

AGREEMENT FOR FSA SERVICES

This Agreement is hereby made this 9th day of July, 2024, by and between:

Cochise County, a political subdivision of the State of Arizona, with its principal place of business located at 1415 Melody Lane, Building G, Bisbee, Arizona, (hereinafter referred to as the “Employer” or “Client”);

AND

COBRA PROFESSIONALS, INC., a corporation organized under the laws of Louisiana represented herein by Tommy Besselman, its President, pursuant to authority of its board of directors (hereinafter referred to as “CPI”),

WHEREAS, Client has adopted an arrangement known as the Flexible Spending Account (the “Plan”) to provide its employees with certain welfare, and tax benefits; and

WHEREAS, Human Resources [Client or person designated by Client] serves as the Plan Administrator with respect to the Plan; and

WHEREAS, Client acknowledges that the services and compensation described in this Agreement were disclosed to Client reasonably in advance of the date on which this Agreement is entered into; and

WHEREAS, Client desires to engage the services of CPI as a nonfiduciary third party administrator for the Plan;

NOW THEREFORE, CPI and Client hereby agree on the provision of flexible spending account (“FSA”) services by CPI to the Client in connection with the Plan, as follows:

1. Services to be Provided. CPI is hereby engaged to provide the following administrative services for the Client in connection with the Plan beginning 08/01/2024 (the

“Effective Date”) which may continue for subsequent years, as specified under Term of Agreement.

- (a) CPI will prepare draft Plan documents(s).
- (b) CPI will consult with Client regarding the adoption and maintenance of the Plan in accordance with the Plan document approved by Client.
- (c) CPI will prepare enrollment materials.
- (d) CPI shall receive, adjudicate and process all claims submitted for reimbursement under the Plan in accordance with Internal Revenue Code (“Code”) § 213(d).
- (e) CPI can accommodate applications for reimbursement on the forms provided by CPI, from Plan participants by mail, email attachment or facsimile or claims can be uploaded through the employee portal.
- (f) CPI shall maintain documentation of all claim substantiation provided by Plan participants and subsequent claim approval/denial.
- (g) If Client chooses in the Services Addendum to utilize manual check reimbursement procedures, CPI will assist Client by preparing checks manually to reimburse the employee for claims processed that result in reimbursement. Reimbursement will be made within ten (10) business days of the date the reimbursement of the claim has been approved.
- (h) If Client chooses in the Services Addendum to utilize direct deposit reimbursement, CPI will prepare ACH directives to reimburse the employee for claims processed that result in reimbursement. Reimbursement will be made within ten (10) business days of the date the reimbursement has been approved.

- (i) If Client chooses in the Services Addendum to utilize debit card reimbursement, payment will be made at the point of service and auto-substantiation will apply, if conditions satisfied. If conditions are not satisfied for auto-substantiation, CPI will send substantiation requests after-the-fact.

- (j) CPI will address Client's questions regarding reimbursement expenditures. Client understands that CPI is and will remain an independent contractor and will not be deemed an employee of Client, a partner or engaged in a joint venture with Client or governed by any legal relationship other than that of independent contractor. CPI's only obligation under this Agreement is to Client and nothing under this Agreement shall be deemed to confer any responsibility on CPI to any person covered under the Plan ("Covered Individual"). Client acknowledges that CPI is not an accounting or law firm and no services provided by CPI in accordance with this Agreement will be construed as tax or legal advice as a result of providing such services. The services to be provided by CPI shall be ministerial in nature and shall be performed in accordance with the terms of the Plan and with CPI's standard operating procedures.

CPI shall provide telephone and electronic access to customer service personnel during normal business hours as determined by CPI.

As Needed Services. In addition to the above services, CPI will provide the following optional services on an as needed (or as requested) basis:

- (a) Assist Client in reporting and disclosure.

- (b) Consultation on Plan design.

- (c) Employee meetings to discuss Plan operation and education communication to employees.
- (d) Additional time required due to incomplete or inaccurate data provided by the Client.
- (e) Data entry (for paper enrollment).
- (f) Grace period administration.
- (g) Preparation of employee statements reflecting plan year balances.

As needed and for additional compensation generally charged at its standard hourly rate, CPI will compile and/or provide such information as it has available to the Plan Administrator or its designee as shall be necessary to the examination of the Plan, such as for audit by Certified Public Accountant, examination by Internal Revenue Service (“IRS”) or investigation by Department of Labor (“DOL”) or in connection with litigation relative to the Plan operation.

