

CONSULTING AGREEMENT

This Consulting Agreement (this "Agreement") is made by and between Gallagher Benefit Services, Inc., ("Gallagher") and Fauquier County and the Fauquier County School Board (the "Client").

The Client wishes to enter into a consulting relationship with Gallagher on the terms and conditions set forth in this Agreement, and Gallagher is willing to accept such a consulting relationship. This Agreement is based on the Client's RFP 77-18sm, entitled Employee Benefits & Communications Consulting Services, dated April 26, 2018, and Gallagher's Proposal Response to same, dated May 22, 2018, both of which are incorporated herein by reference.

In consideration of and in reliance upon the previous paragraph and the terms and conditions contained in this Agreement, the Client and Gallagher agree as follows:

1. Engagement of Services

The Client engages Gallagher as a professional consultant to provide the consulting and/or brokerage services as more fully described in Exhibit A attached to this Agreement and incorporated herein. During the time that Gallagher is performing services for the Client under this Agreement, and for all purposes outlined in this document, Gallagher's status will be that of an independent contractor of the Client.

2. Term and Termination

The Effective Date of this Agreement is November 1, 2018. The term of Gallagher's engagement under this Agreement (the "Consulting Period") will begin as of the Effective Date and will remain in effect for one (1) year from the Effective Date. **The Consulting Period will be automatically extended for an additional year on each anniversary of the Effective Date for up to five (5) successive one (1) year terms unless otherwise terminated as provided herein.** Either party may terminate this Agreement by giving the other party at least sixty (30) days written notice of its intent to terminate at any time during the Consulting Period. In the event such termination is effective during the Consulting Period (including any renewed Consulting Period), Client shall be responsible to Gallagher for any services performed prior to the date of termination and Gallagher shall be responsible to Client to continue to provide services until the date of termination of this Agreement.

3. Compensation

As compensation for its services under this Agreement, Gallagher will receive carrier commissions and/or direct fees owed by the Client, as set forth in the Compensation Disclosure Statement attached hereto as Exhibit B. Additional information regarding Gallagher compensation can also be found in Exhibit B. Gallagher shall disclose the amount of commissions payable to it by each insurance company at the time it presents rates to Client. The Client is responsible for payment of Gallagher's fees (if applicable) within thirty (30) days of invoice receipt. If any amount is not paid in full when due without a good faith basis to withhold, that nonpayment will constitute a material breach of this Agreement that will allow Gallagher to immediately terminate this Agreement.

4. Performance and Scope

(a) **Representations and Warranties.** Each party represents, warrants and covenants to the other that: (i) it has full power and authority to make, execute, deliver and perform its obligations under this Agreement; (ii) the performance of its obligations pursuant to this Agreement shall be in accordance with all applicable laws; (iii) this Agreement has been duly executed and delivered by an authorized representative of such party and constitutes the legal, valid and binding obligation of such party, enforceable

against such party in accordance with its terms; and (iv) there are no other agreements presently in force which would encumber or prevent either party's compliance with any terms of this Agreement.

(b) Standard of Care. Gallagher will perform its duties, responsibilities and obligations with the care, skill, prudence and diligence that a prudent employee benefits consultant or insurance broker acting in a like capacity and familiar with such matters would use in the conduct of an enterprise of a like character and with like aims under the circumstances then prevailing. As appropriate, Gallagher will coordinate fiduciary review services and other related duties with the plan's claims administrator and/or insurance carrier(s). However, Gallagher generally does not accept any fiduciary duties or obligations with respect to a plan given that these are typically performed by the plan's claims administrator or insurance carriers.

(c) Reliance. In the performance of its duties, Gallagher may rely upon, and will have no obligation to independently verify the accuracy, completeness, or authenticity of, any written instructions or information provided to Gallagher by the Client or its designated representatives and reasonably believed by Gallagher to be genuine and authorized by the Client.

