;
  - c. Social security numbers;
  - d. Coverage(s) selected; and
  - e. Any related Plan-eligibility data, including changes during the Plan Year, such as:
    - i. New hires;
    - ii. Terminations; or
    - iii. Other changes that require coverage changes for Plan participants.

Client shall be responsible for ensuring the information provided is timely and accurate. Higginbotham shall have no liability to Client or participants as a consequence of inaccurate information provided by Client, and Higginbotham shall have no obligation to credit Client for any losses to Client participants as a consequence of Client's inaccurate information. Higginbotham shall assume that all information provided by Client is complete and accurate and is under no duty to question the completeness or accuracy of such information. Some of the information collected will be considered PHI and subject to privacy rules under HIPAA and the BAA signed by Client and Higginbotham.

3. Client shall, if required by law or regulation, notify each participant and provide each participant with an opportunity to opt out (if required) or obtain from each participant such written authorization for release of any personal financial records and medical records in accordance with applicable state and federal law (including the Gramm-Leach-Bliley Act) to permit Client and/or Higginbotham to perform their obligations under this Agreement.
4. Client shall provide Higginbotham with notice of the privacy practices that Client produces in accordance with HIPAA, as well as any subsequent changes to such notices. Client shall provide Higginbotham with any changes to, or revocation of, permission by a participant to use or disclose PHI if such changes affect Higginbotham's permitted or required uses or disclosures. Client shall notify Higginbotham of any restriction to the use or disclosure of PHI that Client has agreed to in accordance with the privacy rules under HIPAA. Client shall not request that Higginbotham use or disclose PHI in any manner that would not be permissible under the privacy rules under HIPAA if done by Client, except that Higginbotham may use or disclose PHI for purpose of data aggregation and the management and administrative activities of Higginbotham.
5. Client shall secure legal review of this Agreement from Client's legal counsel.
6. Client shall complete new plan year enrollment procedures completely and on a timely basis.
7. Client shall securely process requests in THE *benefits*HUB or email all eligibility requests to [cobra@higginbotham.net](mailto:cobra@higginbotham.net) Attn: Benefits Eligibility Dept. in a prompt and efficient manner. Client shall be responsible for ensuring that eligibility requests were successfully and effectively received by Higginbotham and that all information necessary to process the request was provided.
8. Client shall monitor and review all relevant billing statements to confirm that eligibility requests were received by Higginbotham and processed successfully and correctly. Client shall promptly and efficiently notify Higginbotham of any discovered discrepancies or deficiencies with any processed changes. **CLIENT SHALL BE LIABLE FOR ALL ELIGIBILITY CHANGES PROCESSED ON CLIENT'S BEHALF, AND IN NO CASE SHALL HIGGINBOTHAM BE RESPONSIBLE FOR ANY INCORRECT OR IMPROPERLY PROCESSED REQUEST IF CLIENT FAILS TO REVIEW ITS BILLING AND NOTIFY HIGGINBOTHAM OF ANY DISCREPANCY WITHIN 60 DAYS OF THE REQUEST BEING RECEIVED BY HIGGINBOTHAM, EVEN IF HIGGINBOTHAM WAS NEGLIGENT IN PERFORMING SUCH CHANGES.**
9. All final determinations as to a participant's eligibility to Client benefit plans are to be made by the Client.
10. Client shall take any and all necessary action and execute any and all necessary documents to authorize Higginbotham to perform the services described in this Agreement.

### **C. Representations, Warranties, and Understandings:**

1. Client warrants and represents that it is the Plan Administrator and named fiduciary of all plans referenced in Exhibit A and shall not require any bond or security of Higginbotham in the performance of services under this Agreement.
2. Client reserves full authority to make all decisions regarding the administration of the benefit plans, including those services to be performed by Higginbotham under this Agreement. Higginbotham is a service provider acting under this Agreement at the direction of the Plan Administrator. Higginbotham is not a fiduciary and is not the Plan Administrator of any of Client benefit plans. Client has the sole responsibility to pay any fee or penalty arising from the Covered Benefit Plans that is assessed by the Internal Revenue Service, the Department of Labor, and/or other federal, state, or local governmental agencies, unless such penalty is a direct result from an error or omission, or gross negligence on Higginbotham's behalf.

