

AGREEMENT ON CONSULTING SERVICES

This Consulting Agreement dated as of the effective date of the Purchase Order is made and entered into between Client and FBS-HIA, LLC d/b/a Higginbotham Public Sector, whose address is 2175 N. Glenville Dr., Richardson, Texas 75082, (the "Consultant") individually each a "Party" and collectively (the "Parties"). This Agreement provides for the consulting services of Consultant to Client to assist in obtaining employee benefits and insurance for Client. The parties agree as follows:

1. Definitions and Defined Terms

1.1 **Defined Terms.** Terms defined in the preamble have their assigned meanings and each of the following terms has the meaning assigned to it.

"Agreement" means this Agreement on Consulting Services and Business Associate Agreement, as each may be amended from time to time in writing and executed by the Parties.

"allsynx" means THE*benefits*HUB, d/b/a allsynx, an affiliate of Consultant who provides online benefits administration platform, among other services that may be purchased through Consultant.

"Benefits Administration Platform" means THE*benefits*HUB benefits administration platform hosted and maintained by allsynx.

"Business Associate Agreement" means the business associate agreement between Consultant and Client, incorporated into this Agreement.

"Business Day" means a Consultant business day.

"COBRA" means the health insurance plan employees may purchase under the Consolidated Omnibus Budget Reconciliation ACT of 1985.

"Confidential Information" means non-public information that is proprietary or confidential to the other Party and is either clearly labelled as such or identified as Confidential Information in Section 13, and includes, but is not limited to, the following: health or personal information of insureds and/or prospective insureds; all user data; information related to the Products; pricing information; trade secrets; business plans; business methods; customer lists; financial projections; new-product plans; internal procedures; documentation for development, sales, finance and accounting; passwords; credential information; software object code; software source code; and documentation related to computer code and algorithms; and information designated by a Client employee to be maintained as confidential (e.g., telephone number, address, family information, etc.) pursuant to the Texas Public Information Act; or other information deemed confidential in accordance with federal or state laws and regulations. "Confidential information" does not include the following information:

- (a) is or becomes publicly known, other than through any act or omission of the receiving Party;
- (b) was in the other Party's lawful possession before the disclosure;
- (c) is lawfully disclosed to the receiving Party by a third party without restriction on disclosure; or

(d) is independently developed by the receiving Party, which independent development can be shown by written evidence.

“Effective Date” means the date first listed in the preamble.

“Fee” means the amounts described in Section 6 of this Agreement, for products or employees enrolled on the Benefits Administration Platform.

“Higginbotham” means Higginbotham Insurance Agency, Inc., Consultant’s parent company who provides COBRA coverage, flexible benefit plans, third party administration services, and other benefit services that may be purchased through Consultant.

“HIPAA” means the Health Insurance Portability and Accountability Act of 1996, including the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and 164.

“NBS” means National Benefits Services, LLC, an affiliate of Consultant who provides COBRA coverage, health savings account services, flexible benefit plans, third party administration services, and other benefits services that may be purchased through Consultant.

“Personnel” means Consultant and Client’s respective employees, representative, agents, subcontractors, and other persons whom Consultant, Consultant’s affiliates, or Client have authority or oversight of.

“Plan Year” means September 1, 2022, through August 31, 2023.

“Products” means the benefit products offered by a carrier to employer groups.

“Services” has the meaning assigned to it in Section 5.

“Standard Cooperative Services” means the voluntary benefits and services selected by the cooperative for members of the cooperative to provide to their employees.

“Term” has the meaning assigned to it Section 3.

