

# EMPLOYEE BENEFITS CONSULTING AGREEMENT

With City of Lawton  
*Benefit Plan Sponsor*



## HIGGINBOTHAM CONSULTING AGREEMENT



**HIGGINBOTHAM®**  
Global Reach. Local Touch. Single Source.

This Consulting Agreement, hereinafter referred to as "Agreement" is between City Of Lawton ("Client") and Higginbotham Insurance Agency, Inc. ("Consultant"), effective this 1st day of January, 2023.

WHEREAS, Client desires to obtain the benefit of Consultant's knowledge and experience by retaining Consultant, and Consultant desires to accept such position upon the terms and subject to the conditions set forth herein.

WHEREAS, the Parties wish to set forth their respective expectations;

Now, therefore, for good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, the Parties hereby agree as follows:

## 1. Scope of Services to be Provided by Consultant

Consultant will provide Client with consulting services, the scope of which shall be determined by Client in accordance with the Scope of Services Addendum (Exhibit 2), for the following benefit programs listed below:

- Medical
- Prescription Drug
- Dental
- Vision
- Voluntary/worksites benefits (as needed)

In addition, Consultant will provide the following Value-Added services as elected by Client, as listed in Exhibit 1:

- Wellness Consulting (as needed)
- Compliance Consulting (as needed)
- HR Technology Consulting (as needed)
- Benefits Communication Consulting (as needed)
- HR/Employee Training (as needed)
- Eligibility Processing (if elected)
- COBRA Administration (if elected)
- Flexible Spending/Dependent Care/HRA/HSA Account Administration (if elected)
- Benefits Administration Platform with Carrier Connectivity (if elected)
- HR Consulting (if elected)

## 2. Term & Termination

**A. Term.** This initial term of this Agreement shall be six (6) months, commencing on January 1, 2023 and ending June 30, 2023 ("Initial Term"). Thereafter, this Agreement shall automatically renew for one year terms ("Renewal Term"), starting on July 1, 2023 and ending on June 30, 2024 and will remain in effect until terminated as described below.

**B. Termination.** This Agreement may be terminated by either party only as follows:

- a) Effective upon fifteen (15) days advance written notice to the other party stating that such other party is in breach of any of the provisions of this Agreement, provided such breach (if able to be cured) is not cured within seven (7) days after the notice is received;

- b) Effective upon ninety (90) days' advance written notice to the other party given with or without reason; provided such notice is given after the Initial Term; or
- c) By mutual written agreement of the Parties.

### **3. Cost of Services**

Client agrees to pay Consultant professional fees as outlined in Exhibit 1 and Scope of Services Addendum. These annual fees are payable in monthly installments and Consultant agrees to submit invoices to Client on a monthly basis. The fees include Consultant's out-of-pocket expenses, including, but not limited to, expenses related to travel, communication, advertising and any other work performed on behalf of Client, unless otherwise specified.

The amount of the Fee shall be guaranteed for a period of one (1) year. Notwithstanding the foregoing, the Fee as expressed in this Agreement is calculated using a baseline benefit-eligible employee/retiree count of approximately 1,100. Client shall be required to confirm the benefit-eligible employee/retiree count at such times as may be reasonably requested by Consultant. Should the number of benefit-eligible employees/retirees increase by more than 10 percent (10%) over the previous 12 months, Consultant reserves the right to adjust the Fee, effective as of the immediately following month.

Client further acknowledges that Consultant may receive additional compensation including contingency payments, overrides, and bonuses as a result of being Client's insurance broker (collectively, "Additional Compensation"). Client consents and agrees to Consultant's ability to receive such Additional Compensation under all circumstances.

Client further acknowledges that Consultant may receive fees, commissions, or other forms of compensation that have no impact to insurance premium rates as filed with a particular state (collectively, "Vendor Management Fees") for the performance of certain core and/or optional services listed in the Scope of Services Addendum. Client consents and agrees to Consultant's ability to receive such Vendor Management Fees under all circumstances.

### **4. Personnel**

Consultant will assign its personnel according to the needs of Client and according to the disciplines required to complete appointed tasks in a professional manner. Consultant retains the right to substitute personnel upon approval by Client.

