



**AGREEMENT BETWEEN THE CITY OF LEAGUE CITY, TEXAS
AND HIGGINBOTHAM INSURANCE AGENCY, INC.
FOR BENEFIT CONSULTANT SERVICES**

STATE OF TEXAS

COUNTY OF GALVESTON

§
§
§
§
§

This Agreement is made by and between the City of League City, Texas (City) and Higginbotham Insurance Agency, Inc. (Consultant) on the date set forth below.

AGREEMENT

1. **TERM:** The initial term of this Agreement shall be from May 1, 2016 to April 31, 2017. The parties may mutually agree in writing to renew the Agreement for up to two successive one year terms. City reserves the right to terminate the Agreement at any time, with or without cause, on thirty (30) days prior written notice to Consultant.

2. **SCOPE OF WORK:** Consultant will provide the City with three components of service: 1) consultation services regarding to various health benefit plans, 2) development and implementation of a wellness program and 3) advocacy service through Compass. More detailed descriptions of Consultant's services are set forth in Exhibits A1 and A2 of this Agreement, which are attached and incorporated herein.

3. **COMPENSATION:** The total compensation paid by the City to Consultant under this Agreement shall not exceed One Hundred and Nine Thousand Dollars (\$109,000.00). The compensation shall be paid in twelve monthly installments of approximately Nine Thousand Eighty Three Dollars and Thirty Three Cents (\$9,083.33) after a receipt of an invoice by Consultant. Payment terms for amounts due from City under the Agreement (including due dates, late fees and interest) are governed by Chapter 2251 of the Texas Government Code.

4. **CONFLICT OF INTEREST:** Consultant assures that to the best of its knowledge there exists no conflict of interest or appearance of a conflict between Consultant's family, business or financial interest and the services provided under this Agreement. Should this situation change during the term of this Agreement, Consultant will advise City of such change.

5. **INDEPENDENT CONTRACTOR:** This Agreement shall not be construed to create a partnership, joint venture, nor other agency relationship between the parties, who are independent of one another. The relationship of the Consultant to City is and shall continue to be that of an independent contractor, and no liability or benefits such as workers' compensation, pension rights or liabilities, insurance rights or liabilities, arising out of or related to an employer/employee relationship, shall arise, or accrue to either party or either party's agent, subcontractor or employee, as a result of this Agreement or its performance. No relationship, other than that of independent contractor, shall be implied between the parties or between either party and the other party's agent, employee, or subcontractor, and the Consultant hereby agrees to hold City harmless from any such claims by it or its associates, and any cost or expense related thereto.

6. **DEFAULT:** In the event of a failure by Consultant to satisfactorily perform the services specified herein and/or a default by Consultant in abiding by the other terms and conditions of this Agreement, City may terminate the Agreement on written notice to Consultant and Consultant shall be liable for all damages, costs, and expenses (including attorney fees) incurred by City related to this default.

7. **ALTERNATIVE DISPUTE RESOLUTION:** The dispute resolution process provided for in Chapter 154 of the Texas Civil Practice and Remedies Code may be used, by City and Consultant to attempt to resolve any claim for breach of contract made by Consultant, to the extent it is applicable to the Agreement and not preempted by other law. Except as otherwise provided by law, nothing herein is a waiver by City or the State of Texas of the right to seek redress in a court of law.

8. **ASSIGNMENT:** The parties recognize that this contract is based upon the skill and expertise of the parties and therefore agree that the contract and the obligations thereunder may not be assigned or delegated without the written consent of the other party, except as expressly allowed by this contract.

9. **COMPLIANCE WITH LAW:** Consultant shall certify that he/she or it is in compliance with all applicable state and federal laws, including non-discrimination laws as it relates to the terms and conditions of the agreement.

10. **NON-APPROPRIATIONS:** Consultant understands that City is a governmental entity, and should the Legislature fail to provide funding for any period during the term of this contract, City shall be excused for all liability for payment. City is required to give Consultant written notice within thirty (30) days after learning that the funds will not be available. Upon receiving written notice from City, this contract will automatically terminate

11. **NOTICES:** Any notice given under this contract by either party to the other may be affected either by personal delivery in writing or by mail, registered or certified postage prepaid with return receipt requested. Mailed notices shall be addressed to the addresses of the parties as they appear in the contract. Notices delivered personally shall be deemed communicated at the time of actual receipt. Mailed notice shall be deemed communicated three (3) days after mailing.

