



Kenton County School District | It's about ALL kids.

Issue Paper

DATE:

August 30, 2023

AGENDA ITEM (ACTION ITEM):

Consider/Approve: COBRA Administrative Services & Privacy/Security of Protected Health Information Agreements

APPLICABLE BOARD POLICY:

01.11 General Powers & Duties of the Board

HISTORY/BACKGROUND:

On August 7, 2023 the Board awarded the position of Section 125 Plan Administration to the Houchens Company. Implementation of the plan involves researching policy alternatives, conducting annual open enrollment and assisting KCS D employees with health policy transactions. Certain transactions include COBRA provisions and health information that is covered under HIPAA Act of 1996. The agreements disclose the requirements and responsibilities of KCS D and Houchens under these laws and regulations beginning on August 7, 2023.

FISCAL/BUDGETARY IMPACT:

None

RECOMMENDATION:

Approval of the COBRA Administrative Services Agreement & Privacy/Security of Protected Health Information Agreement effective August 7, 2023.

CONTACT PERSON:

Susan Bentle, Exec Director Finance

Principal/Administrator



District Administrator



Superintendent

AGREEMENT CONCERNING PRIVACY AND SECURITY OF PROTECTED HEALTH INFORMATION

THIS AGREEMENT (the "Agreement") is entered into as of the Effective Date indicated in Section 6(o) below by and between Kenton County Board of Education (the "Client") and Houchens Insurance Group, Inc., a Kentucky corporation ("Agent") and Affiliates (defined below). This Agreement replaces and supersedes any prior agreement between Client and Agent addressing the privacy and security of Protected Health Information (defined below) under HIPAA (defined below) including but not limited to any prior business associate contracts or agreements.

PURPOSES AND INTENT OF THIS AGREEMENT

A. HIPAA (defined below) establishes standards regarding the Use and Disclosure of certain health information created or received by or on behalf of Covered Entity that may individually identify an Individual (defined below as "Protected Health Information" or "PHI").

B. Client is a plan sponsor of a group health plan that is a Covered Entity as defined at 45 C.F.R. § 160.103 ("Group Health Plan").

C. Agent is an insurance broker that provides life and health insurance services to plan sponsors, group health plans and wellness plans on matters related to employee benefits and has been retained by the Client and/or broker to perform a function or activity on behalf of Group Health Plan that may require Agent to have access to PHI.

D. Client and Agent have entered into a business relationship whereby Agent will perform certain services for Client (as identified in Section 2 below) that may involve the Disclosure of Group Health Plan's PHI to Agent, thus subjecting Agent to certain obligations to protect such PHI pursuant to provisions of HIPAA applicable to group health plans including but not limited to the requirement to reasonably and appropriately safeguard e-PHI disclosed by Client to Agent.

E. HIPAA requires the plan document of Group Health Plan to require Client as a plan sponsor to reasonably and appropriately safeguard e-PHI created, received, maintained, or transmitted to or by Client on behalf of Group Health Plan and, further, to require that any agent to whom Client provides such e-PHI to likewise agree to implement reasonable and appropriate security measures to protect such e-PHI. See 45 C.F.R. §§ 164.514(b)(2).

F. Client desires to receive satisfactory assurances from Agent that it will comply with the obligations required of agents and/or business associates by the HIPAA Privacy and Security Rules and the parties wish to set forth their understandings with regard to the use and disclosure of PHI by Agent in performance of its obligations. This Agreement is intended to satisfy HIPAA requirements relating to the relationship between Client and Agent and the terms and conditions under which Agent will have access to and may use, disclose, create, receive or transmit PHI, including but not limited to HIPAA regulations published in the *Federal Register* on January 25, 2013, and codified at 45 C.F.R. §§ 164.514(b)(2) with regard to group health plans and at 45 C.F.R. §§ 160.103, 164.502(e), 164.504(e)(2) with regard to business associates, if and as applicable to group health plans.