(d) No Practice of Law. Gallagher will not be obligated to perform, and the Client will not request performance of, any services which may constitute the unauthorized practice of law. The Client will be solely responsible for obtaining any legal advice, review or opinion as may be necessary to ensure that its own conduct and operations, including the engagement of Gallagher under the scope and terms herein, conform in all respects with applicable State and Federal laws and regulations (including ERISA, the Internal Revenue Code, State and securities laws and implementing regulations) and, to the extent that the Client has foreign operations, any applicable foreign laws and regulations.

(e) Subcontractors. Gallagher may cause another person or entity, as a subcontractor of Gallagher, to provide some of the services required to be performed by Gallagher hereunder; provided that Gallagher shall remain responsible for all acts and omissions of any such subcontractors (each of which shall be bound by Gallagher's obligations under this Agreement). Gallagher shall seek prior written approval from Client for any subcontractors providing substantive consulting, professional or managerial services. Prior written approval shall not be required for clerical, office, secretarial, IT back-up, administrative or similar support services.

(f) Conflict of Interest. Gallagher's engagement under this Agreement will not prevent it from taking similar engagements with other clients who may be competitors of the Client. Gallagher will, nevertheless, exercise care and diligence to prevent any actions or conditions which could result in a conflict with Client's best interest.

(g) Acknowledgements. In connection with Gallagher's services under this Agreement, Client agrees that:

(i) Although Gallagher will apply its professional judgment to access those insurance companies it believes are best suited to insure the Client's risks, there can be no assurance that the insurance companies Gallagher has accessed are the only or are the best suited ones to insure the Client's risks. The final decision to choose any insurance company has been made by the Client in its sole and absolute discretion. The Client understands and agrees that Gallagher does not take risk, and that Gallagher does not guarantee the financial solvency or security of any insurance company.

(ii) Any compensation of the types described above and disclosed to it does not constitute a conflict of interest and the Client expressly waives any claims alleging any such conflict of interest.

(iii) The compensation payable to Gallagher is solely for the services set forth under this Agreement, as detailed in Exhibit A. Any additional administrative, claims representative

or other services (collectively, "Additional Services") will be governed by the terms of a separate agreement covering the Additional Services.

5. Confidentiality

(a) **Client Information.** Gallagher recognizes that certain confidential information may be furnished by the Client to Gallagher in connection with its services pursuant to this Agreement ("Confidential Information"). Gallagher agrees that it will disclose Confidential Information only to those who, in Gallagher's reasonable determination, have a need to know such information. Confidential Information will not include information that (i) is in the possession of Gallagher prior to its receipt of such information from the Client, (ii) is or becomes publicly available other than as a result of a breach of this Agreement by Gallagher, or (iii) is or can be independently acquired or developed by Gallagher without violating any of its obligations under this Agreement. However, disclosure by Gallagher of any Confidential Information pursuant to the terms of a valid and effective subpoena or order issued by a court of competent jurisdiction, judicial or administrative agency or by a legislative body or committee will not constitute a violation of this Agreement. Unless prohibited by law, Gallagher shall provide Client with any such subpoena or order and an opportunity to object prior to disclosure. Furthermore, Gallagher will limit disclosure to that information required to be disclosed under the terms of the subpoena or order and will reasonably cooperate with Client (at Client's expense) to limit such disclosure.

(b) **HIPAA Privacy.** Gallagher and the Client will each comply with any prohibitions, restrictions, limitations, conditions, or other requirements to the extent they apply to them directly or indirectly pursuant to the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") and its implementing regulation concerning privacy of individually identifiable health information as set forth in 45 CFR Parts 160-164, as amended from time to time. When required, the Client, as a representative of the health plans and Gallagher will enter into a separate Business Associate Agreement.

(c) **Use of Names; Public Announcements.** No party will use, in any commercial manner, the names, logos, trademarks or other intellectual property of the other party without its prior written consent. Except as may be required by law, no party will issue any press releases or make any public announcements of any kind regarding the relationship between the parties without the other party's prior consent.