2. Client Responsibilities.

Client is responsible for the establishment and operation of the Plan. CPI’s general responsibility under this Agreement is to assist client regarding certain of Client’s responsibilities with respect to the Plan.

Client shall furnish the information determined by CPI to be necessary to satisfy its responsibilities under this Agreement. This includes timely notification of employee/participant enrollees and terminations. The Client shall be responsible for providing the following information or taking the following actions:

- (a) Review of Plan documents and disclosure documents by legal counsel to ensure that Plan complies with applicable laws and with Client preferences.

- (b) Provide accurate employee data electronically in sufficient time to permit CPI to complete work before deadlines.
- (c) Provide accurate data on transactions.
- (d) Provide to CPI a current copy of the Plan document, any amendments or policies, and disclosures to participants. It is the Client's responsibility to ensure that the Plan document(s), plus amendments, is compliant with current IRS and DOL regulations. It is understood that Client may modify or change its Plan and may maintain or adopt more than one health reimbursement arrangement and/or flexible spending account program. Client shall provide copies of any documentation of any such Plan(s) to CPI as soon as practical after such Plan is executed.
- (e) Review and distribute summary plan description, summary of material modifications and other required disclosure to participants.
- (f) Client, or its designated plan administrator, is responsible for all discretionary decisions relating to the Plan, including the interpretation of Plan document provisions, the determination of eligible employees, the payment of amounts governed by the Plan and the engagement of service providers. CPI may, when requested, assist Client with respect to such matters.
- (g) ERISA §412 requires that certain employee benefit plans and every person who handles funds or other property of such a plan shall be bonded unless otherwise excepted from the bonding requirements, in accordance with the provisions of that section. Client is responsible for obtaining the bond, if any, that is required by that section.
- (h) Client agrees to provide all necessary bank access information for CPI to

facilitate reimbursement once claims are submitted and adjudicated.

- (i) If Client chooses in the Services Addendum to utilize debit card services, Client agrees to provide all necessary bank access information for the bank to draft the Accounts. Client further agrees to maintain and to provide sufficient funds in the Account to enable payment.
- (j) Client agrees to hold all assets of the Plan, including amounts withheld from employee pay, in trust for the benefit of participants or in a segregated account of the Client that is dedicated to paying benefits under the Plan (either, the “Account”). Client shall be responsible for the establishment and maintenance of such Account. Assets of the Plan held in the Account shall not be commingled with other funds.

CPI may rely exclusively on information provided by Client or Client’s designated legal counsel or advisors, whether oral or in writing, and will have no responsibility to independently verify the accuracy of that information. Client acknowledges that inaccurate information and/or late information could result in penalties. CPI assumes no responsibility for, and shall not have any liability for, any consequences that result from CPI’s inability to complete its work in the ordinary course of its business due to the failure of Client to provide timely information to CPI.

3. CPI does not provide the following services.

- (a) CPI will not serve as a fiduciary of the Plan.
- (b) CPI will not provide investment advice or legal advice.

(c) CPI will not perform Plan audits that require an independent certified public accountant.

(d) CPI does not insure or underwrite the Plan liability of Client and is not financially responsible under this Agreement for the claims payable under and/or expenses incident to the Plan(s). CPI has no duty or obligation to defend any legal action or proceeding brought to recover benefits under the Plan(s); however, CPI shall provide to Client and/or Client's legal counsel, upon request and subject to any limitations described in this Agreement, any documentation in CPI's possession that may relate to such claim for benefits and/or expenses.

(e) CPI does not prepare Form 5500 (series).

Client has sole discretionary authority and control over the administration of the Plan. Client acknowledges that CPI and its employees are not fiduciaries of the Plan, nor does CPI or any of its employees act as the Plan Administrator or named fiduciary for the Plan or for any employee welfare benefit plan as that term is defined in ERISA, that is maintained by the Employer.

4. Plan Administrator. The Client shall name the Plan Administrator. In the absence of any such designation, or of any designation in the Plan, then the Client shall serve as Plan Administrator. The Client will notify CPI of the name of the Plan Administrator and any contact person or persons, and shall notify CPI immediately of any changes in the Plan Administrator or contact. The Client shall also be responsible for designating any appeals committee or appeals officer to review an appeal of a denial of a claim for benefits under the Plan(s). The Plan Administrator shall be responsible for the following:

(a) Interpreting the Plan document.