3. Client and Higginbotham each acknowledge that in the performance of this Agreement, each party has and will continue to disclose to the other, proprietary and confidential information (the "Confidential Information"). Only information that is identified in writing by a party as "confidential" shall be considered Confidential Information of that party. and Higginbotham agree that each party shall: (i) keep such Confidential Information of the other party in strict confidence; (ii) not disclose Confidential Information of the other party to any third parties or to any of its employees who do not have a legitimate need to know such information; and (iii) not use Confidential Information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure). further agrees that Higginbotham may communicate confidential, protected, privileged or otherwise sensitive information to through a named contact designated by (the "Named Contact") and specifically agrees to indemnify, defend, and hold harmless Higginbotham for any claims (whether brought by Client, its participants, or any third party) arising out of such communications directed to through the Named Contact attempted via facsimile, mail, telephone, email or any other form, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted once Higginbotham has sent such. Confidential Information does not include information which: (i) becomes generally available to the public other than as a result of a disclosure by a party hereto, its representatives, or its agents; (ii) was available to the receiving party on a non-confidential basis prior to its disclosure hereunder by a party or its agents; (iii) becomes available on a non-confidential basis from a third party source provided that such third party source is not bound by a confidentiality agreement with the other party hereto; or (iv) is independently developed by the receiving party without the use of, or reference to, the disclosing party's Confidential Information.
4. Client agrees not to copy or disclose to other parties any materials provided, except for auditor, attorneys, and others to whom disclosure is legally required, unless Higginbotham gives permission to disclose.
5. If a court of competent jurisdiction declares any term of this Agreement invalid, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions.
6. Client and Higginbotham acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by Client and Higginbotham. Client and Higginbotham agree that any principle of construction or rule of law that provides that, in the event of any inconsistency or ambiguity, an agreement shall be construed against the drafter of the agreement, shall have no application to the terms and conditions of this Agreement.
7. Failure by Client or Higginbotham to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions below.
8. This Agreement, along with attached Exhibits, constitute the entire agreement of the parties hereto with respect to the subject matter of this Agreement and supersede all prior agreements and undertakings, both written and oral, between or on behalf of the parties hereto with respect to the subject matter of this Agreement. This Agreement may not be amended or modified except in writing signed by each of the parties. This Agreement is binding upon both parties, their respective successors or assignees, and shall be interpreted under the laws of the State of Texas, County of Tarrant.

#### **D. Hold Harmless**

1. Client shall hold harmless Higginbotham, from and against any liability incurred by Client or any third party, arising out of the sole or joint negligence of Client, its agents or employees, and related to Client obligations under this Agreement. Such indemnification will include, but not be limited to, attorneys' fees, court costs, and amounts paid in settlement of claims or judgments rendered against Higginbotham.

#### **E. Notices and Communications**

All notices between Client and Higginbotham provided shall be sent by one of the following methods with tracing capability: by confirmed facsimile; by guaranteed overnight mail; by first class United States mail, with postage prepaid and delivery receipt; or by email addressed to the other party with a read receipt requested at their respective addresses as set forth below for Higginbotham, and on the signature page for Client.

Higginbotham Insurance Agency, Inc.  
500 W. 13<sup>th</sup> Street  
Fort Worth, Texas 76102  
Email: [cobra@higginbotham.net](mailto:cobra@higginbotham.net)

Notices shall be deemed provided when sent except as otherwise set forth in the Agreement. Emails sent to Higginbotham should be sent to the appropriate Higginbotham Service Representative or Contract Administration. Both parties agree to promptly notify the other of any changes in addresses and/or email addresses. Neither party shall be responsible under this Agreement for notices sent prior to notification of a change of address.

#### **F. Termination of this Agreement**

1. This Agreement may be terminated by either party for reasonable cause upon 60-days' written notice stating such reasonable cause. Reasonable cause shall include, but not be limited to, the following:
  - a. Bankruptcy or insolvency of either party;
  - b. Business reasons, such as market changes, profitability, etc.;
  - c. Change in statutes or regulations which eliminate or substantially modify the requirements for third party administrative services with respect to the Plan(s);
  - d. Either party is suspended or restricted from performance by Federal or State regulatory authority;
  - e. Either party fails to comply with the provisions of this Agreement;
  - f. Client fails to pay fees in accordance with Fee Schedule, or does not accept an adjustment to the Fee Schedule.
2. Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. The indemnity, confidentiality and privacy provisions of this Agreement shall survive its termination.