### **5. Client's Responsibilities**

Client will make available (or shall cause its agents, consultants, or vendors to make available) such reasonable information as required for Consultant to conduct its services. Such data will be made available as promptly as possible. It is understood by Consultant that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement. It is understood by Client that timely delivery of requested information is a condition to the performance of service by Consultant, and any delay by Client can result in the delay of Consultant's performance of services or delivery of Work Product (defined in Section 6). Additional fees may be imposed by Consultant if, due to Client's failure to timely deliver information, additional time and resources of Consultant is necessary to perform the services or deliver a Work Product. Client will make timely payments of the service fees as set forth elsewhere in this Agreement.

## **6. Confidentiality of Records and Information**

Consultant recognizes that Client (including the employee benefit plans sponsored by Client) has protected health information and other proprietary information (collectively, "Information") which are valuable, special, and unique assets of Client. Consultant will not divulge, disclose, 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 its use and disclosure of protected health information as described in Exhibit 3. Provided, however, that Consultant may disclose Information to the extent required by applicable law or regulation or by legal process or requested by applicable regulatory or administrative body upon reasonable notice to Client.

All work product including, but not limited to, reports, written analyses, documents, drawings, plans, specifications, videos, photographs, works of authorship and the like ("Work Product") derived from the Services shall be considered a "Work Made for Hire" as that phrase is defined by the U.S. copyright laws and shall be owned by and for the express benefit of Consultant. If circumstances are such that the Work Product cannot be deemed "Work Made for Hire", it is agreed that all claims of ownership will be assigned to Consultant.

## **7. Independent Contractor**

It is understood and agreed that Consultant is engaged by Client to perform services under this Agreement as an independent contractor. Consultant shall use its best efforts to follow written, oral, or electronically transmitted (i.e., sent via facsimile or e-mail) instructions from Client as to policy, procedure and assignments. Nothing herein shall be deemed or construed to create a joint venture, partnership, agency, or employee/employer relationship between the parties for any purpose. Consultant shall be authorized to engage any subcontractor as it deems necessary or appropriate to perform the services under this Agreement, provided that Consultant shall be responsible for the services performed by such subcontractor(s).

## **8. Insurance**

During the Term and for three (3) years thereafter, Consultant shall maintain the following policies of insurance: (i) professional liability insurance with limits of not less than \$1,000,000/\$3,000,000; (ii) commercial general liability insurance with limits of not less than \$1,000,000/\$2,000,000; and (iii) products liability insurance with limits of not less than \$3,000,000/\$3,000,000. Upon request, Consultant shall provide evidence of such insurance to Client.

## **9. Fiduciary Responsibility**

Client acknowledges that: (i) Consultant shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) Consultant shall exercise no authority or control with respect to management or disposition of the assets (if any) of Client's employee benefit plans; and (iii) Consultant shall perform services pursuant to this Agreement in a non-fiduciary capacity. Client agrees to notify Consultant as soon as possible of any proposed amendments to the plans' legal documents to the extent that the amendments would affect Consultant in the performance of its obligations under this Agreement.

## **10. Limitation of Liability**

REGARDLESS OF ANY PROVISION TO THE CONTRARY, AND TO THE FULLEST EXTENT 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, REGARDLESS OF CAUSE, INCLUDING IF CAUSED BY THE NEGLIGENCE OF CONSULTANT. ADDITIONALLY, TO THE FULLEST 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, REGARDLESS OF CAUSE, INCLUDING IF CAUSED BY THE NEGLIGENCE OF CONSULTANT, 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 FULLEST EXTENT PERMITTED BY LAW.

## **11. Governing Law**

This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Oklahoma, 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 Comanche County, Oklahoma, and all Parties hereto waive any claims of inconvenience or lack of personal jurisdiction with respect to such courts.

## **12. Entire Agreement**

No provision of this Agreement may be modified, waived, or discharged unless such modification, waiver, or discharge is agreed to in writing signed by Consultant and Client. No agreements or representations, oral or otherwise, express or implied, have been made by either party with respect to the subject matter hereof that are not set forth expressly in this Agreement.

