

## 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 to Client.

**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 the Human Resources and/or his/her 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 March 1, 2011 and shall conclude December 31, 2013. The agreement may be extended annually upon written agreement of BIM and the Client no later than 60 days prior to December 31, 2013. 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 A, 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, in an amount acceptable to Client against liability for bodily injury (including death) of persons and for loss of or damage to property which result from or are related to the performance of BIM's services.

**11. Indemnity.** BIM shall defend, indemnify, and hold Client whole and harmless against any and all claims for damages, costs, and expenses to persons or property that may arise out of, or be occasioned by or from any negligent act, error or omission of BIM and/or any agent, servant, or employee of BIM, in the execution or performance of this Agreement.

**12. Termination.** Client may terminate this Agreement upon sixty (60) days written notice to BIM 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.

**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: 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 State 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 19<sup>th</sup> day of ~~March~~, 2011.  
*April*

**ACCEPTED:**  
Benefit Insurance Marketing

  
By: L Briggs Cochran, President

3-10-11  
Date

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

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

4-19-11  
Date

**PROFESSIONAL SERVICES AGREEMENT**

**EXHIBIT A**

<b>Professional Services</b>	<b>Benefit Plans</b>
<p><b>Benefit Insurance Marketing services include:</b></p> <ul style="list-style-type: none"><li>• Assist the LFUCG Division of Human Resources with the completion of RFP's to include medical, dental, vision, etc</li><li>• Attend employee enrollment meetings and answer employee questions relating to plan designs, legislative changes impacting their plans, etc</li><li>• Prepare employee notifications or mailing concerning their benefits</li><li>• Provide an administrative procedures guide</li><li>• Provide actuarial, aggregate and legal assistance to review claims, plan designs, and proposed plan changes.</li><li>• Provide the information to assist Client with its responsibility for compliance with state and federal mandates.</li><li>• Provide periodic informational releases to assist the Client in keeping informed about relevant legislative or regulatory developments.</li></ul>	<p style="text-align: center;">Medical / Pharmacy</p> <p style="text-align: center;">Dental</p> <p style="text-align: center;">Vision</p>
<p>Professional Services fees will be \$3.25 per employee which approximates \$9,750 per month based on current census of 3,000 employees.</p>	