2. **Effective Date.** This Agreement is effective on the Effective Date.
3. **Term.** Except as provided in Section 4, this Agreement will begin on the Effective date and continue through August 31st of the following year. The Agreement will then automatically renew for successive one-year terms, beginning September 1st of the year and ending August 31st the following year until terminated as provided in Section 4. Absent a request to terminate the Agreement at the end of its term, the Parties will assume the Agreement is automatically renewed for the period of another one-year term.
4. **Termination.** This Agreement shall terminate upon:
 - (i) a 90-day prior written notice by either Party of termination for any reason, with or without cause;
 - (ii) a determination by a court of law, that an essential term of this Agreement violates any federal, state, or local law or regulation; or a change in law or regulation that renders this Agreement unlawful;

- (iii) the institution by or against either Consultant or Client for insolvency, receivership, or bankruptcy proceeding, or any other proceedings for the settlement of such Party's debts;
- (iv) either Consultant or Client's election to dissolve and liquidate; or
- (v) immediately upon a material breach to the Agreement by either Party and:
 - (a) the non-breaching Party provides written notice of the breach;
 - (b) the non-breaching Party provides a written demand for the breaching Party to cure such breach; and
 - (c) the breach continues after 30 days' notice of the breach.

5. **Services to be Provided to Client.** Client engages Consultant for the following Services:
- (i) provide benefit consultation for all voluntary benefits;
 - (ii) assist Client with online benefits enrollment through Benefits Administration Platform, which will include a benefit website, which will begin September 1st following the Effective Date of the Agreement;
 - (iii) assist Client with enrollment in voluntary products selected by Client;
 - (iv) assist Client with consolidated billing and reconciliation;
 - (v) bid all Products for Client in accordance with state and federal laws and regulations, to include Consultant compensation during the Plan Year;
 - (vi) conduct the request for proposal with the intention to keep rates and coverage stable, while building in compensation for Consultant; and
 - (vii) conduct group meetings for Personnel of Client to educate Personnel on the online enrollment process and to provide benefit education to Personnel for increased understanding of and participation in benefit plans.

If Client wishes to engage Consultant for additional Services, including any services outside of the Standard Cooperative Services if Client has obtained Consultant's Services through a cooperative membership, a new agreement shall be made for the additional Services, which may include additional fees.

6. **Fees.**

- 6.1 Amount to be Paid. For the Plan Year, the Consultant will be paid by standard commissions that will be included in all supplemental products or employer paid insurance products and shall be disclosed to the Client upon request or as required by applicable law. Standard commissions shall be determined by carrier and/or industry standards.
- 6.2 Third Party Fees. Client shall be responsible for paying any additional fees due to Higginbotham, NBS, allsynx, or any additional third-party provider whom Client contracts within conjunction with this Agreement.
- 6.3 Additional Compensation: In some circumstances, the Consultant may earn additional compensation from insurance carriers in the form of bonuses, overrides, profit sharing, non-financial rewards, or contingent commissions, which may be based on the amount of premium and profitability of all the insurance business the Consultant places through the insurer. This compensation is not guaranteed. Any additional compensation or rewards earned will be retained by the Consultant.

7. **Reliance.** In the performance of its duties, Consultant may rely upon, and will have no obligation to independently verify the accuracy, completeness, or authenticity of, any written instruction or information provided to Consultant by Client or its designated Personnel and reasonably believed by Consultant to be genuine and authorized by Client.
8. **Subcontractors.** Client acknowledges that Consultant may cause another person or entity, as a subcontractor of Consultant, to provide some of the services required to be performed by Consultant hereunder and Consultant shall be responsible for ensuring subcontractor compliance with Consultant's obligations under this Agreement.
 - 8.1 Client further acknowledges that Consultant has designated allsynx as the online benefits administration system provider and Higginbotham and/or NBS as the COBRA and other services provider, and agrees that, Client shall execute and deliver any additional agreements with these providers for Consultant to meet its obligations under this Agreement.
 - 8.2 Client agrees that Consultant reserves the right to designate new service providers as it deems necessary or appropriate with written notice of its intent to designate new service providers. If Consultant terminates its relationship with a current service provider, Client agrees to continue to comply with its agreement with such service provider for so long as required under, and pursuant to the terms of its agreement with such service provider, and thereafter to use commercially reasonable efforts to execute and deliver an agreement with Consultant's replacement service provider.
9. **Client's Representations and Warranties.** Client represents and warrants to Consultant that:
 - (i) Client will appoint and retain Consultant as its agent of record for the applicable Plan Year;
 - (ii) If Client is part of a cooperative, Client shall enter into a separate agreement for any additional services or products the Client elects to utilize that are not included in the Standard Cooperative Services;
 - (iii) Client shall furnish annually all requested and necessary information for employee enrollment, including census data, to Consultant for Consultant to meet its obligations under this Agreement;
 - (iv) Client shall maintain employee eligibility data within the Benefits Administration Platform, including managing and maintaining terminations and new hires in a timely manner;
 - (v) Client shall maintain employees' names and social security numbers for billing and reconciliation purposes;
 - (vi) Client shall maintain and remit payroll deduction codes, deduction descriptions, and deduction amounts for payroll extractions for billing and reconciliation;
 - (vii) Client shall remit payroll deductions in the approved format to Consultant by the deadline provided to Client by Consultant;