(d) **Aggregated Data.** Gallagher shall own any non-identifying, aggregated and statistical data that might be derived from providing services to Client (the "Aggregated Data"). Nothing herein shall be construed as prohibiting Gallagher from utilizing the Aggregated Data for purposes of operating Gallagher's business. Gallagher shall not: (i) disclose to any third party any Aggregated Data that reveals Client's identity or its Confidential Information; or (ii) reveal the identity, whether directly or indirectly, of any individual whose specific data might be used by Gallagher on behalf of Client.

6. Indemnification Rights and Limitation of Liability

(a) **Indemnification.** To the extent permitted by the Laws of the Commonwealth of Virginia, each party ("Indemnifying Party") will promptly defend, indemnify and hold the other party ("Indemnified Party") harmless from and against any and all claims, suits, actions, liabilities, losses, expenses or damages which the Indemnified Party may incur as a result of any violation by the Indemnifying Party of any law, or any loss or expense to the Indemnified Party caused by the misrepresentation, negligent act or omission, or any breach of any of the Indemnifying Party's obligations under this Agreement.

(b) **Limitation of Liability.** Notwithstanding any other term or provision of this Agreement, each party shall only be liable for actual damages incurred by the other party, and shall not be liable for any indirect, consequential or punitive damages. Furthermore, unless otherwise noted in Exhibit A, the aggregate liability under this Agreement, if any, of either party to the other for claimed losses or damages shall not exceed \$20,000,000. This provision applies to the fullest extent permitted by applicable law.

7. **Notices**

Any notices, requests or other communications pursuant to this Agreement will be addressed to the party at its address listed below. Such notices will be deemed to have been duly given, (i) if delivered in person or by courier, upon delivery; (ii) if sent by an overnight service with tracking capabilities, upon receipt; (iii) if sent by registered or certified mail, postage prepaid, within five (5) days of deposit in the mail; or (iv) if sent by fax or electronic mail, at such time as the party which sent the notice receives confirmation of receipt by the applicable method of transmittal.

If to the Client: Fauquier County and The Fauquier County School Board
Attention: Janelle Downs
Alice Jane Childs Office Building
320 Hospital Drive, Suite 34
Warrenton, VA 20186

If to Gallagher: Gallagher Benefit Services, Inc.
Attention: Jeff Ries
4064 Colony Rd. Ste 450
Charlotte, NC 28211

Either party may, by written notice to the other, change the address to which notices to such party are to be delivered or mailed.

8. **Miscellaneous**

(a) Severability. The various provisions and subprovisions of this Agreement are severable and if any provision or subprovision or part thereof is held to be unenforceable by any court of competent jurisdiction, then such enforceability will not affect the validity or enforceability of the remaining provisions or subprovisions or parts thereof in this Agreement.

(b) Entire Agreement; Amendment. This Agreement, including all exhibits hereto, constitutes the entire agreement between the parties and supersedes all prior agreements and understandings, whether oral or written, between the parties regarding the subject matter hereof. Except for changes in carriers and/or lines of coverage noted in Exhibit B, which may occur upon unilateral approval of the Client, this Agreement may be modified or amended only by a written instrument executed by both parties. This Agreement may be executed by the parties in several counterparts, each of which shall be deemed to be an original copy.

(c) Waiver. No covenant, term or condition or the breach thereof will be deemed waived, except by written consent of the party against whom the waiver is claimed. Any waiver by either party hereto of any provision of this Agreement shall not be construed as a waiver of any other provision of this Agreement, nor shall such waiver be construed as a waiver of such provision with respect to any other event or circumstance, whether past, present or future.

(d) Governing Law; Choice of Venue. This Agreement will be construed, interpreted and enforced in accordance with the laws of the Commonwealth of Virginia and any and all litigation resulting from this Agreement shall only be brought in the Circuit Court of Fauquier County, Virginia.