TERMS AND CONDITIONS

1. Definitions. For the purposes of this Agreement, capitalized terms used herein, but not otherwise defined, shall have the same meanings as set forth in the Privacy Rule and Security Rule (defined below). The following terms have the following meanings:

(a) Affiliate of an entity means any other entity (including, without limitation, any corporation, company, partnership, joint venture, trust, employee benefit plan, or other enterprise) which directly or indirectly controls, is controlled or sponsored by, or is under common control or ownership with such entity but only to the extent that such entity is directly involved with and has access to the PHI that is the subject of this Agreement. By way of example and not limitation, an Affiliate of an entity would include a parent, subsidiary, or sibling entity to such entity, or a health plan of such entity.

(b) Breach means the acquisition, access, Use, or Disclosure of PHI in a manner not permitted under the Privacy Rule which compromises the security or privacy of the PHI. "Breach" as used in this Agreement excludes the same items excluded in the definition of the term "breach" in 45 CFR 164.402.

(c) Electronic Protected Health Information ("ePHI") means PHI that is transmitted by or maintained in Electronic Media. References in this Agreement to PHI shall include but are not limited to ePHI.

(d) HHS means the United States Department of Health and Human Services.

(e) HITECH Act means Title XIII of Division A and Title IV of Division B, of the American Recovery and Reinvestment Act of 2009 (Pub. L. 111-5), properly called the "Health Information Technology for Economic and Clinical Health (HITECH) Act."

(f) HIPAA means Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 (42 U.S.C. §§ 1320d – 1320d-8), as amended (including but not limited to amendments contained in the HITECH Act), and regulations promulgated thereunder (45 C.F.R. Parts 160, 162, and 164).

(g) Individual means the person or Group Health Plan participant who is the subject of the PHI and shall include a person who qualifies as a personal representative in accordance with 45 C.F.R. § 164.502(g).

(h) Privacy Rule means the Standards for Privacy of Individually Identifiable Health Information at 45 C.F.R. Part 160 & Part 164, subparts A & E, as amended.

(i) Protected Health Information ("PHI") means information that relates to an Individual's past, present, or future physical or mental condition, medical treatment, or payments for medical treatment, and that does or can be used to identify the Individual. Such information shall be limited to the information created, maintained, transmitted, or received by Agent from or on behalf of Group Health Plan, and shall exclude the same items excluded in the definition of the term "protected health information" in 45 C.F.R. § 160.103.

(j) Security Incident means the attempted or successful unauthorized access to or Use, Disclosure, modification, or destruction of PHI, or interference with the operations of an information system that contains PHI.

(k) Security Rule means the Security Standards for the protection of ePHI at 45 C.F.R. Part 160 & Part 164, subparts A & C, as amended.

(l) Unsecured PHI means PHI that is not rendered unusable, unreadable, or indecipherable to unauthorized persons through the use of a technology or methodology specified by the Secretary in the guidance issued on August 24, 2009 and in accordance with all updates to the guidance that the Secretary issues.

2. Underlying Business Relationship.

(a) Client has engaged Agent to provide insurance brokerage and other services for Group Health Plan (the "Services") such as GHP Renewal Services (defined below), GHP Wellness Program Services (defined below), or COBRA services.

(b) If Agent's Services to Client include obtaining premium or renewal bids for the provision of health insurance coverage and/or administrative services for or on behalf of the Group Health Plan (collectively, the "GHP Renewal Services"), Client shall provide Agent, if feasible, only "summary health information" as defined by 45 C.F.R. 164.504(a) or, alternatively, aggregate information that has been de-identified according to 45 C.F.R. 164.514(a).

(c) If Agent's services to Client or Group Health Plan include services to help manage the costs of the Group Health Plan through a wellness program involving counseling Individuals on lifestyle or health care choices (the "GHP Wellness Program Services") or that include COBRA services, Client agrees that Agent workforce members will require access to certain PHI in order to provide such services in respect to Individuals who are Group Health Plan participants.

