

## **PROFESSIONAL SERVICES AGREEMENT**

This Professional Services Agreement ("Agreement") is made and entered into by and between Lexington-Fayette Urban County Government in Fayette County, Kentucky ("Client") and Benefit Insurance Marketing, having its principal place of business in Fayette County, Kentucky, at 1151 Red Mile Road, Lexington, Kentucky 40504 ("BIM").

**1. Purpose.** The purpose of this Agreement is to state the terms and conditions under which BIM shall provide employee benefit advisory and brokerage services for the optional benefit programs offered to employee of Client. BIM has been selected by Client as being the best value respondent to Client's Request for Proposal No. 21-2012 Employee Optional Benefit Broker Advisory Services (the "RFP"). The RFP, which is attached hereto as Exhibit "A", is incorporated herein by reference as if fully stated. BIM's response to the RFP dated July 31, 2012, which is attached hereto as Exhibit "B", is incorporated herein as if fully stated. To the extent of any conflict among and between the terms of these documents, the provisions of this Agreement shall take precedence, followed by the RFP and the response.

**2. Description of Services.** BIM services to Client shall include, but shall not be limited to, the following:

A. Review the various Client plans structure, benefits, service, vendor contracts, and costs, including (i) review of current benefits and recommend potential benefit adjustments or changes; and (ii) review costs and other obligations.

B. Review proposal specifications, including (i) review and recommendation of specification adjustments for improvement of benefits for Client's Plans to be offered; (ii) review presentation procedures for eligible participants; and (iii) assist with the selection of insurance carriers and other professional vendors that will be provided with a request for proposal.

C. Assist in the selection process by (i) responding to questions or inquiries from insurance carriers and other professional vendors during the proposal process; (ii) reviewing and comparing the proposals received to determine conformity to bid request requirements; (iii) conducting discussions and meet with those insurance carriers and other professional vendors who are competitive to achieve the best benefits, costs and contractual terms for Client; and (iv) making recommendations for the placement of coverage for insurance services and other related professional services.

D. Assist in implementation, communication and Plan management by (i) coordinating the enrollment and installation of contract(s), including employee communication and employee meetings and other necessary services to complete the enrollment and implementation of the Plans; (ii) coordinating with the insurance carrier and other professional vendors for proper administrative procedures, reporting requirements, and contacting service representatives; (iii) monitoring the performance, throughout the year, of such insurance carriers and other vendors; (iv) assisting in the resolution of claims or service issues with insurance carriers or other related professional vendors; and (v) providing services not listed above as may be necessary or negotiated by BIM and Client .

**3. Work with Client Staff.** In undertaking the foregoing services on behalf of Client, BIM shall work closely with its Division of Human Resources and/or its designees, including other Client Human Resources personnel and other appropriate Client personnel and officials ("Client Staff"), and perform any and all related tasks required by Client Staff in order to fulfill the purposes of this Agreement.

**4. Work Product.** BIM shall deliver all data, reports and documents which result from its services to Client Staff in such form as is satisfactory to Client Staff. Upon acceptance or approval by Client, all reports, information and other data, given to, prepared or assembled by BIM on behalf of Client pursuant to the terms of this Agreement, and any and all other related documents or items related thereto, shall become the sole property of Client and shall be delivered to Client. BIM may make copies of any and all documents referenced herein for its files.

**5. Performance of Services.** BIM and its employees and/or associates shall perform all the services under this Agreement and BIM hereby agrees and represents that all of its employees and/or associates who perform services under this Agreement are and shall be fully qualified and competent to perform the services described herein.

**6. Term.** The term of this Agreement shall begin February 1, 2013 and shall conclude January 31, 2015. The agreement shall be automatically extended for additional one (1) year terms in subsequent years unless either BIM or the Client indicates in writing no later than 60 days prior to January 31, 2015, that they do not wish to renew this Agreement . Further, BIM understands and agrees that all services, written reports, and other data are to be completed and delivered to Client by the termination date unless an extension of time is approved by Client Staff.

