

OGDENSBURG CITY SCHOOL DISTRICT
OGDENSBURG, NEW YORK

SUBJECT: Resolution to Approve Agreement with Foy Benefits Inc. as the Ogdensburg City School District's Health Insurance Broker

DATE: April 29, 2019

REASON FOR BOARD CONSIDERATION:

The Board of Education must accept or reject all contractual agreements.

FACTS AND ANALYSIS:

The Ogdensburg City School District will transfer all employees and retirees to a new Health Insurance Plan, therefore the following is recommended:

RECOMMENDED ACTION:

Moved by _____ and supported by _____ that, having the recommendation of the Superintendent of Schools, the Board of Education of the Ogdensburg City School District does hereby approve the attached agreement with Foy Benefits, Inc. to serve as the district's Health Insurance Broker for current and retired employees effective July 1, 2019, as submitted this 29th day of April, 2019.

APPROVED FOR PRESENTATION TO THE BOARD:



Superintendent

KK/alf
Attachment

Client Agreement

This Client Agreement is between **Ogdensburg City School District** (Client) and **Foy Benefits, Inc.** (Broker), effective as of *July 1, 2019.*

WHEREAS, **Ogdensburg City School District** wishes to obtain the assistance of **Foy Benefits, Inc.** with strategic benefit planning, design, funding, administration and communication with respect to its employee benefit programs;

WHEREAS, **Foy Benefits, Inc.** has superior knowledge and expertise in assisting employers with designing and servicing employee benefit plans; and

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 Foy Benefits, Inc.:

Foy Benefits, Inc. will provide **Ogdensburg City School District** with the consulting, program analysis, brokerage services, and consolidation advisement listed below:

A. Renewal Services.

- Underwriting analysis of renewal
- Analysis of actuarial generated rates
- Claims analysis, medical, to isolate problematic areas
- Claims analysis, prescription drug, to isolate problematic areas
- Interpret claims data and develop action plan
- Quarterly reporting
- Mid-year renewal
- Insurance carrier contract renewal
- Carrier evaluation
- Voluntary needs analysis and market study
- RFP creation for Insured, Administrative Services Only (ASO), Self-Funding and Consortium options
- Plan design modeling
- Ancillary lines of coverage renewal
- Employee benefits statement

B. Strategic Services.

- Creation, offer employee benefits strategic plans
- Benchmark plan design for comparison
- Ongoing service with carrier

C. Enrollment.

- Employee one-to-one enrollment meetings

- Collection and review of enrollment materials
- Enrollment communication to carrier
- Retirement medical and prescription drug plan administration
- Enrollment communication campaign, including group meetings
- Portal for employees to access HR/benefits information

D. Compliance Resources.

- Health Care Reform news and information.
- Health Care Reform penalty modeling.
- Information on compliance with federal and/or state laws including:
 - COBRA
 - HIPAA
 - Internal Revenue Code Section 125
 - Medicare Part D
 - Additional employment laws
- 1094/1095-C Filing

E. Stewardship Report. Foy Benefits, Inc. will develop and implement a detailed account stewardship plan, which should include, but not be limited to, the following:

- Specific quantifiable and measurable goals and objectives, annually, for Foy Benefit, Inc.'s team relating to Client's programs; and
- Detailed work plans which lay out the account management plan, work schedules, areas of concentration, timing and information requirements.

2. Client's Responsibilities

Client will make available such reasonable information as required for Foy Benefits, Inc. to conduct its services. Such data will be made available as promptly as possible. It is understood by Foy Benefits, Inc. that the time of Client's personnel is limited, and judicious use of that time is a requirement of this Agreement.

3. Disclosure and Recordkeeping

A. Full Disclosure.

Client has the right to approve any arrangements and/or the utilization of any intermediaries in connection with, or arising out of, or in any way related to Client's insurance and risk management program. Foy Benefits, Inc. must seek approval from Client prior to the use of any of the above in connection with the Client's insurance and risk management program.

B. Recordkeeping.

Foy Benefits, Inc. will maintain accurate and current files including, but not limited to, insurance policies and correspondence with insurers or brokers in accordance with industry standard record retention practice or as otherwise directed by Client.