(d) With regard to transmitting information to Agent that constitutes PHI, Client agrees:

(1) To first notify Agent before transmitting PHI to Agent in order to obtain instructions on a secure method of transmission and, in any event, to transmit PHI in a manner that renders the PHI unusable, unreadable, and indecipherable and to provide the cipher key to Agent separate from the PHI; and

(2) To disclose to Agent only the minimum necessary information pursuant to 45 C.F.R. 164.502(b) and 164.514(d).

3. Agent's Obligations and Activities.

(a) Agent agrees to Use or Disclose PHI only if such Use or Disclosure, respectively, is Required By Law or is in compliance with each applicable requirement of this Agreement, and such Use or Disclosure would not violate the Privacy Rule if done by Group Health Plan, except that Agent may Use or Disclose PHI for its proper management and administration and to carry out its responsibilities, provided that any such Disclosure is either Required By Law or Agent obtains reasonable assurances from the person to whom the information is Disclosed that it will be held confidentially and Used or further Disclosed only as Required By Law, or for the purpose it was Disclosed to the person and the person agrees to notify Agent of any instances of which it is aware in which the confidentiality of the information has been breached. Consistent with the foregoing, Agent may Use or Disclose PHI to perform functions, activities, or services for, or on behalf of, Client, as specified in this Agreement and as otherwise required by

the business relationship between the parties. Agent may Disclose PHI to: 1) an insurer or third-party administrator with whom Group Health Plan has entered a business associate contract or other agreement that complies with HIPAA's provisions applicable to group health plans in regard to protecting and securing the privacy of PHI, and 2) subcontractors of Agent who comply with Section 3(e) below. Agent shall not Use or further Disclose PHI other than as permitted or required by this Agreement or as Required By Law. Client and Agent acknowledge that applicable law requires Agent to Disclose PHI when required to do so by the Secretary of HHS or his or her designee to investigate Agent's compliance with regulations promulgated under HIPAA or HITECH, or to the Client, the Individual who is the subject of the PHI, or the Individual's designee, as necessary to satisfy the Client's obligations with respect to an Individual's request for an electronic copy of PHI. When Using or Disclosing PHI or requesting PHI from Client, Agent will make reasonable efforts to limit PHI to the minimum necessary to accomplish the intended purpose of the Use, Disclosure or request.

(b) Agent agrees to use reasonable and appropriate safeguards to prevent the Use or Disclosure of PHI other than as provided in this Agreement and to protect the confidentiality, integrity, and availability of ePHI. Safeguards will include compliance with the provisions of the Security Rule applicable to business associates, including but not limited to the general rules described in 45 C.F.R. § 164.306; the administrative safeguards described in 45 C.F.R. § 164.308; the physical safeguards described in 45 C.F.R. § 164.310; the technical safeguards described in 45 C.F.R. § 164.312; the requirements for business associate contracts with Subcontractors in 45 C.F.R. § 164.314; and the policies, procedures, and documentation requirements described in 45 C.F.R. § 164.316, no later than the date such compliance is required of Business Associates by HHS.

(c) Agent agrees to take all reasonable and necessary steps, in accordance with Client's instructions, to negate any harmful effect that is known to Agent that results from Agent's Use or Disclosure of PHI in violation of the requirements of this Agreement.

(d) Unless Agent is requested by law enforcement to delay informing Client, Agent agrees to report to Client any Breach of Unsecured PHI as soon as practicable once we become aware of a Breach. Agent agrees to report to Client, as soon as practicable once Agent becomes aware, a Security Incident or other Use or Disclosure of PHI not allowed by this Agreement; provided, however, that with respect to unsuccessful Security Incidents, the parties agree that this paragraph constitutes notice of such unsuccessful Security Incidents. By way of example, the parties consider unsuccessful Security Incidents as including, but not limited to, pings on a firewall, unsuccessful attempts to log on to a system with an invalid password or user name, unsuccessful attempts to install malware, and denial-of-service attacks that do not result in a server being taken off-line. Any report made to Client regarding a Breach of Unsecured PHI shall include the identity of any Individual(s) involved unless the parties have agreed on other terms for identifying any such Individual(s). Agent shall cooperate with Client in notifying Individuals and the media of any Breach, but only if and to the extent Client deems such notice to be appropriate.

