City of Benson
City Council Communication

Regular Meeting **March 25, 2013**

To: Mayor and Council Agenda Item # 5

From: Glenn H. Nichols, City Manager

Subject:

Employee Benefit Advocate Service Application and Agreement with ESG (Employee Solutions Group) Corporation for insurance brokerage and administration of employee insurance related benefits

Discussion:

Discussion and possible action regarding renewal of Employee Solutions Group (ESG) contract.

ESG administers benefit broker services, Health Reimbursement Account (HRA) claims, Consolidated Omnibus Budget Reconciliation Act (COBRA) notices and Flex Spending Accounts (FSA). Human Resources and ESG work together to provide benefit information to the employees. HR is satisfied with the services and communication received from ESG and asks for their contract to be extended.

If this contract is approved, the City Manager is authorized to execute all documents necessary to accept the agreement.

Staff Recommendation:

Approval of the Employee Benefit Advocate Service Application and Agreement with ESG (Employee Solutions Group) Corporation for insurance brokerage and administration of employee insurance related benefits

EMPLOYEE BENEFIT ADVOCATE SERVICE APPLICATION

(1) EMPLOYER / LICENSEE INFORMATION

Contact Name	Business Federal ID #	Date of Application
Glenn Nichols | Melissa Quiroz | Megan Moreno	86-6000234	**03/05/2013**
Company Name: City of Benson		Telephone Number: (520)586-2245
Address (Street – No P.O. Boxes, City, State & Zip Code): 120 W. 6th Street, Benson, AZ 85602		
Email: mquiroz@cityofbenson.com	SIC Code:	Fax Number: (520)586-3375

Type of entity: ☐ C-Corp ☐ S-Corp ☐ Partnership ☐ Sole Proprietor ☐ Non-Profit ☐ LLC ☒ Other Municipality

Do you own interest in any other business? ☒ No ☐ Yes If yes, Name _____

Address if different _____ Federal ID # _____

Affiliated Co. included in plan? ☐ Yes ☐ No (Please provide a separate sheet for information on additional affiliated companies.)

Number of employee Health Insurance Participants: 72 Total number of employees: 80

Do you currently have an HRA Plan? ☒ Yes ☐ No If yes, original plan effective date

Do you have a Flexible Spending Plan (FSA)? ☒ Yes ☐ No

Do you have a Premium Only Plan (FSA)? ☒ Yes ☐ No

Do you have a union? ☐ Yes ☒ No

If less than 20, do you offer COBRA benefits? ☐ Yes ☐ No N/A - > 20 EE

Do you have a Employee Web Portal or Intranet? ☐ Yes ☒ No No Web Portal Currently – See Exhibit 1 Attached

Have you filed all Form 5500 Health & Welfare filings? ☐ Yes ☐ No (Please furnish copy of prior year returns) N/A

(2) AVAILABLE BENEFITS AND QUALIFIED PLANS

ESG, and its affiliate Insight Risk Advisors, Inc. will provide all brokerage services including but not limited to, selection of carrier, negotiation, employee enrollment support, claims support, employee advocacy and employer advisory services. The current benefit plans include:

Current Benefit Plans (Check all in force plans currently):

☒ Medical Plan (**named health insurance plan):** **HealthNet**

☒ Dental Plan (**named health insurance plan):** **Humana**

☒ Vision Plan (**named health insurance plan):** **VSP**

☒ EAP Plan (**named health insurance plan):** **HealthNet**

☒ HRA / FSA / HSA Plan **(named administrator):** **Employee Solutions Group**

☒ Discount or Other Rx / Vision / GAP/ ADD Plan **(named plan):** **Principal**

☒ HR Online (Web Based HR Resource)**:** **See Exhibit 1 Attached - By Agreement**

☒ ESG | WBD Web Design (employee web portal)**:** **See Exhibit 1 Attached – By Agreement**

(3) PAYMENT

ESG, will initiate debit entries from the checking account and financial institution named below (This option must be chosen for ESG administration). Attach a copy of a voided check to this Application.

Bank Name **AGREEMENT ON FILE** Routing Number: **AGREEMENT ON FILE** Account #: **AGREEMENT ON FILE**

Setup Fee**: $ 0** Minimum Monthly Brokerage Service Fee: **$2,900.00** Per Participant Fee Over Current Headcount: **$40 per month**

(4) AUTHORIZATION

I have read, understand and agree to the ESG Terms and Conditions stated on page 2 of this document as attested by the signature below, effective on the date of the signature.