4. Termination

A. Termination.

This Agreement may be terminated by either party only as follows:

- a) Effective upon thirty (30) 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 fifteen (15) days after the notice is received;
- b) Effective upon sixty (60) days' advance written notice to the other party given with or without reason; provided such notice is given after the Initial Term, Beginning July 1st 2019 through June 30th, 2020; or;
- c) By mutual written agreement of the parties.

5. Cost of Services

Foy Benefits, Inc. professional commissions are based upon carrier allowance. The commissions are standardized by New York State Insurance Department.

MVP:

\$3.50 per participant, per month

The Hartford:

7.5%

Excellus BCBS:

Base Medical Commission: Large Group (excludes HMO business)

Cumulative YTD Premium	Commission
First \$500,000	4.5%
\$500,001 - \$1,000,000	4.0%
\$1,000,001 - \$1,500,000	3.5%
\$1,500,001 - \$2,000,000	2.5%
\$2,000,001 - \$5,000,000	1.5%
\$5,000,001 +	1.0%

Better Business Planning, a vendor used by Foy Benefits, Inc., will charge fees at the lesser of \$4 per account per month or what is currently being charged by the current vendor (SLL Consortium). For these fees, Better Business Planning will assist in administrating both FSAs and COBRA.

If elected, Foy Benefit's, Inc. will provide 1094-C and 1095-C services. Fees include a flat \$500 annual charge as well as a per form filing fee which is estimated to be \$3.75 per form. On an annual basis, Foy Benefits, Inc. will inquire with Client about interest in this service.

Additional programs and services may be provided on a per project approval basis.

6. Personnel

Foy Benefits, Inc. will assign its personnel according to the needs of Client and according to the disciplines required to complete the appointed task in a professional manner. Foy Benefits, Inc. will supply an on-site representative. Foy Benefits, Inc. retains the right to substitute personnel with reasonable cause. Foy Benefits, Inc. understands and will comply with district requirements for on-site personnel.

7. Records and Information

Foy Benefits, Inc. agrees to keep any information provided by Client confidential and to exercise reasonable and prudent cautions in protecting the confidentiality of such information. If the services provided by Foy Benefits, Inc.

involve the use of protected health information, Client and **Foy Benefits, Inc.** agree to enter into an appropriate business associate agreement.

8. Independent Contractor.

It is understood and agreed that **Foy Benefits, Inc.** is engaged by Client to perform services under this Agreement as an independent contractor. **Foy Benefits, Inc.** shall use its best efforts to follow written, oral or electronically transmitted (i.e., sent via facsimile or email) instructions from Client as to policy and procedure.

9. Fiduciary Responsibility.

Client acknowledges that: (i) **Foy Benefits, Inc.** shall have no discretionary authority or discretionary control respecting the management of any of the employee benefit plans; (ii) **Foy Benefits, Inc.** shall exercise no authority or control with respect to management or disposition of the assets of Client's employee benefit plans; and (iii) **Foy Benefits, Inc.** shall perform services pursuant to this Agreement in a non-fiduciary capacity.


Client agrees to notify **Foy Benefits, Inc.** as soon as possible of any proposed amendments to the Plans' legal documents to the extent that the amendments would affect **Foy Benefits, Inc.** in the performance of its obligations under this Agreement. Client agrees to submit (or cause its agent, consultants or vendors to submit) all information in its (or their) control reasonably necessary for **Foy Benefits, Inc.** to perform the services covered by this Agreement.

10. Entire Agreement

This constitutes the entire Agreement between the parties, and any other warranties or agreements are hereby superseded.

Subsequent amendments to this Agreement shall only be in writing signed by both parties.

Foy Benefits, Inc.



Signature
Chief Executive Officer

Title

4/23/19

Date

Ogdensburg City School District

Signature

Title

Date

BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (the "Agreement") is effective as of July 1, 2019 (the "Agreement Effective Date") by and between **Ogdensburg City School District** ("Covered Entity") and **Foy Benefits, Inc.** ("Business Associate").

1. Definitions

- a. "HIPAA" means the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191.
- b. "HIPAA Regulations" means the regulations promulgated under HIPAA by the United States Department of Health and Human Services, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164.
- c. Any terms used, but not otherwise defined, in this Agreement shall have the same meaning as those terms have under HIPAA and the HIPAA Regulations.