12. **OFFICIALS NOT TO BENEFIT:** No Mayor, Council-person, officer, director, employee, administrator and representative of City shall be admitted to any share or part of this contract or to any benefit that may arise therefrom.

13. **GOVERNING LAW/VENUE/STATUTE OF LIMITATIONS:** The validity of this Agreement and the interpretation of its terms and the applicable statute of limitations for any cause of action brought by or against City pursuant to the Agreement shall be governed by the laws of the State of Texas. Jurisdiction for any legal proceedings incident to this agreement shall lie in Galveston County, Texas.

14. **FORCE MAJEURE:** In the event of Force Majeure, City may terminate this agreement by written notice following such casualty and City shall not be responsible for any damages sustained by Consultant. Force Majeure shall mean fire, earthquake, flood, act of God, strikes or other labor disturbances, riots or civil commotion, litigation, terrorism, war or other acts of any foreign nation, power of government or government agency or authority, or any other cause like or unlike any cause above-mentioned which is beyond the control or authority of City.

15. **SUBCONTRACTS:** Any subcontracts and outside associates or consultants required by Consultant in connection with the services covered by this contract will be limited to such individuals or firms as were specifically identified and agreed to during negotiations. Consultant shall ensure that each subcontractor complies with all provisions of the Agreement and this Addendum. Consultant shall remain liable for the acts and omissions of such subcontractor(s) and the proper performance and delivery of the products and/or services set forth in the Agreement.

16. **TAX EXEMPTION:** City and Consultant agree that City will not be required to pay any taxes for which it can demonstrate an exemption.

17. **CONFIDENTIALITY:** Subject to the Texas Public Information Act and any similar legal requirements, neither Party shall disclose any confidential information obtained from the other Party without such Party's prior written approval. Consultant recognizes that Client has patient health information and other proprietary information (collectively, "Information") which are valuable, special, and unique assets of the City. Consultant will not divulge, or communicate in any manner any Information to any third party without prior written consent. Consultant will protect the Information and treat it as strictly

confidential. Consultant understands and agrees to limit the use and disclosure of protected health information as described in Exhibit B, which is attached and incorporated into this Agreement.

18. **INTELLECTUAL PROPERTY:** Consultant represents that it has all intellectual property rights necessary to enter into and perform its obligations under the Agreement and shall indemnify, defend and hold harmless the State of Texas and City against any action, claim, liability, loss or expense related to such intellectual property rights and representations. Consultant will pay any damages attributable to such claim that are awarded against the State of Texas and/or City in a judgment or settlement.

19. INDEMNIFICATION: CONSULTANT SHALL INDEMNIFY AND HOLD HARMLESS CITY, AND EACH OF ITS REGENTS, OFFICERS, AGENTS AND EMPLOYEES FROM AND AGAINST ALL CLAIMS, ACTIONS, SUITS, DEMANDS, PROCEEDINGS, COSTS, DAMAGES AND LIABILITIES, INCLUDING WITHOUT LIMITATION ATTORNEYS' FEES AND REASONABLE LITIGATION COSTS, ARISING OUT OF, CONNECTED WITH, OR RESULTING FROM ANY ACTS OR OMISSIONS OF CONSULTANT OR ANY AGENT, EMPLOYEE, SUBCONTRACTOR, OR SUPPLIER OF CONSULTANT IN THE EXECUTION OR PERFORMANCE OF THIS CONTRACT.

20. **INSURANCE:** For the entire term of the Agreement ("Term"), Consultant shall maintain Comprehensive General Liability insurance coverage of \$1,000,000 per occurrence. If, during the Term, Consultant will enter City property, Consultant shall also maintain the following insurance: (i) Worker's Compensation coverage with statutory limits for the State of Texas, including Employers Liability coverage of \$500,000 per accident; (ii) Commercial Automobile Liability coverage of \$1,000,000 Combined Single Limit; (iii) for engineers and architects only: Consultant Liability coverage of \$5,000,000 per occurrence; and (iv) for builders only: Builder's Risk coverage in the amount of the construction cost, including protection against named windstorm and flood. All policies must contain a waiver of subrogation against City. Comprehensive General Liability and Commercial Automobile Liability policies must name City as Additional Insured. Consultant shall pay all insurance deductibles and deductibles must not exceed \$10,000 unless approved in advance by City. Consultant shall provide City Certificates of Insurance evidencing these insurance requirements prior to the start of work.