This Agreement shall otherwise bind and inure to the benefit of the parties hereto and their respective successors, assigns, heirs, legatees, devisees, executors, administrators and legal representatives.

All obligations which by necessity extend beyond any date of termination, shall survive the termination of this Agreement.

Consultant and Client acknowledge that this Agreement and all the terms and conditions contained herein have been fully reviewed and negotiated by Consultant and Client. Consultant and Client 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.

This Agreement is the complete and entire agreement between the parties of their understanding in connection with the Services referred to herein and supersedes all previous or contemporaneous dealings, agreements and/or understandings with respect hereto. Subsequent amendments to this Agreement shall only be in writing signed by both parties.

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*Signature of Consultant*

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*Date*

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*Title*

IN WITNESS WHEREOF the parties have signed this Agreement the date first above mentioned.

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Stanley Booker, Mayor  
City of Lawton

ATTEST:

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Traci L. Hushbeck, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2022

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John Ratliff, City Attorney

## EXHIBIT 1: CONSULTING FEES

- Annual 2% commission of Client's Group Medical Insurance, to be paid in monthly installments, will include services for:
  - Medical Plan Consulting
  - Prescription Drug Consulting
  - Compliance Consulting
  - HR Technology Consulting
  - Wellness Consulting (as needed)
  - HR Consulting (as needed)
  - HR / Employee Training (as needed)
  - Benefits Communication Consulting (as needed)
  - Benefits Administration with Carrier Connectivity (if elected)
- Standard commissions on ancillary coverages, to be paid in monthly installments, will include services for:
  - Dental Plan Consulting
  - Vision Plan Consulting
  - Life / AD&D Consulting
  - Voluntary / Worksite Benefit Consulting
  - Any additional ancillary coverages elected
- Additional fees, as may be applicable per terms of the Scope of Services Addendum, to include services for:
  - Flexible Spending Account Administration - \$1.75 PSPM
  - Dependent Care Spending Account Administration - \$1.75 PSPM
  - Health Savings Account Administration - \$1.50 PSPM
  - Health Reimbursement Account Administration - \$5.00 per disbursement check issued
  - COBRA Administration - \$0.65 PEPM
  - Consolidated Billing - \$2.00 PEPM

PSPM = Per Subscriber Per Month

PEPM = Per Employee (enrolled) Per Month

## EXHIBIT 2: SCOPE OF SERVICES

Strategic Planning	Scheduled/ Ongoing	As Requested	Additional Fee and/or Frequency Limit
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 and as provided by vendor
Employee contribution strategies	√		Annually
Development of prototype plan design options	√		Annually
Evaluation and Analysis	Scheduled/ Ongoing	As Requested	Additional Fee and/or Frequency Limit
Examination of consumer directed health care 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	Additional Fee and/or Frequency Limit
Multi-year cost projections and forecasting	√		Annually
Large claim tracking	√		Month or as provided by vendor
Plan design change modeling (incremental changes to current plans as well as translation models that allow conversion from one health care delivery system to another)	√		Annually
Experience monitoring, including: - Trend analysis	√		Month or as provided by vendor
- Utilization analysis	√		Month or as provided by vendor
- Pharmacy utilization analysis	√		Month or as provided by vendor