(e) Agent agrees to ensure that any subcontractor that creates, receives, maintains or transmits PHI on behalf of Agent shall execute a written contract containing the same restrictions and conditions that apply through this Agreement to Agent with respect to such information, including without limitation an agreement to implement reasonable and appropriate safeguards to protect ePHI and to abide by applicable requirements of the Security Rule applicable to business associates.

(f) If Agent maintains PHI in Designated Record Sets, Agent agrees to: 1) make available PHI to Client on behalf of Group Health Plan in accordance with 45 CFR 164.524, provided, however, that Agent is not required to provide access if the information held by the Agent merely duplicates the information maintained by the Group Health Plan; and 2) make available PHI for amendment and to incorporate any amendment(s) to PHI in accordance with 45 C.F.R. § 164.526 within the deadlines set forth in HIPAA.

(g) Agent agrees to make available to HHS and Client all of Agent's records relating to the Use and Disclosure of PHI received from, or created or received by Agent on behalf of, Client in a time and manner designated by HHS or Client, for purposes of determining Group Health Plan's compliance with the Privacy Rule, subject to all applicable privileges.

(h) Agent agrees to document all Disclosures of PHI that Agent makes, except Disclosures that are excepted from reporting to Individuals under the HIPAA accounting of Disclosures rule then in effect. Required documentation shall include: (1) the date of the Disclosure; (2) the name of the entity or person who received the PHI and, if known, the address of such entity or person; (3) a brief description of the PHI Disclosed; and (4) a brief statement that would reasonably inform the Individual of the basis for the Disclosure. Agent agrees to provide to Client, within ten (10) business days after Agent's receipt of a written request from Client, information collected in accordance with Section 3(h) of this Agreement, so as to permit Client to respond to a request by an Individual for an accounting of Disclosures of his or her PHI.

(i) To the extent Agent is to carry out an obligation of Group Health Plan under the Privacy Rule, Agent will comply with the requirements of the Privacy Rule that apply to Group Health Plan in the performance of the obligation.

(j) Agent shall comply with the additional privacy and security requirements of the HITECH Act that apply to Agent in rendering the Services hereunder, which by this reference are hereby incorporated into this Agreement; provided that these shall not be effective until the compliance date set by HHS.

4. Client's Obligations and Activities. Client shall not request or require Agent to Use or Disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Client or Group Health Plan. Client shall make reasonable efforts to limit PHI provided to Agent to that which is minimally necessary for the performance of Agent's duties in its business relationship with Client, and shall not fax or email PHI to Agent unless otherwise agreed to or specifically requested by Agent, in advance. Any e-mails sent to Agent from Client and containing PHI should be encrypted. Client shall notify Agent of any changes in or revocation of a HIPAA authorization, and of any agreements Client makes for restrictions or confidential communications under 45 C.F.R. § 164.522 or pursuant to 42 U.S.C. § 17935(a), to the extent that such actions would affect Agent's Use or Disclosure of PHI.

5. Term and Termination.

(a) Term. The Term of this Agreement shall begin as of the Effective Date indicated in Section 6 below, and shall end when Agent has fully complied with the termination provisions of this Section 5.

(b) Termination without Cause. Except where advance notice is required under the terms of a legally enforceable agreement between the parties identified on the signature page

below, either party may terminate this Agreement without cause immediately upon written notice to the other party.

(c) Termination by Client for Cause. Upon Client's knowledge of any material breach or violation of this Agreement by Agent, Client shall either:

(1) Provide an opportunity for Agent to cure the breach or end the violation, and if Agent does not cure the breach or end the violation within the time specified by Client, terminate this Agreement and Agent's business relationship with Client upon written notice, if feasible; or

(2) If feasible, immediately terminate this Agreement and Agent's business relationship with Client upon written notice if Agent has breached a material term of this Agreement and it is not possible either to cure the breach or to end the violation.