2. Status of Parties

Foy Benefits, Inc. hereby acknowledges and agrees that **Ogdensburg City School District** is a covered entity and that **Foy Benefits, Inc.** is a business associate of **Ogdensburg City School District**, under the HIPAA Regulations.

3. Obligations and Activities of Business Associate

- a. *Use or Disclosure.* Business Associate agrees to not use or further disclose protected health information (PHI) created or received by Business Associate from, or on behalf of, **Ogdensburg City School District** other than as expressly permitted or required by the Agreement or as required by law.
- b. *Safeguards.* Business Associate agrees to use appropriate safeguards to prevent any use or disclosure of the Protected Health Information other than uses and disclosures expressly provided for by this Agreement.
- c. *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 Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- d. *Reporting.* Business Associate agrees to report to **Ogdensburg City School District** any use or disclosure of the Protected Health Information in violation of this Agreement as soon as reasonably practicable.
- e. *Subcontractors and Agents.* Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information agrees to the same restrictions and conditions that

apply through this Agreement to Business Associate with respect to such information.

- f. *Access.* When requested by Covered Entity, Business Associate agrees to provide access to Protected Health Information in a designated record set to Covered Entity or to an individual in order to comply with the requirements under 45 C.F.R. § 164.524 and the policies of Covered Entity. Such access shall be provided by Business Associate in the time and manner designated by Covered Entity.
- g. *Amendment.* When requested by Covered Entity or an individual, Business Associate agrees to make any amendment(s) to Protected Health Information in a designated record set that Covered Entity directs or agrees to pursuant to 45 C.F.R. § 164.526 and the policies of Covered Entity. Such amendments shall be made by Business Associate in the time and manner designated by Covered Entity.
- h. *Audit and Inspection.* Business Associate agrees to make its internal practices, books and records relating to the use and disclosure of Protected Health Information available to Covered Entity, or, at the request of Covered Entity, to the Secretary of Health and Human Services (the "Secretary of HHS") or any officer or employee of HHS to whom the Secretary of HHS has delegated such authority for the purposes of the Secretary determining Covered Entity's compliance with the HIPAA Privacy Regulations. Such information shall be made available in a time and manner designated by Covered Entity or the Secretary of HHS.
- i. *Documentation of Disclosures.* Business Associate agrees to document such disclosures of Protected Health Information, and such information related to such disclosures, as would be required for Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the policies of Covered Entity.
- j. *Accounting.* Business Associate agrees to provide to Covered Entity, or an individual, information collected in accordance with Section 3.i. of this Agreement, to permit Covered Entity to respond to a request by an individual for an accounting of disclosures of Protected Health Information in accordance with 45 C.F.R. § 164.528 and the policies of Covered Entity. Such information shall be provided in a time and manner designated by Covered Entity.

4. Permitted Uses and Disclosures by Business Associate

- a. *General Use and Disclosure Provisions.* Except as otherwise limited in this Agreement, Business Associate may use or disclose Protected Health Information on behalf of, or to provide services to, Covered Entity in connection with the performance of the services listed in **Foy Benefits, Inc. Vendor Service Contract** of the Agreement if such use or disclosure of Protected Health Information would not violate HIPAA or the HIPAA

Regulations if done by Covered Entity or such use or disclosure is expressly permitted under Section 4.b. of this Agreement.

b. *Specific Use and Disclosure Provisions.*

- (1) Except as otherwise limited in this Agreement, Business Associate may use and disclose Protected Health Information for the proper management and administration of the Business Associate or to meet its legal responsibilities; provided, however, that such Protected Health Information may be disclosed for such purposes only if the disclosures are required by law or the Business Associate obtains certain reasonable assurances from the person to whom the information is disclosed. The required reasonable assurances are that:
 - (a) the information will remain confidential;
 - (b) the information will be used or further disclosed only as required by law or for the purpose for which the information was disclosed to the person; and
 - (c) the person will notify the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.
- (2) Except as otherwise limited in this Agreement, Business Associate may use Protected Health Information to provide data aggregation services to Covered Entity as permitted by 45 C.F.R. §164.504(e)(2)(i)(B). Data aggregation services involve the combining by the Business Associate of (a) Protected Health Information created or received by a Business Associate in its capacity as the Business Associate of a Covered entity with (b) Protected Health Information received by the Business Associate in its capacity as a Business Associate of another Covered Entity, to permit data analyses that relate to the health care operations of the respective Covered Entities.