21. **AUDIT; INDEPENDENT AUDITS; RIGHT TO AUDIT; RETENTION; SUPPORTING DOCUMENTS:** The Consultant agrees and authorizes City and/or the State Auditor (collectively, "Auditor") to conduct audits or investigations in connection with this Agreement. Consultant agrees to cooperate with Auditors conducting such audits or investigations and to provide all information and documents reasonably requested. Consultant will include this provision in all contracts with permitted subcontractors.

22. **LIMITATIONS:** The Parties are aware that there are constitutional and statutory limitations on the authority of City to enter into certain terms and conditions of the Agreement, including, but not limited to, those terms and conditions relating to liens on City's property; disclaimers and limitations of warranties; disclaimers and limitations of liability for damages; waivers, disclaimers and limitations of legal rights, remedies, requirements and processes; limitations of periods to bring legal action; granting control of litigation or settlement to another party; liability for acts or omissions of third parties; payment of attorneys' fees; dispute resolution; indemnities; and confidentiality (collectively, the "Limitations"), and terms and conditions related to the Limitations will not be binding on City except to the extent authorized by the laws and Constitution of the State of Texas.

23. **SOVEREIGN IMMUNITY:** Except as otherwise provided by Texas law, neither the execution of the Agreement by City nor any other conduct, action or inaction of any City representative relating to the Agreement is a waiver of sovereign immunity by City.

24. REPRESENTATIONS BY CONSULTANT: Consultant represents and warrants that it will obtain and maintain in effect, and pay the cost of all licenses, permits or certifications that may be necessary for Consultant's performance of this Agreement. If Consultant is a business entity, Consultant warrants, represents, covenants, and agrees that it is duly organized, validly existing and in good standing under the laws of the state of its incorporation; and is duly authorized and in good standing to conduct business in the State of Texas, that it has all necessary power and has received all necessary approvals to execute and deliver the Agreement and is authorized to execute this Agreement according to its terms on behalf of Consultant.

25. ELIGIBILITY TO RECEIVE PAYMENT: Consultant certifies that, as a matter of State law, it is not ineligible to receive the Agreement and payments pursuant to the Agreement and acknowledges that the Agreement may be terminated and payment withheld if this representation is inaccurate.

26. PAYMENT OF DEBT/DELINQUENCY TO STATE: Consultant certifies that it is not indebted to the City of League City and is current on all taxes owed to the City of League City. Consultant agrees that any payments owing to Consultant under the Agreement may be applied directly toward any debt or delinquency that Consultant owes the City of League City regardless of when it arises, until such debt or delinquency is paid in full.

27. PRODUCTS AND MATERIALS PRODUCED IN TEXAS: If Consultant will provide services under the Agreement, Consultant covenants and agrees that in performing its duties and obligations under the Agreement, it will purchase products and materials produced in Texas when such products and materials are available at a price and delivery time comparable to products and materials produced outside of Texas.

28. TRAVEL EXPENSES: If the Agreement requires City to reimburse for travel expenses, the Consultant shall invoice all requests for reimbursement in accordance with the State of Texas travel, meal and lodging reimbursement guidelines applicable to State of Texas employees.

29. RISK OF LOSS: All work performed by Consultant pursuant to the Agreement will be at Consultant's exclusive risk until final and complete acceptance of the work by City. In the case of any loss or damage to the work prior to City's acceptance, such loss or damage will be Consultant's responsibility.

30. PUBLICITY: Consultant shall not use City's name, logo or likeness in any press release, marketing materials or other public announcement without receiving City's prior written approval.

31. LEGAL CONSTRUCTION/SEVERABILITY: In the event that any one or more of the provisions contained in this contract shall for any reason be held to be invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision, and this contract shall be construed as if such invalid, illegal or unenforceable provisions had never been contained in it. To this end, the provisions of this contract are declared to be severable. The Parties may mutually agree to renegotiate the contract to cure such illegality/invalidity or unconstitutionality if such may be reasonably accomplished.

32. NON-WAIVER: No covenant or condition of this Agreement may be waived except by written consent of the waiving party. Forbearance or indulgence by one party in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by the other party.

33. ENTIRE AGREEMENT: This contract constitutes the entire contract and supersedes all prior or contemporaneous agreements, whether written or oral, between the parties. Verbal representations not contained herein shall not be binding on the parties unless acknowledged by them in writing.

34. AUTHORITY: The person signing below on behalf of City and Consultant warrants that he/she has the authority to execute this contract according to its terms.