Employer (sign here) _____Title _____ Date _____

Exhibit 1

AGREEMENT TO PROVIDE INSURANCE BROKERAGE AND ADMINISTRATIVE SERVICES
GENERAL INFORMATION

Renewal Authorization:	Al Thunberg – Practice Manager			
Vendor Name:	ESG CORP d/b/a Employee Solutions Group			
Mailing Address:	60 E. Rio Salado Parkway - Suite 900			
City:	Tempe	**State:**	AZ	**Zip Code:** 85281
Name & Title of Contact Person:	Al Thunberg – Practice Manager			
Telephone Number:	877.668.8522		**Fax Number:**	866.668.1592
Email Address:	athunberg@esgcorp.biz			

RENEWAL OF INSURANCE BROKERAGE AND ADMINISTRATIVE SERVICES

Service Category: Insurance & Administration Services	City of Benson Insurance Brokerage and Administrative Services
Proposed Hourly Rate:	See Discussion in Proposed Remuneration Below
Proposed Monthly Rate:	$ 2,900.00

Service Category: Insurance Broker Services	City of Benson Flexible Spending Account
Proposed Hourly Rate:	See Discussion in Proposed Remuneration Below
Proposed Monthly Rate:	Included

Service Category: Insurance Broker Services	City of Benson Health Reimbursement Account
Proposed Hourly Rate:	See Discussion in Proposed Remuneration Below
Proposed Monthly Rate:	Included

Service Category: Insurance Broker Services	City of Benson COBRA Administration Services
Proposed Hourly Rate:	See Discussion in Proposed Remuneration Below
Proposed Monthly Rate:	Included

Proposed Remuneration Associated With Insurance and Administrative Services For Fiscal Year 2013 – 2014 Plan Year:

Employee Solutions Group respectfully submits the renewal agreement for all brokerage services at a flat monthly rate of $2,900. There will be no increase in the fiscal year 2013 - 2014. This is an all inclusive monthly rate, and includes the cost of Flexible Spending Account, the Health Reimbursement Accounts (Benson has 2 - a deductible reimbursement and emergency reimbursement account) and COBRA Administration Services. Other services outlined below will be offered in addition to the specifically requested services. The rate will be honored from July 1, 2013 to June 30, 2014, without exception for the duration of the stated agreement.

ESG will perform complete enrollment and administration services for the Flexible Spending Account(FSA), including the use of full web access and employee debit cards. This is currently installed and administered by ESG.

ESG will perform complete enrollment and administration services for two (2) Health Reimbursement Accounts (Deductible and ER Copay), including the use full web access and direct provider settlement with Benson Hospital for ER benefits. This is currently installed and administered by ESG.

ESG will perform COBRA Administration services for the City of Benson, including the use of full web access, notification and reimbursement activities required under COBRA regulations. This is currently installed and administered by ESG.

ESG also proposes establishment of an Employee Benefit Web Site, referred to as the "Employee Advocate" Web Portal at **"no additional charge"**.

In addition, our monthly fees, will include at **"no additional charge"**, access to our online HR web portal referred to as HR Genius, used to support daily HR functions, forms and policy decisions.

ESG includes at **"no additional charge"**, a complete benefit interpretation / enrollment process designed to coordinate enrollment meetings, one on one counseling sessions, and other publications necessary to deliver the entire employee benefit election and educational process.

EMPLOYEE ADVOCATE SERVICE AGREEMENT

ESG is an organization devoted solely to eliminating the confusion of employee benefits for the employees we serve, while adding financial value to the companies we serve. Employee Benefit Advocate Service (EBAS) is a comprehensive and innovative approach which integrates web tools, human resource advocacy, and benefits information into a unique employee advocate model.

ESG is an industry innovator providing covered employees with fast, personal and unrestricted access to benefit information and provider contact in the delivery of employee benefit solutions. This is because our streamlined and highly experienced program administration team allows us to devote more of our clients' resources directly to program services for covered employees. We have devoted years of experience in training, building and delivering a cost-effective brand of high-touch benefit advocacy program services.

EBAS, will provide clients with the following services, which are generally recognized as the keys for improved employee benefit satisfaction:

1. Provide tools to support information and recommendations of employee benefit plans, designed to motivate and retain best in class employees at all levels of the organization.
2. Secure annual quotes and advise management of industry trends, options and other information needed to make an informed decision regarding employee benefits programs, costs, and limitations.
3. Technical guidance on HIPAA, PHI and tax advisory services, web based tools, direct employee advocate counseling, support information, claims processing, claims support, and resolutions.
4. Employee education of benefit plans, using internet and live-person base enrollment meetings to guide and counsel employees, assisting employees achieve their best benefit solutions.
5. Advise and council management, in the strategies, product options, tax advice, ERISA, and non discriminatory testing of benefit decisions.
6. Quarterly, update management on the feedback of employees regarding benefit plans, and recommend, advise, and plan strategies to consider in future renewals.
7. Offer client a protected status relating to Health Insurance Portability and Accountability Act of 1996 (HIPAA), and Protected Healthcare Information (PHI), the intent to reduce liability and exposure on management while counseling and advising employees of their protected right to unbiased and accurate benefit advice.