**7. Compensation for Services.** In consideration of the professional services to be performed by BIM pursuant to the terms of this Agreement, Client

shall pay BIM for services rendered, as referenced in attached Exhibit "C", which is incorporated by reference. Payments to BIM shall be in the amount shown by its billings and other documentation submitted to Client and shall be subject to Client's approval. Payments are due by the 1st of the month. If payment is not received by the end of the following month, BIM reserves the right to suspend or terminate all BIM services until payment is received.

**8. Change in Scope or Focus of Services.** Client and BIM acknowledge that Client may request, from time to time, changes in the scope or focus of the activities and services conducted or to be conducted by BIM pursuant to this Agreement. Any such change which varies significantly from the Description of Services referenced above and which entails a significant increase in cost or expense to BIM shall be mutually agreed on by BIM and Client. Changes in the scope, which in the opinion of BIM and Client Staff will or in all likelihood will require additional funding by Client, must first be authorized in advance by Client.

**9. Confidentiality of Work and Work Product.** No reports, information, project evaluation, project designs, data or any other documentation developed by, given to, prepared by or assembled by BIM pursuant to the terms of this Agreement shall be disclosed or made available to any individual or organization by BIM without the express prior written approval of Client or as required by the Kentucky Open Records Act, KRS 61.870.

**10. BIM's Liability and Insurance Coverage.** Approval of Client shall not constitute nor be deemed a release of the responsibility and liability of BIM, its employees, agents and/or associates for the accuracy and competency for their designs, reports, information, and other documents or services, nor shall approval be deemed to be the assumption of such responsibility by Client for any defect, error or omission in the documents prepared by BIM, its employees, agents and/or associates. BIM further agrees that it shall maintain in force and effect insurance of the types and in the minimum amounts provided in the RFP (Exhibit "A").

**11. Indemnity.** BIM shall comply with the Risk Management provisions provided in the RFP (Exhibit "A").

**12. Termination.** Client may terminate this Agreement upon sixty (60) days written notice to BIM, with or without cause, with the understanding that all services being performed under this Agreement shall cease upon the date specified in such notice. BIM shall invoice for all services completed and shall be compensated in accordance with the terms of this Agreement for all such services performed by it prior to the date specified in such notice unless the Agreement is terminated for cause in which case the parties agree to act in good faith in determining any amounts owed to BIM.

**13. Additional Terms of Agreement.** The following shall be additional conditions of, and a part of, the consideration of this Agreement, to-wit:

**A. Conflict of Interest.** BIM hereby acknowledges that no officer or employee of BIM is financially interested, directly or indirectly, in the sale to Client of any materials, supplies or services other than the professional services referenced herein. BIM hereby agrees that it shall not accept other employment or engage in outside activities incompatible with the proper discharge of its professional obligations, duties and responsibilities to Client, or which might impair its independent judgment in the performance of its obligations, duties and responsibilities to Client. BIM further agrees that it shall not and will not provide services for compensation, directly or indirectly, to any person or organization who is requesting a permit, authorization, approval, investigation or determination from or by Client.

**B. Nondiscrimination.** As a condition of this Agreement, BIM covenants that it will take all necessary actions to insure that, in connection with any work undertaken pursuant to this Agreement, that it, its associates, agents and subcontractors will not discriminate in the treatment or employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age, sex or physical disability, either directly, indirectly or through contractual or other arrangements. In this regard, BIM shall keep, retain and safeguard all records relating to this Agreement or work performed hereunder for a minimum period of three (3) years from completion of services to Client, with full access allowed to authorized representatives of Client, upon request, for purposes of evaluating compliance with this and other provisions of this Agreement.

**C. Assignment.** This Agreement shall not be assigned, in whole or in part, without the prior express written consent of Client.

**D. Notices.** All notices, communications, and reports required or permitted under this Agreement shall be personally delivered or mailed to the respective parties by depositing same in the United States mail, postage prepaid, or delivered electronically at the following addresses. Mailed notices shall be deemed communicated as of five (5) days after mailing.

If intended for Client to:

Lexington-Fayette Urban County Government  
ATTN: Director of Human Resources  
200 E. Main Street, Room 338  
Lexington, KY 40507

If intended for BIM, to:

Mr. L Briggs Cochran, President  
Benefit Insurance Marketing  
1151 Red Mile Road  
Lexington, KY 40504

**E. Independent Contractor.** In performing services under this Agreement, BIM is and shall be considered an independent contractor of Client. Nothing contained herein shall modify that relationship and the parties hereto specifically acknowledge that BIM is an independent contractor of Client. Additionally, no term or provision of this Agreement shall be construed as making BIM an agent, servant or employee of Client.