- (b) Providing CPI with the names of persons authorized to act on its behalf and with direction as needed to perform its functions under the Agreement.
 - (c) Maintaining employee information.
 - (d) Providing CPI with census data and any other information needed to enable CPI to aid the Plan Administrator to determine the status of an employee as a FSA participant.
 - (e) Distribution to employees and former employees of required notices and other disclosure.
5. Timeliness and Accuracy. It is the Client's and Plan Administrator's responsibility to provide information timely. Because of deadlines applicable to multiple clients, CPI cannot guarantee to perform timely services when the necessary data has not been provided timely by the Client or Plan Administrator. Client acknowledges that it is responsible for providing complete and accurate data, without which it is impossible for CPI to provide accurate service. CPI is entitled to rely on all information provided by Client, and is under no duty to audit or otherwise verify the accuracy of that information.
6. Compensation. CPI shall be compensated for providing the services described herein according to the attached Services Addendum. Additional Service Charges will also be incurred if, with Client's consent, CPI performs services outside of the scope of its normal business or contractual procedures, including but not limited to meeting Client's time deadlines or other such requests that involve excessive travel or other demands. CPI may revise the Service Charges for any reason at the beginning of each successive 12-month period measured from the Effective Date, provided that written notice of such changes is provided at least 30 days before the beginning of each 12- month period. CPI may also revise the Services Charges in the manner provided in the Services Addendum under the

circumstances provided in the Services Addendum. Upon consent from the Client, CPI may revise the Service Charges at any time during the term of this Agreement if Client makes changes to the Plan (regardless of reason) that materially revise the nature or volume of services contemplated by this Agreement or if any change in law or regulations imposes on CPI greater duties or obligations than contemplated by this Agreement.

All Service Charges are due upon receipt of the invoice by Client. There will be a 30-day grace period after which penalties equal to the lesser of \$50 or 5% plus interest at the rate of 1% per month shall accrue with respect to any unpaid Service Charges. CPI may withhold/withdraw the applicable Service Charges from any account maintained by CPI or Client (to the extent that CPI has check-writing authority over such account). In addition, CPI may suspend performance for all services hereunder until payment has been made in full.

The fees quoted in the Services Addendum assume that data provided is accurate. If additional or repetitive work is necessitated because of inaccurate information provided by the Client, then the Client will be responsible for paying for the extra time and expense of such extra work. The Client shall provide data in electronic format mutually agreeable to the Client and CPI.

7. Fiduciary Responsibility. CPI will not act as a fiduciary of the Plan. CPI will act as a contract service provider under the direction of the Client and/or Plan Administrator. Unless the Plan provides otherwise, the Plan Administrator shall be the person with fiduciary administrative responsibilities.

8. Hold Harmless. The Client agrees to hold CPI, its officers, principals, employees and agents harmless from actions taken with regard to the Plan and its fiduciaries for any breach of fiduciary responsibility, disqualifying event, violation of discrimination testing, late filing of any IRS or DOL forms, late transmittal of funds, late execution of documents or asset transfers, or any other action associated

with the operation of the Plan that is not the result of gross negligence or fraud by CPI. The Client shall pay reasonable expenses of defense incurred by CPI or any of its employees because of performance of services under this Agreement, in particular, as follows:

(a) The Client shall indemnify CPI, its officers, principals, employees and agents who are made or threatened to be made a party to an action or proceeding, including any action by or in the right of the Employer to procure judgment in its favor, by reason of the fact that CPI or its employees provided services to the Client to or in connection with the Plan maintained by the Client or its affiliates or in any similar capacity at the request of the Client, against all costs and expenses resulting from or related to such action or proceeding or any appeal therein, if CPI, its officers, principals or employees acted in good faith for purposes which they reasonably believed to be in, or in the case of service at the request of the Client for any matter or other enterprise not opposed to the best interest of the Client or its Plan, and in criminal actions or proceedings, in addition had no reasonable cause to believe that their conduct was unlawful.

(b) Definitions:

(i) “costs and expenses” mean all reasonable costs, expenses and liabilities incurred by an indemnified person, including but not limited to:

(A) reasonable court-awarded attorney’s fees;

(B) reasonable amounts paid in settlement of or in the satisfaction of any order or judgment in any action or proceeding; and

(C) reasonable fines, penalties and assessments asserted or adjudged in any action or proceeding.

(ii) “action or proceeding” means all suits, claims, actions, investigations, or

proceedings whether civil, criminal, or administrative heretofore or hereafter instituted or asserted.

(c) The indemnification granted pursuant to or provided by this Agreement shall not be deemed exclusive of any other rights to which such person seeking indemnification may be entitled whether contained in:

- (i) a resolution of the Client; or
- (ii) an agreement providing for such indemnification; and any such indemnification shall continue to a person who has ceased to be a service provider with respect to his activities as a service provider to the Plan.