ESG, and its assigned service teams, will direct employees to appropriate resources, provide expertise and guidance for medical claims, adjudication, and education / carrier resources. These support tools will be delivered, thru direct employee contact, counseling, benefit advocacy and coaching instructions to reach timely and efficient solutions to employee benefit challenges.

ESG will complete an optimization review to balance size and requirements of the advocacy plan with costs, and recommend the optimal combination of tools, size, experience, responsiveness, efficiency, satisfaction, positive employee outcomes, affordability and return on investment. The EBAS service solution will recommend the right decision for your employees balanced with your financial objectives.

EMPLOYER RESPONSIBILITIES

The Employer shall provide to the EBAS information necessary to administer the Plans in a timely manner. This information should include the employee census data. The Employer agrees to EBAS's procedures related to the operation of the Benefit Plan, including but not limited to enrollment, claims, account maintenance, disputes, error corrections, reporting, eligibility, and any other processes involved in supporting the EBAS.

TERMINATION

This Plan may be terminated by proper notice of one party to the other. The term of this agreement is for 12 months. Following the termination of the Plan, this agreement shall automatically terminate, and all benefits shall be paid and final reports prepared. Terms by which this Plan can be terminated are by written notice sixty (60) days in advance from either party or by written notice fifteen (15) days in advance to the Employer for failure to forward to the EBAS funds service fees. Upon this sooner termination, EBAS shall use any funds in its possession for the payment of benefits, for its own fees and expenses. EBAS has no responsibility to enforce the Employer's funding of benefits required under the Plan. Upon and after the expiration or termination of this Application, the rights granted to the employer pursuant to this Agreement shall revert to EBAS. Within 20 days after termination or expiration of this Application, the employer shall return to all manuals, brochures, computer programs, customer and vendor databases, and any other documents regarding the programs and systems and any copies thereof. In addition, the employer shall refrain from any further direct or indirect use of or reference to the EBAS systems, publications, manuals, brochures, documents, computer programs and computer databases. Finally, the termination of this Application shall not affect the duty of the employer not to infringe on EBAS's trademarks and copyrights and not to disclose and keep confidential all said Confidential Information supplied to the employer by EBAS.

LIMITATION OF WARRANTIES AND LIABIITIES

Except as expressly set forth in this Agreement, EBAS disclaims any and all express warranties, warranties of fitness for a particular purpose and implied warranties of merchantability. EBAS will not be liable for any loss of business or profits, or for any consequential, incidental, punitive, or similar damages, or, other than as set forth in this Agreement, for claims of damages made by any third party for any cause whatsoever, regardless of the form of action, whether in contract or in tort, including negligence, even if it has been advised of the possibility of such damages. Each party acknowledges that this limitation of liability reflects an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. In no event will the EBAS's liability exceed the payments by Plan Sponsor to EBAS within the previous six months for services provided under this Agreement. This shall be the Plan Sponsor's exclusive remedy. No action, regardless of form, arising out of the services provided under this Agreement, may be brought by the Plan Sponsor more than two years after the date the last services are provided under this Agreement.

EMPLOYEE WEB BENEFIT TERMS OF USE AGREEMENT

1. Permitted Use

Under this Terms and Use Agreement (herein referred to as "the Agreement'), ESG CORP & Web Benefits Design Corporation, (herein referred to as 'ESG or WBD'), agrees to provide an Employee Benefits Internet Service Application (herein referred to as 'EBISA') hosted by WBD, and set up a private employee benefits information system for the exclusive use by the broker/consultant and/or employer (herein referred to as 'Client').

The EBISA is to be used only by the Client and users authorized by the Client. The Client will have the ability to assign user logins and passwords to selected individuals. The Client will have full control over who is authorized to access / use this EBISA. All use of the EBISA is provided via the Internet through a standard Internet browser and/or email client. In order to use the EBISA, the Client and Client authorized users (herein referred to as 'Users') are responsible, at their own expense, to acquire access to the Internet and to provide all equipment and software needed.