**F. Venue.** The obligations of the parties pursuant to this Agreement are performable in Fayette County, Kentucky, and if legal action is necessary to enforce same, exclusive venue shall lie in Fayette County, Kentucky.

**G. Applicable Laws.** This Agreement is made subject to the provisions of applicable state and federal laws. Further, this Agreement shall be governed by and construed in accordance with the laws and court decisions of the Commonwealth of Kentucky.

**H. Mediation.** In the event of any controversy or claim arising out of or relating to this Agreement, or the breach of this Agreement, the parties hereto agree to submit such controversy or claim to nonbinding mediation.

**I. Entire Agreement.** This Agreement contains the entire agreement between the parties and this Agreement supersedes any and all other agreements, whether oral or written. This Agreement may not be amended except in writing and all amendments must be approved by both Client and BIM.

**J. Severability.** If any one or more of the provisions of this Agreement shall for any reason be held invalid, illegal or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provision.

**K. Binding Obligation.** This Agreement shall become a binding obligation on the signatories upon execution by all signatories hereto. Client warrants and represents that the individual executing this

Agreement on behalf of Client has full authority to execute this Agreement and bind Client to the same. BIM warrants and represents that the individual executing this Agreement on its behalf has full authority to execute this Agreement and bind BIM to same.

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

**M. Captions.** The captions to the various clauses of this Agreement are for informational purposes only and shall not alter the substance of the terms and conditions of this Agreement.

**EXECUTED AND AGREED TO** by Lexington-Fayette Urban County Government and Benefit Insurance Marketing on this \_\_\_\_\_ day of October, 2012.

**ACCEPTED:**  
**Benefit Insurance Marketing**

**ACCEPTED:**  
**Lexington-Fayette Urban County Government**

  
By: L Briggs Cochran, President

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

2-1-13  
Date

\_\_\_\_\_  
Date

**PROFESSIONAL SERVICES AGREEMENT**

**EXHIBIT C**

**Professional Services**

**Benefit Plans**

**Benefit Insurance Marketing services include:**

- Determining and recommending the most economical funding methods for the optional benefit programs offered to LFUCG employees.
- Representing LFUCG in all negotiations with providers on all issues including those related to premiums, benefit levels, plan design and special terms and conditions.
- Meeting with and providing reports to various LFUCG representatives as requested.
  - Respond promptly to LFUCG employee inquiries
  - Provide prompt information in response to inquiries from the Urban County Council
- Researching and advising LFUCG on any new developments related to employee benefit plans on an ongoing basis.
- As requested by LFUCG, preparing bid specifications and soliciting proposals from insurance markets which specialize in optional benefits. Evaluate bids including administration, claim payment procedures, customer service, network, reserve establishment policies, financial soundness, and identifying the most cost-beneficial package from various bidders.
- Providing ongoing service and support of all optional benefit programs selected, including but not limited to enrollment support, installation and on-going day to day requests.
- Provide coverage documents for all benefit plans.
- Review and be responsible for the accuracy and correctness, prior to delivery, of excess/reinsurance coverage documents and/or pricing policies, including all changes and

**Optional Benefit plans offered to LFUCG Employees**

- Short Term Disability**
- Long Term Disability**
- Cancer Insurance**
- Critical Illness Plan**
- Accident Insurance**
- Whole Life Insurance**
- Universal Life Insurance**
- Term Life Insurance**

<p>endorsements.</p> <ul style="list-style-type: none"> <li>• Advise LFUCG of any “gaps” in and/or inadequate coverage.</li> <li>• Participate in employee marketing and educational programs as requested.</li> <li>• Assisting with health fairs or other special events as requested.</li> <li>• Preparation of any requested period reports, as requested.</li> </ul>	
<p>For the scope of services outlined in this contract, BIM will accept standard commissions which are included in the optional benefits premiums. BIM will not charge a fee beyond those commissions.</p>	