(d) Termination by Agent for Cause. Upon Agent's knowledge of any material breach or violation of this Agreement by Client, Agent shall either:

(1) Provide an opportunity for Client to cure the breach or end the violation, and if Client does not cure the breach or end the violation within the time specified by Agent, terminate this Agreement and Client's business relationship with Agent upon written notice, if feasible; or

(2) If feasible, immediately terminate this Agreement and Client's business relationship with Agent upon written notice if Client has breached a material term of this Agreement and it is not possible either to cure the breach or to end the violation.

(e) Effect of Termination.

(1) Upon termination of this Agreement for any reason or no reason, Agent, with respect to PHI received from Client, or created, maintained, transmitted or received by Agent on behalf of Client, shall:

(A) Retain only that PHI which is necessary for Agent to continue its proper management and administration or to carry out its responsibilities;

(B) Return to Client or, if agreed to by Client, destroy all PHI that is: i) capable of destruction without substantial cost; ii) that can be destroyed without damaging Agent's computer equipment; and iii) that is not needed by Agent for the purposes described in Section (5)(e)(1)(A) that Agent still maintains in any form;

(C) Continue to use appropriate safeguards and comply with the applicable provisions of the Security Rule with respect to ePHI to prevent Use or Disclosure of the PHI, other than as provided for in this Section, for as long as Agent retains the PHI; and

(D) Not Use or Disclose the PHI retained by Agent other than for the purposes for which such PHI was retained and subject to the same conditions set out in the first sentence of Section 2(a) above which applied prior to termination.

(2) If this Agreement is terminated, for any or no reason, and either party determines that it is not in Client's best interest for Agent to continue its engagement with Client

without Agent's continued possession and Use of the PHI, the parties shall arrange for appropriate termination of any engagement so affected.

6. General Provisions.

(a) **Amendment.** Except as otherwise provided herein, this Agreement may be amended only by the mutual written consent of the parties. The parties agree to negotiate in good faith any modification to this Agreement that may be necessary or required to ensure consistency with amendments to and changes in applicable federal and state laws and regulations, including without limitation regulations promulgated pursuant to HIPAA. This Agreement shall in any case be construed, and to the extent necessary shall be deemed amended, to comply with the Privacy Rule, the Security Rule, HIPAA, the HITECH Act, and implementing regulations, as each may be amended or interpreted from time to time by federal legislative, administrative, or judicial action.

(b) **Survival.** Agent's rights and obligations under Section 5(e) shall survive and continue after the termination of this Agreement. Sections 6(b)-(n) of this Agreement and the last sentence of Section 6(a) of this Agreement shall survive and continue after the termination of this Agreement.

(c) **Interpretation.** This Agreement embodies the entire agreement and understanding between the parties with respect to the subject matter hereof, expressly superseding all prior agreements and understandings, including but not limited to prior business associate agreements, whether oral or written. Any PHI created, maintained, transmitted or received by Agent from or on behalf of Group Health Plan prior to the Effective Date of this Agreement is now subject to this Agreement. Any ambiguity in this Agreement shall be resolved to permit the parties to comply with the requirements of HIPAA and all regulations enacted pursuant to HIPAA, including without limitation the Privacy Rule, the Security Rule, the HITECH Act, and implementing regulations. In the event of any conflict between this Agreement and any other agreement between the parties, this Agreement shall control.

(d) **Severability.** If any provision of this Agreement is rendered invalid or unenforceable by the decision of any court of competent jurisdiction, that invalid or unenforceable provision shall be severed from this Agreement and all other provisions of this Agreement shall remain in full force and effect if it can reasonably be done in conjunction with the original intent of this Agreement.

(e) **Assignment.** No assignment of the rights or obligations of either party under this Agreement shall be made without the express written consent of the other party, which consent shall not be unreasonably withheld. Any attempted assignment in violation of this provision shall be void.