35. AMENDMENT: This Agreement may be changed, amended, modified, extended or assigned only by mutual consent of the parties provided that consent shall be in writing and executed by the parties hereto prior to the time such change shall take effect.

36. BINDING AGREEMENT: This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

IN WITNESS WHEREOF, City and Consultant, by and through their duly authorized officers and representatives, have executed this Agreement as of the date indicated below.

Executed this _____ day of _____, 2016.

HIGGINBOTHAM INSURANCE AGENCY, INC. (“CONSULTANT”)

Name:
Position:

CITY OF LEAGUE CITY (“CITY”)

Mark Rohr, City Manager

ATTEST:

Diana Stapp, City Secretary

APPROVED AS TO FORM:

Nghiem V. Doan, City Attorney

EXHIBIT A-1

Scope of Work:

- Serve the City as an advisor regarding, and including the preparation of the City's RFP for health plan design and content including COBRA, flexible spending account, section 125 program, dental, vision, long and short-term disability, life insurance benefits and their components and employee assistance program.
- Review, on an ongoing basis, the existing employee benefit programs for competitiveness, appropriateness and overall acceptance by plan participants.
- Serve and assist the City in negotiating benefits provider contract(s) resulting from the review and recommendations noted above including the use of available provider networks. Provide the City underwriting data and evaluation services to support contract modifications such as benefit differentials and funding options.
- Negotiate, when appropriate, long term rate(s)/service guarantees designed to meet the service delivery and financial plan of the City.
- Assist the City in preparing periodic reports to the City Council, City Manager or Human Resources Director on the progress, applicability and overall benefit of a specific plan.
- Review utilization rates on a quarterly basis and evaluate each on the City's best option as it relates to self-funded or fully-funded plans.
- Assist the City with plan design changes, plan implementation strategies, plan design and/or benefits communications relating to coverage; integrating appropriate assignments of duties to vendors, while maintaining proper oversight/responsibilities.
- Review new or proposed administrative services provided by the City or outside vendor(s) to determine the most effective and efficient service delivery strategies.
- Assist the City with premium funding projections during its annual budget process. Review long term healthcare contribution philosophy and budgetary agenda and best strategies for applying identified resources to a meaningful long term benefit package.
- Provide the City with advocacy assistance for plan management and quality assurance services including, but not limited to the following:
 - Claims reporting
 - Benefit review/design
 - Stop-Loss management
 - Customer service
 - Plan administration & claims services
 - Renewal negotiations
 - Competitive bidding
 - Transition & implementation of plan
 - Analysis & selection of vendor
 - Review of Underwriting services
 - Review of Benefits Summary
 - Benefits Communications Services
 - Regulatory compliance and reporting
 - Review of COBRA/HIPAA services
 - Open enrollment
 - Review of cafeteria plan administration
 - Cost containment
 - Contract analysis
 - Review of ERISA services
 - Vendor compliance
 - Review of results of claims audit
 - Budgeting
 - Review of actuarial services
 - Wellness program

- Act as the City's representative to all outside insurance vendors; collecting information and making periodic presentations to staff, employees and City Council, as requested, of their offerings.
- Provide periodic comparisons of plans of benefits and employer/employee contributions to area cities and comparable businesses.
- Provide periodic reports using carrier data on claims and fixed expenses, and relate those to total premium and expectations for renewal. Add historical perspective to premium and claims data for all coverage and provide reports as needed by the City.
- Provide national, regional and local medical inflation data and compare that to specific City plan inflation.
- Review and make recommendations to the City on carrier cost containment mechanisms, as relates to return on investment and participant impact.
- Meet periodically with the City's staff relating to levels of customer service received from various carriers, and where required intercede with both parties to assist in problem resolution.