- (viii) Client shall remit monthly premiums to Consultant by the 5th of the month following payroll;
- (ix) Client shall be responsible for any year-end deficits related to Flexible Spending Accounts;
- (x) Client shall furnish the necessary equipment for Consultant to assist employees with online enrollment at Client locations; and
- (xi) The person executing this Agreement on behalf of Client has the authority to enter into this Agreement on behalf of Client, and, to the extent known, all necessary and prerequisite administrative procedures, policies, and laws have been complied with, and that the governing body of Client is bound by the execution of this Agreement.

10. **Acknowledgements.** In connection with Consultant's Services under this Agreement, Client agrees that:

- (i) Consultant will apply its professional judgment and best efforts to access those insurance companies it believes are suited to insure Client's risks, provide appropriate value and coverage for the Client / Client's employees, and confirm the insurance companies accessed maintain the required rating, as outlined herein, to insure Client's risks, however there is no guarantee that the companies presented are the only or best suited to insure the Client's risk;
- (ii) The final decision to choose any insurance company will be made by Client in its sole and absolute discretion. Client understands and agrees that Consultant is not an insurance carrier, and that Consultant does not guarantee the financial solvency or security of any insurance company;
- (iii) Any insurance company presented to the Client will have an A-rated designation by A.M. Best Company rating, at the time it is presented. However, Client shall verify the A-rating of any insurance company it chooses and is responsible for ensuring the company is A-rated at the time of choosing;
- (iv) The compensation payable to Consultant is solely for the services set forth under Section 5. Any additional administrative, claims, fees and/or other monetary compensation, and representative or other services will be governed by the terms of a separate agreement covering any additional services Client may wish to purchase;
- (v) Client is responsible for prompt payment of Consultant's fees (if applicable) and payment of premiums for all insurance place by Consultant on Client's behalf. If any amount is not paid, in full, when due, including premium payments to insurance companies, nonpayment will constitute a material breach of this Agreement and Consultant may immediately terminate this Agreement in accordance with the termination provisions of this Section and Section 4, and will allow an insurance company for Client's risks to cancel any applicable policies in accordance with the terms of such policies; and

- (vi) Client acknowledges that payroll deduction amounts provided to Consultant as described in Section 9(iv) must match the electronic back-up report submitted to Consultant. If the payroll deduction amount does not match the electronic back-up report, then payment cannot be made to the insurance carrier or vendor by Consultant on behalf of Client. Client shall be responsible for any failure for payment as a result of payroll deduction amounts that do not match the electronic back-up report.

