

Higginbotham FSA Administrative Services Agreement

This Agreement specifies the services to be provided by Higginbotham Insurance Agency, Inc. ("Higginbotham") to Client in connection with the administration of a Flexible Spending Account beginning on the effective date of the Purchase Order.

WHEREAS, Client desires to retain Higginbotham as a third-party administrator to provide Section 125 – Flexible Spending Account ("FSA") services for the Plan sponsored by the Client;

WHEREAS, Higginbotham is making available FSA administrative and other related services to be established by the Client and designed to comply with § 125 of the Internal Revenue Code (the "Code");

WHEREAS, the FSA administrative services incorporates professional material, and internally developed Higginbotham corporate information;

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

Client retains Higginbotham to provide the following services as indicated below:

FSA Administration

- Plan review and amendment
- Employee enrollment assistance, including educational materials and enrollment packets
- Process employee eligibility changes provided by Client
- Account balance tracking service
- Claims adjudication service
- Debit card reconciliation service
- Provide employees with 24-hour access to their accounts via the internet and 800-line interactive voice response, and daytime access to our 800-line callcenter.
- Provide monthly year-to-date reports
 - Optional monthly employee statements (additional fee)
 - Optional reports delivered "Second Day Air" or "Overnight" (additional fee)
- Account for, properly maintain, and correctly credit employee accounts
- Perform discrimination testing

The fee for Higginbotham to perform the services above is shown in 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 at the rates stated on the fee worksheet, unless modified in writing by mutual agreement of both parties prior to the expiration date. Client shall pay to Higginbotham all fees specified in the Fee Schedule.

Higginbotham Responsibilities and Duties in addition to Services Checked Above:

1. Higginbotham shall provide certain reimbursement and 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 the Plan and its participants that Higginbotham has prepared or that has otherwise come within its 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 Associates Agreement.
2. As agent of Client, Higginbotham shall operate under the express terms of this Agreement and the Plan. Higginbotham shall initially determine if persons covered by the Plan are entitled to benefits under the Plan and shall pay Plan benefits in its usual and customary manner to participants. Higginbotham shall have no duty or obligation with respect to claims incurred prior to the effective date, if any, regardless of whether such services

were/are to be performed prior to or after the effective date.

3. Higginbotham shall refer to Client, for final determination, any claim for benefits or coverage that is appealed after initial rejection by Higginbotham or any class of claims that Client may specify.
4. Higginbotham and Client shall enter into a Business Associate Agreement.
5. 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 makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, Higginbotham shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. Higginbotham shall not be liable for such payment, unless Higginbotham would otherwise be liable under another provision of this Agreement.

Client Responsibilities and Duties:

1. Client retains Higginbotham as a third-party administrator for the Plan and authorizes Higginbotham to act on behalf of the Client to perform all functions necessary to prepare, implement, and operate the Plan.
2. Client shall furnish the information requested by Higginbotham to perform Higginbotham's functions as a third-party administrator hereunder, including, but not limited to, the participants':
 - a. Names;
 - b. Addresses;
 - c. Social security numbers;
 - d. Medical coverage 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 accuracy of the information it provides. 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 claims expenses or administrative fees incurred or paid to Higginbotham 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 any Business Associate Agreement 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 will secure legal review of the Plan, amendments, and Summary Plan Description from Client's legal counsel.
6. Client will complete new plan year enrollment procedures completely and on a timely basis.
7. Client will notify Higginbotham of changes in employee eligibility in a prompt and efficient manner. All final determinations as to a participant's eligibility to the Plan or entitlement to Plan benefits are to be made by the Client, including any determination upon appeal of a denied claim for Plan benefits.

8. Client will initiate any action required in the event the Plan becomes discriminatory. Without limiting the Client's responsibilities described herein, it is the Client's sole responsibility and duty to:
 - a. amend the Plan as necessary to ensure ongoing compliance with applicable law;
 - b. file any required tax or government returns relating to the Plan; and
 - c. take all other steps necessary to maintain and operate the Plan in compliance with applicable provisions of the Plans, HIPAA, or any applicable federal and state laws.

Client will notify Higginbotham of any changes to the Plan at least thirty (30) days before the effective date of such changes.