CITY OF LEAGUE CITY

SCOPE OF SERVICES

CONSULTING SERVICES			
Strategic Planning	Scheduled/ Ongoing	As Requested	Frequency of Service
Executive management meetings and benefits philosophy development	√		Quarterly
Multi-year strategy	√		Annually
Benchmarking with peer group	√		Annually
Specific recommendations to address utilization patterns	√		Semi Annually & As Provided by Vendor
Employee contribution strategies	√		Annually
Development of prototype plan design options	√		Annually
Evaluation and Analysis	Scheduled/ Ongoing	As Requested	Frequency of Service
Examination of program types including consumer directed healthcare and HDHP plan feasibility	√		Annually
Evaluation of current and alternative networks and disruption studies (providers, claimants and dollars)	√		Annually
Research, analyze and recommend business process outsourcing as appropriate (e.g., benefit administration, FMLA compliance)	√		Annually
Evaluation of current and alternative vendor capabilities (all coverages)	√		Annually
Underwriting and Actuarial	Scheduled/ Ongoing	As Requested	Frequency of Service
Multi-Year Cost Projections and Forecasting	√		Annually
Large Claim Tracking	√		Monthly or As Provided by Vendor
Plan Design Change Modeling (incremental changes to current plans as well as translation models that allow conversion from one healthcare delivery system to another)	√		Annually
Experience Monitoring, including: -Trend Analysis	√		Quarterly
-Utilization Analysis	√		Quarterly
-Pharmacy Utilization Analysis	√		Quarterly
Contribution Modeling	√		Annually
Annual review of medical network usage	√		Annually
Renewals and RFPs	Scheduled/ Ongoing	As Requested	Frequency of Service
Medical and Prescription Drug RFP	√		Annually or As Required

Dental RFP	√		Annually or As Required
Basic Life & Personal Accident RFP	√		Specific to rate guarantee period
Benefits Administration Platform selection process and RFP		√	As Required
Vision RFP	√		Annually or As Requested
Voluntary Benefits – Life, Personal Accident, Short-term and Long-term Disability, Accident Indemnity	√		Specific to rate guarantee period
FSA, HSA, EAP, COBRA, Section 125, Transportation Benefits, etc. RFPs	√		Specific to rate guarantee period
Compliance	Scheduled/ Ongoing	As Requested	Frequency of Service
Analysis and advice arising under ERISA, Tax Code, COBRA	√		Monthly
Review of service agreements, contracts, and SPDs from vendors	√		Annually
Compliance management calendar	√		Monthly
E-mail news updates on relevant topics impacting health and welfare plans	√		As Alerts are distributed
HIPAA privacy and security training and toolkit	√	√	As Requested
Implementation and Communication	Scheduled/ Ongoing	As Requested	Frequency of Service
Ensure final plan parameters are executed in accordance with Client's expectations	√		Annually
Coordinate with vendor(s) on plan changes & implementation timelines	√		Annually
Manage implementation of new vendor(s), if applicable	√		Annually
Develop and monitor implementation schedule with vendors	√		Annually
Verify accuracy of ID cards and other employee materials	√		Annually
Confirm plan data is configured properly for claim payment system	√		Annually
Project management of all vendors involved in the production and distribution of open enrollment and other communication materials	√	√	Annually
Assistance with monthly newsletter development and ongoing communication support based on Client's needs		√	Annually
Creation of open enrollment guide and annual enrollment materials based on Client's branding	√		Annually
Employee Response Center and Enrollment meeting support during annual enrollment		√	Annually if Requested

Vendor Management and Day-to-Day Services	Scheduled/ Ongoing	As Requested	Frequency of Service
Problem avoidance and resolution	√		Monthly
Claims advocacy and resolution	√		Monthly
Dedicated resource for ongoing claim issues and day to day administrative support	√		Monthly
Establish and monitor performance guarantee metrics	√		Annually, if permitted by Carrier
Schedule and drive vendor meetings	√		Annually or when substantial changes are made
WELLNESS SERVICES			
Wellness	Scheduled/ Ongoing	As Requested	Frequency of Service
Development of wellness operating plan based on needs, vendor review and implementation support	√		After initial strategy is implemented, semi annual review
Initial evaluation and consult from Health Risk Management Director (HRM)	√		Annually
Employee Wellness Survey		√	As Requested
ADVOCACY SERVICES			
Member Advocacy	Scheduled/ Ongoing	As Requested	Frequency of Service
Compass		√	Monthly

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into by and between City of League City ("**Plan Sponsor**") and Higginbotham Insurance Agency ("**Business Associate**") (together referred to as the "Parties") effective April 12, 2016.

WHEREAS, the Group Health Plan ("**Plan**") sponsored by Plan Sponsor is a group health plan as defined in Title 45, Parts 160 and 164 of the Code of Federal Regulations (the "Privacy Regulations") and Title 45, Parts 160, 162 and 164 of the Code of Federal Regulations (the "Security Regulations") (together, the "Privacy and Security Regulations") adopted pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA");

WHEREAS, Business Associate and Plan Sponsor entered into an agreement ("Underlying Agreement") whereby Business Associate will perform services on behalf of the Plan; and

WHEREAS, the Parties wish to set forth their understandings with regard to the use and disclosure of Protected Health Information ("PHI") by Business Associate in performance of its obligations in compliance with the Privacy and Security Regulations (as amended to incorporate Subtitle D of the Health Information Technology for Economic and Clinical Health Act, Title XIII of Public Law 111-005 (42 U.S.C.A. Section 17921 et seq., subchapter III, Privacy) ("HITECH")) and the Texas Health and Safety Code sections 181 and 182 (as amended by HB300 (82nd Legislature).