2. Client Responsibilities and Warranty

By entering data (herein referred to as 'Data') into the employee benefits information system, the Client warrants that: (1) the Client is authorized to submit the Data to the EBISA; and, (2) the storage of such Data by WBD and its affiliates will neither infringe on nor misappropriate the property rights of or otherwise violate the rights of any third party.

3. Client Proprietary Data Rights

The Data submitted to the EBISA is for the exclusive use of the Client. ESG & WBD agrees not to use, distribute or disclose any of the data maintained as a result of the Client using this EBISA. The Client agrees to evaluate and bear all risks associated with the use of any Data, including any reliance on the accuracy and usefulness of such data.

4. ESG / WBD Account Information and Data

ESG & WBD does not own or have any rights to any Data that the Client submits as a result of using this EBISA. WBD will not monitor, edit, or disclose any information regarding the Client or Client's database without the Client's express written permission except in accordance with this Agreement or as may be required by law. ESG & WBD may access the Client database in order to respond to service or technical problems when requested to do so by the Client.

5. ESG / WBD Proprietary Rights

The Client acknowledges and agrees that the EBISA contains proprietary and confidential methods and information that is protected by applicable intellectual property and other laws, and agrees not to disclose such information to any third party without ESG & WBD's prior permission. The Client agrees not to copy, sell, rent, license or to redistribute any portion of the EBISA, use of the EBISA, or access to the EBISA to any individual or group. Standard ESG & WBD website Terms and Conditions for unauthorized use and access penalties apply to this EBISA.

6. Availability of EBISA

WBD will make commercially reasonable efforts to ensure that the quality of the service we provide is of at least prevailing industry standards, and that access to the EBISA is available 24 hours a day, 7 days a week. However, although ESG & WBD will use all reasonable efforts in good faith to avoid interruption of the EBISA, the Client acknowledges and agrees that access to the EBISA may be unavailable from time to time for any reason, including without limitation, interruption of major network connectivity, network and server outages, and backup and regular maintenance by WBD and any operators of our servers.

7. Client Assigned Administrator(s)

The Client will select one or more WBD primary Administrators to manage the Client's use of the EBISA, to authorize users to access the EBISA, to access employee data records, and to serve as the primary technical interface with ESG & WBD Client Service Representatives.

8. Client Support Services

ESG & WBD will provide quality technical support to the Client. ESG / WBD's Client Support Representatives will be available to assist Clients Monday through Friday on a best efforts basis. While it is often our business practice to assist, support and resolve client requirements, often times technical support is required available on normal business hours Monday thru Friday. We will make every effort to resolve these matters in a timely and normal business response timeline.

9. User Conduct

The Client agrees not to use the EBISA or information from the EBISA to (a) transmit any material that may infringe the intellectual property rights or other proprietary rights of third parties, including trademark, copyright or right of publicity; (b) interfere with or disrupt the integrity of any data or computer-based information or any servers or networks connected to the EBISA or violate the regulations, policies or procedures of such networks; (c) attempt to gain unauthorized access to the EBISA, other accounts, computer systems or networks connected to the EBISA, through password mining or any other means.

10. Employee Information Confidentiality

ESG & WBD follows and agrees to continue to follow as set forth herein policies and procedures to protect the confidentiality of member information. It is important to note that all records containing confidential medical and insurance data are handled and discarded in a way that is designed to protect the privacy and security of the information. ESG & WBD respects the need for security regarding your personal information. Whenever you provide personal information, your information will be protected using Secure Sockets Layer (SSL) technology. SSL is an industry standard that encrypts the information you provide, to avoid the decoding of that information by anyone other than ESG & WBD. Information you submit directly to us will remain on our servers, secured by various industry approved technologies to prevent unauthorized access to your personal information.

11. Information Security, Integrity, and Reliability Disclosure

ESG & WBD uses and agrees to continue to use as set forth herein multi-layered security architecture to prevent unauthorized access to the building and data center. Formal security measures are in place to protect access to WBD systems and the corporate network. Users of networks and applications are provided a unique use name, and the use of a password is required for both network and application access. ESG & WBD employs a firewall, which control and limits access to the internal network. Logical access to the firewall is limited to authorized system administrators. All network access to WBD internal network is restricted to only specific ports that are necessary for application usage. Outbound access is also managed via the firewall. All Client data is stored behind the firewall on protected network segments.

ESG & WBD uses a multi-tiered approach for information Back-up and Recovery. Full server backups occur weekly with differential backups occurring nightly between each weekly backup session. Full backups of critical databases containing client data are executed on a nightly basis. Database transaction logs are backed up hourly to facilitate targeted rollback in the event of processing or database errors.