Except as provided elsewhere in this Agreement and notwithstanding anything in this Agreement to the contrary, CPI agrees to indemnify Client and hold its officers, directors, and employees harmless from and against all losses, liabilities, damages, expenses, reasonable court-awarded attorney's fees, and other obligations resulting from or arising out of CPI's breach of the standard of care, including any subcontractor's used, but only to the extent that such damages are reasonably ascertainable.

In the event that the Client or the Plan incurs an expense resulting from an error by CPI or its employees, the liability of CPI, its officers and employees shall be limited to, in the aggregate, an amount which is 5 times the amount of fees paid by the Client for CPI's services hereunder for the plan year in question.

9. Work Product. The Client shall be entitled to copies of any completed work product prepared by CPI and paid for by the Client. CPI shall charge such reasonable charges as necessary for selecting and copying its work product for the Client and may request payment in advance. CPI shall provide such data by electronic means as may be reasonably available. CPI will take reasonable means to safeguard the confidentiality of data that is provided to CPI in confidence.

CPI shall maintain the usual and customary books, records, and documents, including electronic records in CPI's possession for five (5) years after completion of this Agreement. In addition, CPI agrees that such books, accounts, reports, files, and other records shall be subject to audit pursuant to A.R.S. § 35-214. . During this period, Client has the right of continuing access to these documents and as such, CPI shall deliver copies of all such books, records, and documents in its possession to Client or its designee as soon as possible, but no later than 30 days after written request from Client has been provided.

10. Data from Third Parties. CPI shall be authorized to obtain needed employee or asset data from third parties (including investment companies, banks, insurance companies, custodians, trustees, payroll processing agencies and accountants) in possession of such data on behalf of the Client. Client shall cooperate in authorizing CPI to obtain such data.

Except as otherwise set forth in this Agreement, CPI may contract with one or more third parties for purposes of assisting CPI with the fulfillment of its duties and responsibilities under this Agreement. CPI agrees to indemnify Client and hold its officers, directors, and employees harmless from any claim, demand, or expense arising from the intentional and/or grossly negligent act or omission of such third party.

11. Term of Agreement. This Agreement shall be for a one-year term and shall commence on the Effective Date specified in Section 1 above. Either party may terminate this Agreement by providing 30 days written notice to the other party. Any modification to the terms of this Agreement, including compensation, may be made by execution of a revised Services Addendum.

Either party may terminate this Agreement upon written notice, if the other party has materially breached this Agreement and has not cured such breach within ten

(10) days of receipt of notice of such breach. Unpaid fees shall be immediately due and owing in the event of the termination of this Agreement.

12. Non-Discrimination: Neither party shall unlawfully discriminate against any employee, applicant, patient, or student based on race, color, creed, sex (including sexual preference/identity), religion, marital status, disability, veteran status, age, or national origin.
13. Conflict of Interest: This Agreement is subject to cancellation pursuant to the provisions of A.R.S. § 38-511 regarding Conflict of Interest.
14. Arbitration: The parties agree that any dispute arising under this Agreement involving the sum of \$65,000 or less in money damages only shall be resolved by arbitration pursuant to A.R.S. § 12-1501 et. seq. The decision of the arbitrator shall be final.
15. Public Records Law: Notwithstanding any provision in the Agreement to the contrary, disclosure of any documents or records are subject to Arizona public records law, A.R.S. § 39-121, et. seq.
16. Immigration Laws: CPI hereby warrants that it will always during the term of this Agreement comply with all federal immigration laws applicable to CPI's employment of its employees, and with the requirements of A.R.S. § 23-214(A). CPI shall further ensure that each sub-Contractor or third-party who performs any work for the CPI under this Agreement likewise complies with the State and Federal Immigration Laws.
17. Certification Pursuant to A.R.S. § 35-393.01: If CPI engages in for-profit activity and has 10 or more employees, and if this Agreement has a value of \$100,000 or more, CPI certifies it is not currently engaged in, and agrees for the duration of this Agreement to not engage in, a boycott of goods or services from Israel. This

certification does not apply to a boycott prohibited by 50 U.S.C. § 4842 or a regulation issued pursuant to 50 U.S.C. § 4842.