In consideration of the mutual promises set forth below, the parties hereby agree as follows:

1. Definitions. Capitalized terms shall have the meanings given to them in the Privacy and Security Regulations, which are incorporated herein by reference.
2. Use and Disclosure of Protected Health Information. The Plan Sponsor and Business Associate hereby agree to comply with the privacy and security requirements of HIPAA, as set forth in the Privacy and Security Regulations. Business Associate shall use and/or disclose PHI only to the extent necessary in furtherance of Business Associate's obligations and duties under the Underlying Agreement with the Plan Sponsor and as authorized or permitted by the Privacy and Security Regulations. Business Associate shall disclose PHI to other business associates of the Plan to the extent necessary for purposes of the Plan's Payment and Health Care Operations, provided such other business associates have business associate agreements in place with the Plan Sponsor as required by the Privacy Regulations (and a copy of the applicable provisions of such other business associate agreements will be provided to Business Associate upon request). Business Associate shall disclose PHI to the Plan Sponsor to the extent necessary for the Plan Sponsor's administration activities that constitute Payment or Health Care Operations, provided the Plan document has been amended as required by the Privacy Regulations (and a copy of the applicable provisions of the Plan document will be provided to Business Associate upon request). Business Associate may disclose Summary

Health Information to the Plan Sponsor for the purpose of (a) obtaining bids for health or stop loss insurance for the Plan, or (b) modifying, amending or terminating the Plan.

3. Prohibition on Unauthorized Use or Disclosure of PHI. Business Associate shall not use or disclose any PHI received from or on behalf of the Plan, except as permitted or required by the Underlying Agreement, this Agreement, the Privacy and Security Regulations, and as required by law or as otherwise authorized in writing by the Plan. Business Associate shall comply with the applicable provisions of: (a) the Privacy and Security Regulations; (b) state laws, rules and regulations applicable to individually-identifiable health information not preempted by federal law; and (c) the Plan's health information privacy policies and procedures.

4. Business Associate's Operations. Business Associate may use PHI it creates for or receives from the Plan, in its capacity as a Business Associate, to the extent necessary for Business Associate's proper management and administration or to carry out Business Associate's legal responsibilities but only if:

- (a) The disclosure is required by law; or
- (b) Business Associate obtains reasonable assurance, evidenced by written contract, from any person or organization to which Business Associate shall disclose such PHI that such person or organization shall:
 - (i) Hold such PHI in confidence and use or further disclose it only for the purpose for which Business Associate disclosed it to the person or organization or as required by law; and
 - (ii) Notify Business Associate (who shall in turn promptly notify the Plan) of any instance of which the person or organization becomes aware in which the confidentiality of such PHI was breached as soon as possible.

5. Data Aggregation Services. Business Associate may use PHI to provide Data Aggregation Services related to the Plan's Health Care Operations.

6. PHI Safeguards. Business Associate shall develop, implement, maintain and use appropriate administrative, technical and physical safeguards to prevent the improper use or disclosure of any PHI relating to the Plan.

7. Electronic Health Information Security and Integrity. Business Associate represents and warrants that it is compliant with all applicable requirements of the Security Regulations. Business Associate further represents and warrants that it has fully developed and implemented, and maintains and uses appropriate administrative, technical and physical security measures consistent with and in compliance with the Security Regulations to preserve the integrity, confidentiality and availability of all electronic PHI that it creates, receives, maintains or transmits on behalf of the Plan. Business Associate shall document and keep its security measures current in accordance with the Security Regulations.

8. Protection of Exchanged Information in Electronic Transactions. If Business Associate conducts any Standard Transaction for or on behalf of the Plan, Business Associate shall comply, and shall require any subcontractor or agent conducting such Standard Transaction to comply, with each applicable requirement of the Privacy and Security Regulations.