ESG & WBD uses McAfee VirusScan Enterprise protection as the corporate standard for protection against viruses, worms and Trojan software. Updates are acquired nightly and are distributed across the network with no interaction form our end users. Authorized personnel monitor potential virus outbreaks and have monitoring software in place to accommodate any virus or security threat. ESG & WBD employs regular desktop operating systems updates and security patches at regular intervals to ensure all systems are protected.

12. Service Fees

The Client agrees to pay all applicable fees as specified in the Client's signed Service Agreement. Fees are invoiced on the first of the month for the current month use. ESG & WBD reserves the right to suspend the EBISA of Clients who fail to make timely payments for their customized EBISA package. Payments will be considered past due if not received within thirty (30) days from the day the payment is due.

13. Renewal / Termination of EBISA

The Agreement and invoicing will remain in place unless ESG & WBD is notified by Client to terminate the EBISA. Unless terminated for cause by ESG & WBD or Client pursuant to Section 14. of the Agreement. This Agreement will continue for the duration of the

annual term as set forth in the Agreement. The Term of Service shall continue on an annual basis, renewing a new 12 month contract on the annual renewal date, unless a thirty (30) day written notification of intent to terminate service is given by either party, or until terminated as specified.

The Client acknowledges and agrees that ESG & WBD, in its sole discretion, may suspend or terminate the EBISA and/or deny the Client access to, use of, or submission of Data for all or part of the EBISA, without prior written notice for the following reasons: (a) violation of the letter or spirit of any term or provision of the AGREEMENT; or (b) violation of the rights of ESG, WBD or third parties. Upon termination, WBD will allow Client's files to be downloaded and, after this point, will bar any further access to the EBISA. Furthermore, the Client agrees that ESG & WBD shall not be liable to the Client or any third party for any termination of the Client's access to the EBISA pursuant to this section.

14. Termination for Cause

Any unauthorized access, copying, disclosure, distribution, or sublicensing by Client or with Client's aid or consent of the EBISA or Data or any related methods, techniques, or processes will be deemed a material breach of this Agreement. ESG & WBD in its sole discretion may terminate the password, account or use of the EBISA if Client breaches or otherwise fails to comply with this Agreement.

ESG & WBD will not share, rent, sell, or trade personal information (including email addresses) that identifies our Clients or users to third parties. Any disclosure or distribution of the Data outside of the above exceptions to a third party by ESG & WBD will be deemed a material breach of this contract and constitute grounds for Client to terminate the Agreement for cause.

15. Warranties, Disclaimers, and Representations

Subject to the terms set forth in the "Availability of EBISA" section, the Client expressly agrees that: (a) The use of the EBISA is at the sole risk of the Client and is provided on an 'as is' and 'as available' basis. ESG, WBD and its affiliates expressly disclaim all warranties of any kind, whether express or implied, including, but not limited to the implied warranties of merchantability, fitness for a particular purpose and non-infringement, (b) ESG & WBD makes no warranty that:
(1) the EBISA will meet the Client's requirements or result in revenues or profits; (2) the EBISA will be uninterrupted or error-free; and (3) the results that may be obtained from the use of the EBISA will be accurate or reliable. While ESG & WBD will use commercially reasonable efforts to prevent unauthorized access to data entered into the EBISA, ESG & WBD makes no warranty that such fields will be secure against such unauthorized access or other security breaches. ESG & WBD makes no representations or warranties of any kind whatsoever, express or implied, in connection with the Agreement or the EBISA, including but not limited to, warranties of merchantability, fitness for a particular purpose and non-infringement.

16. Indemnity

The Client agrees to indemnify and hold harmless ESG & WBD, its subsidiaries and affiliates, and its and their directors, officers, agents, and employees ("Indemnitees") from any claim or demand, including reasonable attorneys' fees, made by any third party to whom the Client has allowed access (either inadvertently or wittingly) to the EBISA due to or arising out of the Data; the Client's use of the EBISA; the Client's connection to the EBISA; the Client's violation of the Agreement; or, the Client's violation of any proprietary or other rights of another. The Client further agrees and acknowledges that the Indemnitees are not liable or responsible in any way for any errors, omissions or any other action arising out of or related to the use of the EBISA. The Client further agrees to indemnify, defend and hold harmless the Indemnitees from and against any and all claims, damages liabilities, costs and expenses (including reasonable legal expenses) arising out of, or related to, the Client's use of the EBISA or the placement or transmission of any message, information, software, or other materials through the EBISA by the Client or user of the Client's account or related to any violation of any term of the Agreement by the Client or users of the Client's account.