9. Client will pay Higginbotham the service charges set forth in Purchase Order.
10. Funding for any payment on behalf of the participants under the Plan is the sole responsibility of Client, and Client agrees to accept liability for, and promptly provide sufficient funds to satisfy, all payments to participants under the Plan. Higginbotham does not insure or underwrite the liability of Client under the Plan. Except for the expenses specifically assumed by Higginbotham in this Agreement, Client is responsible for all expenses incident to the Plan. Client will select a funding method detailed in Purchase Order.
11. Client will authorize Higginbotham and/or FBS-HIA, LLC to initiate ACH debit and credit entries, and, if necessary, debit entries and adjustments for any debit entries in error, to/from the account, mentioned above. Client will authorize the payor bank to charge the same to the designated account. Client must complete the ACH "Pull" Authorization Agreement found in the Purchase Order. Should an ACH "pull" fail, Higginbotham and/or FBS-HIA, LLC will notify Client that they have 5 business days to deposit funds before a second ACH "pull" is attempted. If the second ACH "pull" fails, Higginbotham will notify Client that the participant's debit cards/reimbursement services will be turned off until the account balance is submitted.

Representations, Warranties, and Understandings:

1. Client warrants and represents that it is the Plan Administrator and named fiduciary of the Plan 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 Plan, 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 Plan.
3. 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.
4. Client agrees to indemnify, defend, and hold Higginbotham, its representatives and employees harmless and to reimburse Higginbotham for any losses Higginbotham might suffer, of whatever nature or whatever source, including but not limited to Client's failure to comply with its representations and warranties and with the terms and conditions of this Agreement, or to otherwise timely provide Higginbotham with information and/or documentation reasonably requested by Higginbotham that is necessary for Higginbotham to perform the services described in this Agreement.
5. Higginbotham agrees to indemnify, defend, and hold Client, its representatives and employees harmless and to reimburse Client for any losses Client might suffer, of whatever nature or whatever source, for any and all claims, liabilities, losses, damages, or expenses, including reasonable attorneys' fees, incurred by reason of the failure of Higginbotham to carry out its obligation on a timely and non-negligent basis, unless such failure is based upon the negligence of Client or any of its employees.
6. Client has the sole responsibility to pay any fee or penalty arising from the Plan that is assessed by the Internal Revenue Service, the Department of Labor, and/or other federal, state, or local governmental agencies.
7. If client pays for FSA administrative services as part of a monthly service fee rather than according to a Fee Schedule, the Service Fee Invoice will be sent by the 10th working day of the following month. Payment of the Service Fee Invoice is due upon receipt of the invoice and considered past due if payment is not received prior to the next month's invoice. Any unpaid Service Fees not disputed within 45 days of being initially invoiced are

subject to interest not to exceed 1.5% per month (18% per annum). A \$35.00 fee will be charged for all payments returned NSF. If Client disputes any charge or amount on any invoice and such dispute cannot be resolved promptly through good faith discussions between the parties, Client shall pay the amounts due under this Agreement less the disputed amount, and the parties shall negotiate in good faith to resolve such disputed amount. An amount will be considered disputed in good faith if (i) Client delivers a written statement to Higginbotham on or before the past due date of the invoice, describing in detail the basis of the dispute and the amount being withheld by Client, (ii) such written statement represents that the amount in dispute has been determined after investigation of the facts and that such disputed amount has been determined in good faith, and (iii) all other amounts due from Client that are not in dispute have been paid in accordance with this Agreement. Disputed amounts shall not be considered past due.

8. Higginbotham will notify Client promptly when a debit card swipe for one of their employees is a "Non- Qualified Swipe" and the employee has not paid back the plan for the NQE amount within the allotted timeframe.
9. 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 by a party as "confidential" shall be considered Confidential Information" of that party. Client 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). Client further agrees that Higginbotham may communicate confidential, protected, privileged or otherwise sensitive information to Client through a named contact designated by Client (the "Named Contact") and specifically agrees to hold harmless Higginbotham for any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, email or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted once Higginbotham has sent such to Client. 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.
10. Client agrees not to disclose details of the Plan to other parties or copy any materials provided, except for auditor, attorneys, and others to whom disclosure is legally required, unless Higginbotham gives permission to disclose.
11. If a court 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.
12. 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.

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. 13th Street
Fort Worth, Texas 76102
Email: phamlin@higginbotham.net
Fax: 817-882-9267

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.

Termination of this Agreement

1. This Agreement may be terminated by either party for reasonable cause upon 30 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. Change in statutes or regulations which eliminate or substantially modify the requirements for third party FSA administrative services with respect to the Plan;
 - c. Either party is suspended or restricted from performance by Federal or State regulatory authority;
 - d. Either party fails to comply with the provisions of this Agreement;
 - e. 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.

This Agreement, along with the Purchase Order, 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.