9. Subcontractors and Agents. Business Associate shall require each of its subcontractors or agents to whom Business Associate may provide PHI on behalf of the Plan to agree to written contractual provisions that impose at least the same obligations to protect such PHI as are imposed on Business Associate by this Agreement and the Privacy and Security Regulations. Business Associate shall maintain a list of all subcontractors and agents to which it provides the Plan's PHI, and it will provide the list to the Plan upon request.

10. Access to PHI. Business Associate shall provide access, at the request of the Plan, to PHI in a Designated Record Set, to the Plan or, as directed by the Plan, to an Individual to meet the requirements under Title 45, Section 164.524 of the CFR or applicable state law. Business Associate shall provide access in the time and manner set forth in the Plan's health information privacy policies and procedures.

11. Amending PHI. Business Associate shall make any amendment(s) to PHI in a Designated Record Set that the Plan directs or agrees to pursuant to Title 45, Section 164.526 of the CFR at the request of the Plan or an Individual in the time and manner set forth in the Plan's health information privacy policies and procedures.

12. Accounting for Disclosures of PHI.

(a) Business Associate shall document all disclosures of PHI and information related to such disclosures as would be required for the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the CFR.

(b) Business Associate agrees to provide the Plan, in the time and manner set forth in the Plan's health information privacy policies and procedures, information collected in accordance with Section 12(a) above, to permit the Plan to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with Title 45, Section 164.528 of the CFR. Business Associate shall provide the accounting directly to an Individual upon request by the Plan.

13. Access to Books and Records. Business Associate shall make its internal practices, books and records relating to the use and disclosure of PHI received from or on behalf of the Plan available to the Plan and to DHHS or its designee for the purpose of determining the Plan's compliance with the Privacy Regulations.

14. Reporting. As described below, Business Associate shall report to the Plan in writing any "Event."

(a) Definition. For purposes of this Agreement, "Event" shall mean any use or disclosure of PHI not permitted (1) under the Privacy Regulations, including events that rise to the level of a Breach, (2) under this Agreement or (3) by law, or that is a Security Incident.

(b) Event Reporting. Business Associate shall provide written notice as soon as practicable to the Plan's Privacy Official (contact information listed below) of any Event of which it has reasonable suspicion or discovers. This notice shall identify a contact person with whom the Plan may correspond regarding the Event. Within sixty (60) days from the date of initial notice, Business Associate shall provide the Plan a written report identifying or describing: (i) the affected Individual whose Unsecured PHI has been or is reasonably believed to have been

Plan Privacy Official:

Fax: _____

Ross Carmichael or VP of Compliance

500 W. 13th Street

Fort Worth, TX 76102

Fax: (817) 882-9341

16. Marketing. Business Associate shall not receive direct or indirect payment for marketing communications which include PHI relating to the Plan or its Individuals without authorization from the affected Individuals in such a way as to violate Texas Health and Safety Code sections 181 and 182 as amended by HB300 (82nd Legislature), unless such communication is permitted under the Privacy Regulations, including 45 CFR Part 164.

17. Restrictions on Uses, Disclosures and Requests.

(a) Business Associate will limit all uses, disclosures and requests of PHI, including electronic PHI, to the Limited Data Set to the extent possible or, if that is not sufficient, to the minimum necessary to accomplish the intended purpose of such use, disclosure or request, to the extent required by the Privacy Regulations. Business Associate shall maintain a written policy delineating the standards it will use in determining the minimum necessary information for its uses and disclosures of PHI in accordance with standards set forth in the Privacy Regulations.

(b) Upon the request of an Individual, Business Associate will not disclose such Individual's PHI for purposes of Payment or Health Care Operations if the Individual paid in full out of pocket for the health care item or service to which the PHI relates, in accordance with 45 CFR section 164.522.

18. Mitigation. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of PHI by Business Associate in violation of the requirements of this Agreement.

19. Termination for Cause. As required by the Privacy Regulations, if the Plan or Business Associate ("Non-Breaching Party") becomes aware that the other entity to this Agreement has engaged in a material breach ("Breaching Party"), then the Non-Breaching Party shall:

(a) Provide an opportunity for the Breaching Party to cure the breach. If the Breaching Party does not cure the breach or end the violation within the time specified by the Non-Breaching Party, then the Non-Breaching Party shall have the right to terminate this Agreement and the Underlying Agreement, if termination is feasible.

(b) Immediately terminate this Agreement and the Underlying Agreement if cure is not possible and if termination is feasible.

(c) If neither termination nor cure is feasible, Business Associate shall report the violation to the Secretary.