ESG & WBD agrees to indemnify and hold harmless Client, its subsidiaries and affiliates, and its and their directors, officers, agents and employees from any claim or demand, including reasonable attorneys' fees, made by any third party arising out of any disclosure or distribution of the Data as described in Section 14 of the Agreement.

17. Limitation of Liability

In no event shall ESG or WBD be liable for any direct and/or indirect, incidental, special, consequential or exemplary damages, including but not limited to damages for loss of profits, goodwill, use, data or other intangible losses incurred resulting from: (a) the use or the inability to use the EBISA; (b) transactions entered into through or from the EBISA; (c) unauthorized access to or alteration of the Client's transmissions or data; (d) statements or conduct of any third party on the EBISA; or, (e) any other matter relating to the EBISA.

The Client agrees that ESG & WBD will not be liable for any: (a) interruption of business; (b) access delays or access interruptions to the EBISA; (c) data non-delivery, corruption, destruction or other modification; (d) unauthorized access to data entered in, or breach of any security mechanisms utilized in, the EBISA or in any field or file therein; or, (e) events beyond ESG & WBD's reasonable control. ESG & WBD's aggregate liability for damages hereunder shall in no event exceed the amount of fees paid by the

Client under this Agreement for the relevant service, up to a maximum amount equal to service charges for six (6) months of the EBISA.

18. Nondisclosure

By virtue of this Agreement, Client, ESG and WBD may have access to information that is confidential ("Confidential Information"). Client, ESG and WBD agree not to make each other's Confidential Information available in any form to any third party or to use each other's Confidential Information for any purpose other than the implementation of the EBISA. Client, ESG and WBD agree to take all reasonable steps to ensure that Confidential Information is not disclosed or distributed by its employees or agents in violation of the provision of this Agreement.

19. Governing Law

Except as otherwise provided herein, this Agreement shall be governed by the laws of the State of Arizona.

20. Notices

Notices to the Client may be made either via email, regular mail, overnight courier or facsimile at the contact address of record for the EBISA. If the Client provides notice to ESG & WBD, such notice should be sent to: ESG CORP, 60 E. Rio Salado Parkway, #900, Tempe, AZ 85281 and Web Benefit Design Corporation, P.O. Box 1568, Windermere, FL 34786.

21. Entire Agreement

This Agreement constitutes the complete Agreement between the parties and, except as provided, supersedes all previous agreements or representations, written or oral, with respect to the Services described herein.

22. General

The Agreement does not limit any rights that ESG & WBD may have under trade secret, copyright, patent, trademark, or other laws. The failure of ESG & WBD to exercise or enforce any right or provision of this Agreement shall not constitute a waiver of such right or provision. If any provision of the Agreement is found by a court of competent jurisdiction to be invalid, the parties nevertheless agree that the court should endeavor to give meaning to the parties' intentions as reflected in the provision, and the other provisions of the Agreement shall remain in full force and effect. The Client agrees that any claim or cause of action arising out of or related to the use of the EBISA or the Agreement must be filed within three months after such claim or cause of action became known or should have become known or be forever barred. The Agreement will inure to the benefit of ESG & WBD and its successors and assigns. All representations, warranties, terms, disclaimers, and limitations in the Agreement shall survive the termination of the Client's account or access to the EBISA.

HR GENIUS TERMS OF USE AGREEMENT

HR Genius is designed to provide business managers, employees, and their advisors–attorneys, accountants, insurance agents, consultants and others–with the practical and legal information they need to effectively and efficiently deal with the many compliance and other issues they encounter on a day-today basis, in their business and personal lives. ***By using HR Genius, you agree to respect all Copyrights and abide by these Terms of Use.***

Terms & Conditions

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You, and not HR Genius or ESG, are responsible for the applicability and accuracy of Information as it relates to your company, employees or clients. Your use of Information does not relieve you of responsibility, including those to any third party, for matters involving your company, employees or clients (e.g., preparation of tax returns, etc.) and you may not rely upon HR Genius or ESG for advice regarding same. The provision of Information by HR Genius and ESG is not intended to create, and your use does not constitute, any form of relationship between HR Genius, ESG or the author(s) and you.