5. Obligations of Covered Entity

Covered Entity shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the HIPAA Privacy Regulations if done by Covered Entity or that is not otherwise expressly permitted under Section 4 of this Agreement.

6. Term and Termination

- a. *Term.* This Agreement shall be effective as of the Agreement Effective Date and shall continue until the Agreement is terminated in accordance with the provisions of Section 6.b. or 7.b. hereof, or the Agreement between the parties terminates.

- b. *Termination for Cause.* Upon Covered Entity's knowledge of a material breach by Business Associate, Covered Entity may, in its sole discretion, either (1) provide Business Associate with notice of and an opportunity to cure such breach and then terminate this Agreement if Business Associate does not cure the breach within time period specified by Covered Entity, or (2) terminate this Agreement immediately.
- c. *Effect of Termination.*
 - (1) Upon termination of this Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from Covered Entity, or created or received by Business Associate on behalf of Covered Entity. This provision shall also apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
 - (2) Notwithstanding the foregoing, in the event that Business Associate determines that returning or destroying the Protected Health Information is not feasible, Business Associate shall provide to Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of this Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protected Health Information.

7. Miscellaneous

- a. *Regulatory References.* A reference in this Agreement to a section in HIPAA or the HIPAA Regulations means the section as in effect or as amended from time to time, and for which compliance is required.
- b. *Amendment.* Covered Entity and Business Associate agree that amendment of this Agreement may be required to ensure that Covered Entity and Business Associate comply with changes in state and federal laws and regulations relating to the privacy, security and confidentiality of Protected Health Information. Covered Entity may terminate this Agreement upon thirty (30) days written notice in the event that Business Associate does not promptly enter into an amendment that Covered Entity, in its sole discretion, deems sufficient to ensure that Covered Entity will be able to comply with such laws and regulations.
- c. *Survival.* The respective rights and obligations of Business Associate under Sections 6.c., 7.f. and 7.g. of this Agreement shall survive the termination of this Agreement.

- d. *Interpretation.* Any ambiguity in this Agreement shall be resolved in favor of a meaning that permits Covered Entity to comply with applicable law protecting the privacy, security and confidentiality of Protected Health Information, including, but not limited to, HIPAA and the HIPAA Regulations.
- e. *State Law.* Nothing in this Agreement shall be construed to require Business Associate to use or disclose Protected Health Information without a written authorization from an individual who is a subject of the Protected Health Information, or written authorization from any other person, where such authorization would be required under state law for such use or disclosure.
- f. *Injunctions.* Covered Entity and Business Associate agree that any violation of by Business Associate of any of the provisions of this Agreement may cause irreparable harm to Covered Entity. Accordingly, in addition to any other remedies available to Covered Entity at law, in equity, or under this Agreement, Covered Entity shall be entitled to an injunction or other decree of specific performance with respect to any violation by Business Associate of any of the provisions of this Agreement, or any explicit threat thereof, without any bond or other security being required and without the necessity of demonstrating actual damages.
- g. *Indemnification.* Business Associate shall indemnify, hold harmless and defend Covered Entity from and against any and all claims, losses, liabilities, costs and other expenses resulting from, or relating to, the acts or omissions of Business Associate in connection with the representations, duties and obligations of Business Associate under this Agreement.
- h. *No Third Party Beneficiaries.* Nothing express or implied in this Agreement is intended or shall be deemed to confer upon any person other than Covered Entity, Business Associate, and their respective successors and assigns, any rights, obligations, remedies or liabilities.
- i. *Primacy.* To the extent that any provisions of this Agreement conflict with the provisions of any other agreement or understanding between the parties, this Agreement shall control.

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the Agreement Effective Date.

Ogdensburg City School District

Signature of Authorized Representative

Name: _____

Title: _____

Foy Benefits, Inc



Signature of Authorized Representative

Name: ERIC SHALLOW

Title: Chief Executive Officer