Contribution modeling	√		Annually
Annual review of medical network usage	√		Annually
<b>Renewals and RFPs</b>	<b>Scheduled/ Ongoing</b>	<b>As Requested</b>	<b>Additional Fee and/or Frequency Limit</b>
Medical and prescription drug RFP	√		Annually or as required
Dental RFP	√		Annually or as required
Basic Life and Personal Accident RFP	√		Specific to rate guarantee period
Benefits administration platform selection process and RFP		√	As needed
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
<b>Wellness</b>	<b>Scheduled/ Ongoing</b>	<b>As Requested</b>	<b>Additional Fee and/or Frequency Limit</b>
Development of wellness operating plan based on needs, vendor review and implementation support	√		After initial strategy is implemented, semiannual review
Initial evaluation and consult from Health Risk Management (HRM) Director	√		Annually
Employee wellness survey		√	As requested
<b>Compliance</b>	<b>Scheduled/ Ongoing</b>	<b>As Requested</b>	<b>Additional Fee and/or Frequency Limit</b>
Analysis and advice arising under ERISA, Tax Code, COBRA	√		Monthly
Review of service agreements, contracts, and SPDs from vendors	√		Annually
Compliance management calendar	√		Monthly
Email news updates on relevant topics impacting health and welfare plans	√		As alerts are distributed
HIPAA privacy and security training and toolkit	√	√	As requested
<b>Implementation and Communication</b>	<b>Scheduled/ Ongoing</b>	<b>As Requested</b>	<b>Additional Fee and/or Frequency Limit</b>
Ensure final plan parameters are executed in accordance with client's expectations	√		Annually
Coordinate with vendor(s) on plan changes and 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	√		Standard benefit booklet provided – printing pass through costs to client
Employee Response Center and Enrollment meeting support during annual enrollment (locations to be determined)		√	Annually if requested
<b>Vendor Management and Day-to-Day Services</b>	<b>Scheduled/Ongoing</b>	<b>As Requested</b>	<b>Additional Fee and/or Frequency Limit</b>
Issue tracking log	√		Monthly
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 and if permitted by carrier
Schedule and drive vendor meetings	√		Annually or when substantial changes are made

## EXHIBIT 3: BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is entered into by and between City of Lawton ("Plan Sponsor"), on behalf of the employee benefit plans set forth on Exhibit A (collectively, the "Plan") and Higginbotham Insurance Agency, Inc. ("Business Associate") (together referred to as the "Parties") effective January 1, 2023.

WHEREAS, the 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")).

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

1. Definitions. Where not defined herein, 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 and this Agreement, subject to the following:
  - (a) 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 (or the Plan) 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).
  - (b) 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).

- (c) Business Associate may disclose Summary Health Information to the Plan Sponsor for the purpose of (i) obtaining bids for health or stop loss insurance for the Plan, or (ii) modifying, amending or terminating the Plan.
  - (d) Business Associate may not Use or Disclose PHI in a manner that would violate the Privacy or Security Regulations if done by the Plan, except as set forth in Section 4 and 5.
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. 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. To the extent Business Associate is required under this Agreement or the Underlying Agreement to carry out an obligation of the Plan under the Privacy Regulations, Business Associate shall comply with the requirements of the Privacy Regulations that apply to the Plan in the performance of such obligations.
  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. Business Associate may disclose PHI for the proper management and administration of Business Associate 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 has adopted and will enforce policies and procedures to reasonably ensure compliance with the Privacy and Security Regulations, including but not limited to requiring workforce members and subcontractors to report immediately to Business Associate any Use and/or Disclosure of PHI that is not permitted by this Agreement, including a Breach of Unsecured PHI or any Security Incident. 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 obligations at least as stringent as are imposed on Business Associate by this Agreement. 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. Within fifteen (15) business days after receiving a written request from the Plan, Business Associate shall provide access 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.
11. Amending and Restricting PHI. Within fifteen (15) business days after receiving a written request from the Plan, 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. Within fifteen (15) business days after receiving a written request by the Plan for any other restriction(s) on the Disclosure of PHI, Business Associate shall as soon as practicable implement such restriction(s).
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) Within fifteen (15) business days after receiving a written request from the Plan, Business Associate agrees to provide the Plan 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. Within fifteen (15) business days after receiving a written request by the Plan for such information, or such shorter period as required by the Secretary, 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 HHS or its designee for the purpose of determining the Plan's compliance with the Privacy Regulations.