11. **Time Devoted by Consultant.** The Consultant shall devote Consultant's best efforts to execute this Agreement.
12. **Independent Contractor.** Both the Client and the Consultant agree that the Consultant will act as an independent contractor in the performance of its duties under this Agreement. Accordingly, the Consultant shall be responsible for its own employees' actions and terms / conditions of employment, and payment of all taxes including Federal, State, and local taxes arising out of the Consultant's activities in accordance with this Agreement, including by way of illustration but not limitation, Federal, and State income tax, Social Security tax, Unemployment Insurance taxes, and any other taxes or business license fee as required. The Consultant will perform services in accordance with this Agreement at a location of Consultant's discretion. In addition, the Consultant may perform services via the telephone, e-mail, video conference, or other appropriate electronic methods and at such other places as necessary to perform these services in accordance with this Agreement. In no event shall Client be responsible for any additional cost or expenses incurred by the consultant. Nothing herein shall be construed as creating the relationship of employer and employee, or principal and agent, between the Consultant and Client. Consultant shall be responsible for the acts of his/her employees as they relate to the services provided during the course and scope of their employment. Consultant, its agents, and employees, shall not be entitled to any rights or privileges of Client's employees and shall not be considered in any manner to be Client's employees.
13. **Confidential Information**
 - 13.1 Receipt of Confidential Information. Each Party may be given access to Confidential Information from the other Party to perform its obligations under this Agreement.
 - 13.2 Non-disclosure. Each Party shall hold the other's Confidential Information in strict confidence and shall maintain the confidentiality of such Confidential Information using at least the same degree of care as it employs to safeguard its own Confidential Information, but no less than reasonable care. Each Party shall not, unless required by state and federal laws and regulations, make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this Agreement. The duties in this Section 13.2 only apply to the extent permitted by the Texas Public Information Act. In the event a Party must make disclosure, notice shall be given to

the other Party and reasonable effort undertaken (at the expense of the Party who owns the Confidential Information) to limit or restrict disclosure).

13.3 Restrictions on Use. Each Party may disclose Confidential Information to employees and Personnel, including the employees and Personnel of affiliates and sub-contractors, that have a need to know such information for **solely** the execution of their respective duties under this Agreement, provided that each person is under a duty of non-disclosure that is at least as protective of the Confidential Information as the confidentiality and non-disclosure provisions herein. Further, the disclosure of information will be limited solely to the information necessary to execute this Agreement.

13.4 Notification of Breach. Each Party to this Agreement shall promptly notify the other Party if it becomes aware of any breach of confidence by any person to whom it divulges all or any part of the Confidential Information and shall give the other Party reasonable non-monetary assistance in connection with any proceedings which the other Party may institute against such person, other than the other Party for breach of confidence.

14. **Limitation of Liability**. WHEN PERMITTED BY LAW, CONSULTANT AND CONSULTANT'S AFFILIATES, SUBCONTRACTORS, AND PERSONNEL, WILL NOT BE RESPONSIBLE FOR LOST PROFITS, REVENUES, OR DATA, FINANCIAL LOSSES OR INDIRECT, SPECIAL, CONSEQUENTIAL, EXEMPLARY, OR PUNITIVE DAMAGES. ADDITIONALLY, TO THE EXTENT PERMITTED BY LAW, THE TOTAL LIABILITY OF CONSULTANT AND CONSULTANT'S AFFILIATES, SUBCONTRACTORS, AND PERSONNEL, FOR ANY CLAIMS UNDER THESE TERMS, INCLUDING FOR ANY IMPLIED WARRANTIES, IS LIMITED TO THE AMOUNT CLIENT PAID TO CONSULTANT FOR THE SERVICES. FURTHER, CONSULTANT MAKES NO SPECIFIC PROMISES ABOUT THE SERVICES OTHER THAN EXPRESSLY SET OUT IN THIS AGREEMENT AND EXCLUDES ALL WARRANTIES TO THE EXTENT PERMITTED BY LAW. THIS PROVISION APPLIES REGARDLESS OF CAUSE, AND EVEN IF CAUSED BY THE NEGLIGENCE OF CONSULTANT AND/OR CONSULTANT'S AFFILIATES, SUBCONTRACTORS, AND PERSONNEL.

15. **General Provisions.**

15.1 Survival of Provisions. Following the termination of this Agreement for any reason, with or without cause, the provisions of Sections 4, and 13 – 15 will prevail.

15.2 Notices.

(i) Notices and other communications under or in connection with this Agreement shall be given in writing by hand, by airmail, registered courier or by e-mail, save that service of any notice of any claim, dispute, termination, breach, or legal proceedings in connection with this Agreement shall not be made by e-mail. Any such notice, if so given, shall be deemed to have been served:

(a) after 1 Client Business Day of receipt by Party, if it is sent by a nationally recognized courier with package tracking capabilities;

- (b) after 3 Client Business Days of receipt by Party, if it is sent by certified or registered mail with prepaid postage, and a return receipt was requested;
- (c) if sent by hand, when delivered to, and received by, Party during Party's regular business hours; or
- (d) if sent by e-mail, 6 hours after receipt by Party during Party's regular business hours, provided the sender has not received a notice of failed or delayed delivery.