The parties hereby agree as follows:

License

1. Licensor hereby grants, and Licensee hereby accepts, a non-exclusive and nontransferable license to access and use Licensed Content. Licensee acknowledges that Licensed Content may be used only by clients and prospects that have been provided a unique username and password by Licensee to access the Licensed Content.
2. Licensor agrees to and grants to the Licensee a license to access the Licensed Content on the terms and conditions set forth in this Agreement.
3. If Licensee requires more than one Admin System due to multiple branches or separate databases, additional costs will be incurred.
4. Licensee may not resell the licensor's content without the express written permission of Licensor.
5. Licensee shall not distribute subscriptions to any company which is not a part of the Licensee's business units or branches.
6. Licensee shall not distribute subscriptions to General Agents, Brokers or Benefits Consultants.
7. Licensee shall submit to Licensor an approximate number of clients and prospects who will access the Licensed Content within two weeks of signing this Agreement.
8. Licensee shall have the right to make available Licensed Content as part of its normal business process. Licensee agrees that its use of the Licensed Content will be of such style, appearance and quality as to protect the Licensed Content and the goodwill pertaining thereto. Licensee shall not modify or otherwise create derivative works of the Licensed Content, except with the express written permission of Licensor.
9. Licensor maintains the copyright in and to the Licensed Content at all times.
10. Licensee shall be permitted to display the Licensed Content with a button on the Home Page.
11. Licensor may, from time to time, develop enhancements to Licensed Content. Any new product or service offerings and/or product modules that may be developed, may be made available to Licensee for additional fee(s).
12. Licensed Content Price. The "Ask an Expert" service is limited to 3 free requests per subscription per year. Each additional "Ask an Expert" question is billed at $125.00.

Term and Termination.

1. This Agreement shall commence on the Effective Date and shall continue in full force and effect for 12 months, unless terminated earlier in accordance with this Agreement. This Agreement will be automatically renewed for successive one year periods. This Agreement may be terminated by either party upon 60 days notice to the other party.
2. If either party materially breaches any provision of this Agreement, the other party may give written notice to the breaching party that if the default is not cured within 30 days of the date of such notice, the Agreement may be terminated. If the non-breaching party gives such notice and the breach is not cured during such 30-day period, then this Agreement may be terminated by such other party immediately upon written notice.
3. Upon the termination of this Agreement and any extension beyond termination, all rights to the Licensed Content granted to Licensee under this Agreement will cease.
4. Termination of this Agreement, for any cause whatsoever, will in no manner interfere with, affect or prevent the collection by Licensor of any and all sums of money due to it under this Agreement. Upon termination, any unpaid amounts become due and payable immediately.

Title.

Licensee recognizes that Licensor retains all right, title and interest in the Licensed Content, as well as any and all tangible and intangible rights, copyrights, moral rights, trademark, trade secret rights, patents, industrial property rights, and all other proprietary rights of every kind as well as all registrations, applications, renewals, extensions, continuations, divisions, or reissues of the foregoing now or hereafter in force with respect thereto. Licensee agrees that it shall not claim any title to or right to the Licensed Content except pursuant to this Agreement, and it shall not at any time attack or challenge the right of Licensor or its

licensor(s) in and to the Licensed Content. Licensor shall display the copyright information where it currently exists now at the bottom of the page.

Confidentiality.

1. Licensee acknowledges that Licensed Content is valuable intellectual property of Licensor containing trade secrets and proprietary information developed by Licensor. Licensee will not modify or attempt to modify Licensed Content in any manner.
2. Licensor acknowledges that Licensee intends to use Licensed Content services. Except as necessary to conduct such efforts, Licensee agrees to serve confidentially with regard to all non-public aspects of Licensed Content. Licensee agrees that it will not download, decompile, disassemble or reverse engineer Licensed Content or any of its component parts unless with the express permission of the Licensor.
3. Licensee acknowledges that the breach by it of any provision of this Section will give rise to irreparable injury to Licensor, that the remedy at law for such breach will be inadequate and that monetary damages resulting from such breach will not be readily susceptible to measurement. Licensee acknowledges that, upon Licensee's violation of any provision of this Section Licensor will be entitled to immediate injunctive relief and a temporary order restraining any threatened or future breach of this Section. Nothing in this Section will be deemed to limit Licensor's remedy at law or in equity for any breach by Licensee of any provision of this Section.
4. Licensor acknowledges that all information created as a result of Licensee's use of Licensed Content including all names and all related information of individual companies in Licensee's customer base who are using Licensed Content (and the names of any associated participants, beneficiaries or trustees) is confidential and Licensor will not disclose such information to any party or organization other than Licensee.
5. The obligations of Licensor and Licensee under this Section will survive the termination of this Agreement.

Warranty.