(f) **Successors and Assigns.** This Agreement shall be binding upon, and shall inure to the benefit of, the parties, their respective successors and permitted assignees.

(g) **Waiver of Breach.** Waiver of breach of any provision of this Agreement shall not be deemed a waiver of any other breach of the same or different provision, nor shall it be deemed a continuing waiver.

(h) **Notices.** All notices required to be given under this Agreement shall be sufficient if given in writing and either delivered in person, by courier, by United States Certified Mail,

postage prepaid, return receipt requested, or by fax with telephone confirmation of receipt to the appropriate party at the address given following the signature lines at the end of this Agreement, or at such other address (or addresses) as may be provided by notice given under this section. All notices given under this Agreement shall be effective on receipt.

(i) Headings. The headings or captions provided throughout this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

(j) No Third Party Beneficiaries. The parties specifically intend that nothing in this Agreement, either express or implied, is intended to confer any rights or remedies under or by reason of this Agreement upon any person or entity other than the parties hereto and their respective successors and assigns. In particular, the parties intend that this Agreement governs and applies only to their relationship and all other persons or entities shall have no rights, claims, entitlements, or benefits under or as a result of this Agreement.

(k) Governing Law; Where Action to Be Brought; Venue. With respect to questions of interpretation of HIPAA under this Agreement, this Agreement shall be governed by, and construed in accordance with, HIPAA. With respect to questions of state law, this Agreement shall be governed by, and construed in accordance with, the laws of the Commonwealth of Kentucky without regard to conflicts of law principles. Any action or claim arising from, under or pursuant to this Agreement shall be brought in the courts, state or federal, within Warren County in the Commonwealth of Kentucky, and the parties expressly waive the right to bring any legal action or claims in any other courts. The parties hereto hereby consent to venue in any state or federal court within Warren County in the Commonwealth of Kentucky for all purposes in connection with any action or proceeding commenced between the parties hereto in connection with or arising from this Agreement.

(l) Counterparts. This Agreement may be executed in one or more counterparts, each of which will be deemed to be an original copy of this Agreement, and all of which, when taken together, will be deemed to constitute one and the same Agreement. Signatures of the parties transmitted by facsimile, .pdf, e-mail or other electronic means will be deemed to be their original signatures for any purpose whatsoever.

(m) Authority. Each person whose signature is set forth below represents and warrants that he or she is duly empowered to execute and deliver this Agreement, and the person signing on behalf of Client specifically represents and warrants that he or she is duly empowered to execute and deliver this Agreement on behalf of all Affiliates included within the definition of Client in the first paragraph of this Agreement, including without limitation any parent or sibling entity or subsidiary.

(n) Business Relationship. Agent is an insurance broker that provides consulting services to plan sponsors, group health plans and wellness programs on matters related to employee benefits.

(o) Effective Date. This Agreement has been signed by the parties on the date or dates indicated in the signature blocks below, but the Effective Date of this Agreement shall be

August 7, 2023.

[This space is left blank intentionally. Signature blocks appear on next page.]

Kenton County Board of Education
("Client")

By: [Signature]

Name: Herr, Webb

Title: Superintendent

Date: 8/22/23

Address for notices to be sent:

Kenton County Board of Education

Attention: Susan Bentle

1055 Eaton Drive

Ft. Wright, KY 41017

E-Mail Address: susan.bentle@kenton.kyschools.us

Tel No.: 859-957-2628

Fax No.: 859-957-2670

**HOUCHENS INSURANCE GROUP,
INC. ("Agent")**

By: [Signature]

Name: P. Bryne Wiseman

Title: President

Date: 8-24-23

Address for notices to be sent:

Houchens Insurance Group, Inc.
1240 Fairway Street
Bowling Green, KY 42102

*** PLEASE DO NOT SIGN THIS AGREEMENT UNLESS ALL BLANKS HAVE BEEN COMPLETED.**
Please provide a street address (not a post office box) for notices.