14. Event Reporting and Documentation.

- (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. The Parties acknowledge and agree that this Section constitutes notice by Business Associate to the Plan of the ongoing existence and occurrence of unsuccessful Security Incidents for which notice to the Plan by Business Associate shall be required only upon request of the Plan, which shall not be more often than once in a 12-month period.
- (c) Business Associate shall document all Breaches of Unsecured PHI that are discovered by Business Associate as would be required for the Plan to report Breaches to the Secretary in accordance with 45 C.F.R. §164.408(c).
- (d) Within sixty (60) days from the date of discovery, 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 accessed, acquired or disclosed; (ii) the incident, including the date of the Breach and the date of the discovery of the Breach, if known; (iii) who made the unauthorized use and/or received the unauthorized disclosure; (iv) the types of Unsecured PHI involved in the Breach; (v) any specific steps the affected Individual should take to protect him or herself from potential harm related to the Breach; (vi) what the Business Associate is doing to investigate the Breach, to mitigate losses and to protect against further Breaches; (vii) contact procedures for how the affected Individual can obtain further information from the Business Associate; (viii) a recommended plan of notifications to affected Individuals, HHS and/or the media, as may be appropriate or required by law; and (ix) such other information as reasonably requested by the Plan's Privacy Official.
- (e) Business Associate shall conduct the risk assessment to determine whether a Breach occurred and inform the Plan of its assessment. If in the opinion of the Plan the incident qualifies as a Breach, the Business Associate shall carry out the appropriate notification responsibilities, after receiving the Plan's approval of the Business Associate's plan of proposed notifications and the specific content of such notifications.

*Plan Privacy Official:* Craig Akard, HR Director

212 SW 9<sup>th</sup> Street

Lawton, OK 73501

*Fax:* 580-581-3530

*Higginbotham Privacy Official:* Ross Carmichael or VP of Compliance

500 W. 13<sup>th</sup> Street

Fort Worth, TX 76102

*Fax:* (817) 882-9341

15. Sale of PHI. Neither the Plan nor the Business Associate shall receive direct or indirect payment in exchange for any PHI relating to the Plan or its Individuals in such a way as to violate HIPAA, except as permitted under the Privacy Regulations, including 45 CFR Part 164.
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, 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 party 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 thirty (30) days of notice from 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 may 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. Business Associate shall retain no copies of the PHI. 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 or any applicable regulations thereunder with respect to PHI that mandates a change to the obligations of the Parties under this Agreement, 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. 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.

24. 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.

25. 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.

26. Governing Law. This Agreement shall be governed by and construed and interpreted in accordance with the laws of the State of Oklahoma, 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 Comanche County, Oklahoma, and all Parties hereto waive any claims of inconvenience or lack of personal jurisdiction with respect to such courts.

27. 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.
28. Regulatory Reference. A reference in this Agreement to a section in the Privacy and Security Regulations or to a section of the Code of Federal Regulations means the section as in effect or as amended, and for which compliance is required.
29. Survival. The respective rights and obligations of the Parties under Sections 20 and 23 of this Agreement shall survive the termination of this Agreement.
30. Interpretation. Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits the Plan to comply with the Privacy and the Security Regulations. When a section of the Agreement calls for Business Associate to respond to a request from the Plan in conjunction with a regulation specifically cited in the section, Business Associate may rely on the Plan's request as verification by the Plan that the request is made in compliance with the regulation. Business Associate is not responsible for confirming that the Plan's request is made in compliance with the specific regulation.
31. Final Agreement. This Agreement supersedes all prior Business Associate Agreements between the parties with respect to the Underlying Agreement.
32. Effect on Services Agreement. Except as relates to the Use, Disclosure and security of PHI and electronic PHI, or as otherwise expressly provided in this Agreement, or under applicable law, the rights and obligations of the Parties under the Underlying Agreement shall not be changed or limited by this 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 01/01/2023.

\_\_\_\_\_

Higginbotham Insurance Agency, Inc.

By: \_\_\_\_\_

By: Ross Carmichael

Its: \_\_\_\_\_

Its: Vice President of Compliance and Operations

For the City of Lawton:

\_\_\_\_\_  
Stanley Booker, Mayor  
City of Lawton

ATTEST:

\_\_\_\_\_  
Traci L. Hushbeck, City Clerk

APPROVED as to form and legality this \_\_\_\_\_ day of \_\_\_\_\_, 2022

\_\_\_\_\_  
John Ratliff, City Attorney