(ii) All notices for Consultant should be sent to the following addresses:

(a) All notices for Consultant shall be addressed as follows:

Higginbotham Public Sector

Attn: Kyle James

2175 N. Glenville Drive

Richardson, TX 75082

Email: kgjames@higginbotham.net

(iii) All notices sent via email under Section 15.2 must be sent to the email on record with the Parties and the sender must confirm receipt by the other Party following transmission of the email for delivery to be valid.

15.3 Governing Law. The laws of Texas govern all matters arising under or relating to this Agreement. Venue, in the event of suit, shall be the court of appropriate jurisdiction in Dallas County, Texas.

15.4 Interpretative Provision. If any ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties and no presumption or burden of proof shall arise favoring or disfavoring any Party by virtue of the authorship of any of the provisions of this Agreement.

15.5 Force Majeure. Neither party shall have liability to the other under this Agreement if it is prevented from or delayed in performing its obligations under this Agreement, or from carrying on its business, by acts, events, omissions, or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of Consultant or Client), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation, or direction, accident, fire, flood, or storm, provided that the other party is notified of such an event and its expected duration.

15.6 Non-Compete. For good and valuable consideration, the receipt of which is hereby acknowledged with the provision of services by Consultant, the Client shall not directly or indirectly compete with the business of Consultant and its affiliates and successors during the Term of this Agreement. Additionally, Client shall not attempt, in any manner, to circumvent any relationship or potential relationship between the Client and Consultant, including but not limited to allowing another consultant to offer competing products to employees.

15.7 Further Assurance. Each Party shall (at its own cost) do and execute, or arrange for the doing and executing of, each necessary act, document, and thing as may be

reasonably necessary and requested of it by the other Party to implement this Agreement.

- 15.8 Standard Form Documents. The parties recognize that printed form purchase orders, invoices, and other commonly used form documents relating to the performance of any obligations hereunder may contain terms which conflict with one or more terms of this Agreement. In the case of any such conflict, the relevant terms of this Agreement shall prevail.
- 15.9 Assignment and Delegation. Client shall not assign nor delegate, in whole or part, by operation of law, or otherwise, any of its rights or obligations under this Agreement to another Party without Consultant's prior written consent.
- 15.10 Successors and Assigns. This Agreement binds and benefits the parties and their respective permitted successors and assigns.
- 15.11 No Third-Party Beneficiary Rights. No provision in this Agreement is intended nor shall this Agreement create any rights with respect to the subject of this Agreement in any third party.
- 15.12 Compliance with Laws. Each Party shall comply with all applicable federal or state laws, rules, and regulations in performing services under this Agreement.
- 15.13 Amendments. The parties may amend this Agreement in a writing executed by both parties.
- 15.14 Sole and Entire Agreement. The express terms of this Agreement constitute the sole and entire agreement between the parties in relation to the provision of the Services and supersedes all prior written and oral arrangements, understandings, representations, warranties, and agreements between them in that regard (if any). Each Party acknowledges that it is not relying, and will not seek to rely, on any arrangement, understanding, representation, warranty, agreement, term, or condition which is not expressly set out in this Agreement.
- 15.15 Waiver, Rights Cumulative. Each of the rights of each Party under this Agreement may be exercised as often as is necessary, is cumulative and not exclusive of any other rights which that Party may have under this Agreement, law, or otherwise, and may be waived only in writing and specifically. Delay by a Party in exercising, or the non-exercise of a Party, of any such right shall not constitute a waiver of that right.
- 15.16 Severability. If any term or other provision of this Agreement is determined by a court of competent jurisdiction to be invalid, illegal, or incapable of being enforced by any rule of Law or public policy, all other terms, provisions, and conditions of this Agreement shall nevertheless remain in full force and effect.