20. Return or Destruction of Health Information.

(a) Except as provided in Section 20(b) below, and subject to any record retention provisions of the Underlying Agreement, upon termination, cancellation, expiration or other conclusion of this Agreement and the Underlying Agreement, Business Associate shall return to the Plan or destroy all PHI created or received by Business Associate on behalf of the Plan. This provision shall also apply to PHI that is in the possession of subcontractors or agents of Business Associate.

(b) In the event that the Business Associate determines, in its discretion, that returning or destroying the PHI is infeasible, Business Associate shall retain the PHI, extend the protections of this Agreement to such PHI and maintain the confidentiality of all such PHI, for so long as Business Associate maintains such PHI. The obligations of Business Associate under this Section 20(b) shall survive termination of this Agreement and the Underlying Agreement.

21. Obligations of Plan Sponsor.

(a) The Plan Sponsor shall provide Business Associate a copy of the Plan's Notice of Privacy Practices.

(b) The Plan Sponsor shall notify Business Associate of any restriction to the use or disclosure of PHI that the Plan has agreed to (and any revocation of such a restriction), to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

(c) The Plan Sponsor shall notify Business Associate of any change in, or revocation of, permission by and Individual to use or disclose PHI, to the extent that such change or revocation may affect Business Associate's use or disclosure of PHI.

(d) The Plan Sponsor shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Regulations if done by the Plan, except as permitted in Sections 4 and 5 above.

22. Automatic Amendment. Upon the effective date of any amendment to the Privacy and Security Regulations and any applicable regulations thereunder with respect to PHI, the Agreement shall automatically be deemed to be amended to incorporate such amendment to the Privacy and Security Regulations and applicable regulations so that Business Associate and the Plan remain in compliance with the Privacy and Security Regulations and applicable regulations.

23. Hold Harmless. Business Associate shall indemnify and hold Plan Sponsor and its affiliates, employees, directors, trustees and agents harmless from and against all obligations, liabilities, penalties, taxes, costs, damages, losses or expenses (including reasonable attorneys' fees) of any sort which may be imposed on or incurred by the Plan in connection with, or arising out of, a Breach by Business Associate or any of its subcontractors or the performance or breach of Business Associate's or any of its subcontractors' responsibilities and obligations under the Privacy and Security Regulations or this Agreement.

Plan Sponsor shall indemnify and hold Business Associate and its affiliates, employees, directors, trustees and agents harmless from and against all obligations, liabilities, penalties, taxes, costs, damages, losses or expenses (including reasonable attorneys' fees) of any sort which may be imposed on or incurred by the Plan in connection with, or arising out of, a Breach by the Plan or any of its subcontractors or the performance or breach of the Plan's or any of its subcontractors' responsibilities and obligations under the Privacy and Security Regulations or this Agreement.

24. Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed an original and such counterparts shall constitute one and the same instrument.

25. Independent Contractor. The Parties are and shall remain independent contractors throughout the term of this Agreement. Nothing in this Agreement or otherwise shall be construed to constitute Business Associate and the Plan Sponsor as partners, joint ventures, agents or anything other than independent contractors.

26. Facsimile Signature. Signature pages may be transmitted by facsimile, e-mail or other electronic means. Upon delivery via facsimile, e-mail or other electronic means, a signature shall be deemed an original and shall be admissible in evidence.

27. Governing Law. This Agreement shall be governed by the laws of the State of Texas (without regard to conflict of laws principles), except to the extent such laws are preempted by applicable federal law. Any claim, dispute, controversy or other matter arising under or related to this Agreement shall be subject to the sole and exclusive jurisdiction of the federal and state courts located in Tarrant County, Texas, and all Parties hereto waive any claims of inconvenience or lack of personal jurisdiction with respect to such courts.

28. Entire Agreement. This Agreement embodies the entire agreement and understanding between the Parties hereto with respect to the subject matter hereof, and supersedes all prior oral or written agreements and understandings relating to the subject matter hereof. No statement, representation, warranty, covenant or agreement of any kind not expressly set forth in this Agreement shall affect, or be used to interpret, change or restrict, the express terms and provisions of this Agreement.

29. Final Agreement. This Agreement supersedes all prior Business Associate Agreements between the parties with respect to the Underlying Agreement.

IN WITNESS WHEREOF, each of the undersigned has caused this Agreement to be duly executed in its name and on its behalf, effective as of _____.

Higginbotham Insurance Agency, Inc.

By: _____

By: Ross Carmichael

Its: _____

Its: Vice President of Compliance and Operations