18. Certification Pursuant To A.R.S. § 35-394: CPI certifies it does not currently, and agrees for the duration of the contract, that it will not, use: 1) the forced labor of ethnic Uyghurs in the People's Republic of China; 2) any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China; and 3) any contractors, subcontractors, or suppliers that use the forced labor or any goods or services produced by the forced labor of ethnic Uyghurs in the People's Republic of China. If CPI becomes aware during the term of the contract that it is not in compliance with the written certification, CPI shall notify County within five (5) business days after becoming aware of the noncompliance. If the CPI does not provide the County with a written certification that it has remedied the noncompliance within 180 days after notifying the County of the noncompliance, this Agreement terminates, except that if the Agreement termination date occurs before the end of the remedy period, the Agreement terminates on the Agreement termination date. The County retains the legal right to inspect the CPI's records to ensure compliance with this certification for the duration of this Agreement.

19. Interpretation and Severability. This Agreement embodies the entire agreement and understanding between the parties hereto with respect to the subject matter hereof and supersedes all prior oral or written agreements and understandings related to the subject matter hereof. No statement, representation, warranty, covenant or agreement or any kind not expressly set forth in this Agreement will affect, or be used to interpret, change, or restrict the express terms and provisions of this Agreement. If a court declares any portion of this Agreement invalid, the same will not affect the validity of any other provision, provided that the basic purposes of this Agreement are achieved through the remaining valid provisions. The heading of sections and subsections contained in this Agreement are for reference purposes only and will not affect in any way the meaning or

interpretation of this Agreement.

Failure by Client or CPI to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. No waiver or modification of any of the terms or provisions of this Agreement will be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions. The parties acknowledge and agree that the terms and provisions of this Agreement will be construed fairly, as to all parties hereto and not in favor of or against a party, regardless of which party was generally responsible for the preparation of this Agreement.

CPI will not be deemed in default of this Agreement, nor held responsible for, any cessation, interruption or delay in the performance of its obligations to provide such services hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of God, labor controversy, civil disturbance, disruption of public markets, terrorism, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business from CPI's vendors or other parties, including Internet access, or any change in or the adoption of any law, judgment or decree.

20. Assignment. Neither party can assign this Agreement without the other party's written consent; however, the terms of this Agreement shall apply to any legal successor to Client and/or CPI. This Agreement may be amended only by written agreement of duly authorized officers of each party except as otherwise set forth herein.
21. Jurisdiction and Law: Notwithstanding any provision in the Agreement to the contrary, the Agreement shall be governed by Arizona law and jurisdiction shall be in Arizona courts with venue in Cochise County, Arizona.
22. Notices. All notices between Client and CPI provided for herein shall be sent by confirmed facsimile; by guaranteed overnight mail, with tracing capability; by

first- class United States mail, with postage prepaid; or by e-mail addressed to the other party at their respective addresses as set forth below. All notices shall be deemed provided when sent, except as otherwise set forth in this Agreement. CPI's address for notices as described above is: **6421 Perkins Road, Bldg. A, Suite 2A, Baton Rouge, LA 70808**. E-mails sent to CPI should be sent to the appropriate CPI Service Representative. Client's address for notices is: **Human Resources, 1415 Melody Lane, Building G, Bisbee, AZ 85603**. Client further agrees that CPI may communicate confidential, protected privileged or otherwise sensitive information to Client through a named contact designated by Client ("Named Contact") and specifically agrees to indemnify CPI and hold it harmless for any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted once CPI has sent such communications to Client. Client's initial Named Contact shall be as provided in the Services Addendum. Any changes to the Named Contact or other communications information for Client may be provided to CPI using the procedures set forth in this Section; however, CPI requires reasonable advance notice time of at least 10 business days before such change of information shall be effective upon CPI.

23. Survival. The representations, warranties and indemnities provided herein shall survive the termination of this Agreement.

The undersigned are authorized to act on behalf of their respective parties.

IN WITNESS WHEREOF, the parties below set their hand on the date stated above.

WITNESSES:

COBRA PROFESSIONALS, INC.
Authorized Officer

COCHISE COUNTY:

By: _____
Ann English, Chair
Cochise County Board of Supervisors

By: _____
Sharon Gilman
Interim Clerk of the Board

SERVICES ADDENDUM

Plan Administration:

Administration Fee:

(X) Flexible Spending Account	\$4.00 per employee per month with a \$_____ minimum
Monthly ACH Fee	\$12.00
Monthly Debit Card fee	\$ 125.00 / month

The fee schedule may be modified annually, with 30 days' notice. If there are midyear plan changes to the any of the above accounts, charges may apply.

Reimbursement Process: Client agrees to utilize the following process to reimburse Client's employees for eligible expenses:

- (X) Manual check reimbursement
- (X) Direct deposit reimbursement
- (X) Debit card reimbursement

Named Contact for Client: _____

This _____ day of _____, 20__.

By: _____
Human Resources