61692918.5
1/5/2018



COBRA ADMINISTRATIVE SERVICES AGREEMENT

This Agreement which shall be effective on the 7th day of August, 2023, has been entered into between The Kenton County Board Of Education with principal offices at 1055 Eaton Drive, Fort Wright, KY 41017 (hereinafter referred to as Client) and EMPLOYERS RISK SERVICES, a Kentucky Corporation whose mailing address is 1240 Fairway Street, Bowling Green, Kentucky 42103 (hereinafter referred to as ERS).

This Agreement shall be for a period of one year beginning on the effective date of this Agreement set forth above (the "Anniversary Day"). This Agreement will renew automatically for additional periods of one year on the same terms, covenants and conditions unless ERS receives written notice from client of client's desire not to renew at ERS's address appearing above not less than sixty (60) days prior to the next effective Anniversary Day following the conclusion of the year period then in effect, or unless ERS notifies Client in writing not less than sixty (60) days prior to the next effective Anniversary Day of its intent not to renew the Agreement.

Client desires to have ERS provide administrative and clerical functions related to Client's compliance with Health Care Coverage Continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA).

1. In consideration for the fees and charges detailed below, ERS hereby agrees to perform the following administrative and clerical functions:
 - a. Producing and mailing the Initial company-wide COBRA notice to all employees
 - b. Sending of required notices to Principal Qualified Beneficiaries (PQBs) once instructed to do so by Client
 - c. Communicating with PQBs by whatever reasonable and appropriate means regarding COBRA coverage
 - d. Billing and Collecting Premiums
 - e. Reporting Premiums to Client and remitting premiums received to Client
 - f. Reporting enrollees to Client
 - g. Reporting terminations to Client

2. The functions **do not include:**
 - a. Amending and republishing the Client's benefit plan document or Booklets
 - b. Providing any services after termination of this Agreement.
3. ERS will provide Client access to COBRA Web Software, for reporting purposes to notify ERS of new insureds, terminations, retirement, loss coverage, etc.
4. In order for ERS to execute its functions, Client agrees to comply with the requirements of COBRA concerning the complete and timely filing to ERS. Client agrees to submit terminations within fourteen (14) days of any COBRA qualifying event.
5. ERS agrees to comply with ongoing notice requirements within three (3) working days of receiving a completed Participating Qualified Beneficiary Enrollment.
6. ERS further agrees to account for collected premiums by:
 - a. Placing collected premiums in ERS's premium account
 - b. Providing client with a report by the 10th of the month following the previous calendar month detailing premiums collected
 - c. Forwarding to Client by the 10th day of the month following the previous Calendar Month a check drawn on ERS's Premium Account for all net premiums collected during the preceding Calendar Month. The premium check shall be reduced by an amount equal to the prior month's fees payable to ERS. If premiums collected are not sufficient to pay ERS's fees, ERS will detail and bill the excess amount due to Client.
7. ERS will report to Client by the 10th day of the month all new COBRA enrollees (those who have elected to receive coverage) and all terminations from the prior calendar month. ERS will communicate these additions and terminations to Client's Insurer or benefit plan administrator immediately.
8. ERS will advise Client of all relevant statutory or regulatory changes affecting COBRA.
9. HIG Benefits agrees to pay the administration fees to ERS on a timely basis when billed. Failure to pay fees when due may result in ERS unilaterally terminating this Agreement after a thirty (30) day notice period. Client shall also reimburse ERS for any out of the ordinary expenses (such as certified mail) incurred by ERS on behalf of Client, upon presentation to Client by ERS of receipts for such expense.