1. Subject to the limitations set forth in this Section, Licensor warrants that it has the full right and authority to grant the license as provided in this Agreement.
2. Parties stipulate and agree that the information and materials provided on this site and the information provided through the 'Ask the Experts' service are for general information purposes only and are not intended to constitute legal or other advice or opinions on any specific matters. A competent attorney or other appropriate professional should be consulted on all legal compliance matters. The information provided and the opinions expressed are not necessarily those of HR & Benefits Essentials, its officers, partners or owners. Laws and regulations change frequently and their application can vary widely based upon the specific facts and circumstances involved. A particular reader, subscriber or member's situation may involve Federal, State or local laws, and/or application of company Plan documents, Employee Handbook or other company policies. As such, Licensor does not warrant or guarantee the accuracy of any statement or other information and materials provided in the Licensed Content or through the 'Ask the Experts' service. We provide references and links to websites not affiliated with HR & Benefits Essentials as a service to our readers. While we believe these sites to contain valuable information, we cannot guarantee their accuracy. All site visitors are cautioned to refer to the Terms of Use, Privacy, Copyright and other information on this and all sites visited.
3. This warranty (a) constitutes the sole and exclusive warranty of Licensor with respect to Licensed Content. Except for such warranty, Licensor makes no express or implied warranties or representations with respect to any software or services to be provided to Licensee under this Agreement, including, without limitation, any express or implied warranty of merchantability or fitness for a particular purpose or intended use. The remedies set forth in this Section, subject to the limitations set forth in this Section, are the sole remedies available to Licensee in the event that Licensed Content does not perform in accordance with specifications.
4. In no event, other than for trademark or copyright infringement, will Licensor be liable for any consequential, exemplary, incidental or punitive damages, including, without limitation, lost profits, even if Licensee has been advised of the possibility of such damages. In no event will the cumulative liability of Licensor for any breach of this Agreement exceed the Annual Licensing Fee paid to Licensor by Licensee under this Agreement.
5. Licensee further acknowledges that any Internet encryption technology employed in connection with Licensed Content may be defeatable. Licensor assumes no liability under this Agreement to Licensee or any third party as a result of a violation or failure, for any reason, of any such encryption.
6. Licensee further acknowledges that any Internet encryption, anti-spam, anti-virus technology, and the like, employed in connection with Licensed Content may be defeatable. Licensor assumes no liability under this Agreement to Licensee or any third party as a result of a violation or failure, for any reason, of any such encryption.

Indemnity.

Each party agrees to indemnify, save and hold harmless the other from and against any and all loss, claim, liability; cost, damage or expense, including, without limitation, costs of litigation and reasonable attorney's fees, arising out of or by reason of any breach of warranty, representation or agreement made to the other party hereunder. If either party asserts a claim with respect to which it is

entitled to indemnification hereunder, the indemnified party shall promptly notify the indemnifying party and the indemnifying party shall be entitled at its expense to participate in the defense of any claim, lawsuit or proceeding. No claim asserted by a third party for which indemnification is sought shall be settled without first obtaining the written consent of the indemnifying party, which consent shall not be unreasonably withheld.

Miscellaneous.

Neither this Agreement nor the license granted hereunder may be assigned (by operation of law or otherwise), sublicensed or otherwise transferred by Licensee without the prior written consent successors and permitted assigns.

Complete Agreement. This Agreement constitutes the complete and exclusive statement of the agreement between Licensee and Licensor with respect to a license to use Licensed Content and supersedes all proposals, oral or written, and all other communications or agreements between the parties relating to the subject matter of this Agreement.

Amendments. This Agreement may not be altered, amended or modified except in a writing signed by both parties.

Notices. Any notice or other communication required under this Agreement will be given in writing by certified or registered mail, return receipt requested, by personal delivery, or by facsimile transmission (with confirmation of receipt) to such addresses and facsimile numbers as are provided by each party to the other in writing. Any notice will be deemed given upon receipt, if personally delivered or delivered by facsimile, or three days after mailing, if delivered by certified or registered mail.

Governing Law; Venue. This Agreement will be governed by and interpreted in accordance with the laws of the State of Arizona without regard to principles of conflicts of law. The Licensee agrees and consents to the exclusive jurisdiction of the courts of the State of Arizona for all purposes regarding this Contract and further agrees and consents that venue of any action brought hereunder shall be exclusively in the State of Arizona.

Severability. If any term of this Agreement is invalid or unenforceable under any statute, regulation, ordinance or other rule of law, such term will be deemed reformed or deleted and the remaining provisions will remain in full force and effect.

No Implied Waiver. The failure of either party at any time to require performance by the other party of any provision, or to deliver notice of a default by the other party of any provision, of this Agreement will in no way affect the right to require such performance or deliver such notice of default at any time thereafter, nor will the waiver by either party of a breach of any provision of this Agreement constitute a waiver of any succeeding breach of the same or any other provision.