10. Client agrees that ERS can keep the 2% COBRA Fee added to COBRA premium.
11. Client and ERS agree that final authority and responsibility for decisions in respect of claims and compliance are and remain that of the Client. ERS shall not be liable under this Agreement unless its actions are in willful and wanton disregard for, or grossly negligent of, its obligations under this Agreement. ERS agrees to hold Client harmless and to indemnify Client and its officers, directors, and employees against any and all claims, denials, suits, settlements, judgments, costs, penalties, attorney fees and expenses of any kind resulting from any and all dishonest, fraudulent, or criminal acts of ERS or of its officers, directors or employees in connection with ERS's performance of its obligations under this Agreement. Client shall not be liable under this Agreement unless its actions are in willful and wanton disregard for, or grossly negligent of, its obligations under this Agreement. Client agrees to hold ERS harmless and to indemnify ERS and its officers, directors, and employees against any and all claims, denials, suits, settlements, judgments, costs, penalties, attorney fees and expenses of any kind resulting from any and all dishonest, fraudulent, or criminal acts of Client or of its officers, directors or employees in connection with Client's performance of its obligations under this Agreement.
12. Arbitration. As a condition precedent to any right of action hereunder, any dispute or difference between the Client and ERS relating to the interpretation or performance of this Agreement, including its formation or validity, or any transaction under this Agreement, whether arising before or after termination, shall be submitted to arbitration. Upon written request of either party for arbitration, each party shall choose an arbitrator and the two chosen shall select a third arbitrator. If either party refuses or neglects to appoint an arbitrator within 30 days after receipt of the written request for arbitration, the requesting party may appoint a second arbitrator. If the two arbitrators fail to agree on the selection of a third arbitrator within 30 days of their appointment, each of them shall name three individuals, of whom the other shall decline two, and the decision shall be made by the then current President of the National Association of Independent Insurers. All arbitrators shall be active or retired officers of insurance or reinsurance companies or Lloyds of London underwriters, and disinterested in the outcome of the arbitration. The parties hereby waive all objections to the method of selection of the arbitrators, it being the intention of both sides that all arbitrators be chosen from those submitted by the parties.

Each party shall submit its case to the arbitrators within 30 days of the appointment of the third arbitrator. Any arbitrator chosen and presiding over such arbitration, shall award the prevailing party compensatory damages. The parties hereto waive all rights to exemplary or punitive damages and indirect damages of every kind. Without waiving its right to demand arbitration under this contract, any party may apply to a court of competent jurisdiction for attachment, injunction, and/or other enforcement which may not be available in arbitration. The arbitrator may award any form of interlocutory and permanent relief that could be awarded by a court of competent jurisdiction. Parties may apply to the

courts to confirm and enforce such orders without waiving the right to have the dispute determined by arbitration.

13. Miscellaneous. This Agreement constitutes the complete agreement of the parties regarding its subject matter and replaces and supersedes any prior written or oral agreement between the parties regarding its subject matter. No representations or warranties have been provided by any party to this Agreement to any other party to this Agreement except as specifically set forth in this Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Kentucky. This Agreement may not be modified or amended except by means of a writing clearly identifying itself as a modification or amendment of this Agreement and which is signed by all parties to this Agreement. This Agreement may be executed in multiple counterparts, each of which shall constitute an original but all of which together comprise but a single agreement. The captions of this Agreement and its paragraphs and subparagraphs are for the convenience of the parties only and shall not be taken into account in the construction and interpretation of this Agreement. All parties hereby acknowledge that they have read this Agreement in its entirety and have, to the extent which they deemed necessary, consulted with counsel before executing this Agreement. This Agreement is binding upon and shall inure to the benefit of the heirs, executors, successors and assigns of the parties hereto. This Agreement and the rights, benefits, privileges and responsibilities of the parties hereto may not be assigned by any party hereto without the prior written consent of the other parties hereto. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders, the singular may include the plural, and vice versa as the context may require. The terms of this Agreement are severable should any portion of this Agreement be invalid or unenforceable, such invalidity or unenforceability shall not affect the validity or enforceability of the remainder of this Agreement and this Agreement shall be construed and interpreted as though such invalid or unenforceable provision was not contained herein. This Agreement is performable in Kentucky.

The parties to this Agreement consent and agree to all of the provisions and by their signatures cause this Agreement to become effective on the date above noted.

For Client:


Signature


Title

8/22/23
Date

For Employers Risk Services:

Signature

Title

Date