(e) Successors. This Agreement shall be binding upon and shall inure to the benefit of all assigns, transferees and successors in the interest of the parties hereto.

(f) Survival of Provisions. Sections 5 and 6 will survive the termination of this Agreement.

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IN WITNESS WHEREOF, the parties hereto have caused this Consulting Agreement to be duly executed on the date first written above.

**FAUQUIER COUNTY AND THE FAUQUIER
COUNTY SCHOOL BOARD**

By: Susan R. Monaco
Name: Susan R. Monaco
Title: Procurement Manager
Date: 11-6-2018

GALLAGHER BENEFIT SERVICES, INC.

By: E. G. Black
Name: Eric W. Black
Title: 11-5- President
Date: 11-5-18

EXHIBIT A SCOPE OF SERVICES

Subject to any changes and additions as may be mutually agreed by the parties in writing, availability and delivery of data from the insurance carrier and other third party vendors, Gallagher will provide the following services:

CONSULTING SERVICES PROVIDED

RENEWAL ANALYSIS:

- Review and evaluate carrier projections
- Prepare “shadow” renewal projection
- Create financial modeling reports using proprietary Apex software
- Coordinate carrier negotiations
- Create employee contribution modeling reports
- Review identified benchmarks of projected plan costs
- Develop “working” rates for Client analysis and approval
- Assist with budget projections
- Provide renewal alternatives with cost impact of benefit plan changes

PERIODIC PLAN FINANCIAL REPORTS:

- Summary of plan costs
- Analysis of actual vs. budget
- Employee contributions
- Large claims tracking
- Identification of costs for specific line of coverage
- Comparison of plan costs to aggregate stop-loss projections, if applicable
- Utilization review
- Comparison to prior claim period
- Plan trends

ANNUAL FINANCIAL REPORTS (END OF YEAR ACCOUNTING):

- Executive summary of program expenses
- Comparison of current costs to renewal costs
- Incurred But Not Reported (IBNR) claims analysis
- Overview of specific Stop-loss projections
- Future plan costs projections
- Dollars saved by contract negotiation
- Percent of benefit dollars paid by employee
- Claims by size
- Physician visit details
- Benefits paid by type of service
- Plan funding/budget comparison
- Fixed expense comparison

LEGISLATIVE AND CORPORATE COMPLIANCE SUPPORT:

- Provide legislative updates, including Technical Bulletins and Directions newsletters
- Evaluate plan design to assist with compliance with state and federal regulations
- Review benefit plan documents, including summary plan descriptions, contracts, employee summaries, and policies/procedures
- Conduct periodic seminars on regulatory issues
- Assist with the review and evaluation of COBRA and HIPAA compliance procedures

- Provide general information and guidance to assist with compliance with ERISA, FMLA, USERRA, Medicare Part D and other Federal legislation that directly affects the administration of plan benefits
- Provide template or sample compliance notices, certificates of creditable coverage and enrollment forms as reasonably requested by Client

CARRIER MARKETING AND NEGOTIATIONS, AS DIRECTED BY CLIENT:

- Work with Client to develop a strategy to identify goals, analyze program costs and review both current and alternative funding arrangements
- Manage the renewal process with the current carrier to control costs
- Implement carrier renewal strategies with Client
- Develop timeline covering every aspect from RFP preparation to the delivery of employee communications
- Provide analysis of employee disruption report and preparation of geo-access report
- Provide analysis of discounts offered by various carriers by using CPT codes and carrier pricing data
- Manage RFP development that tailors the RFP to the desires, needs and financial directions provided by Client
- Explore alternative funding solutions
- Evaluate vendor responses to track variations in coverage and costs as they are identified
- Conduct finalist interviews to investigate and document intangibles such as personalities, service orientation and responsiveness
- Draft renewal analysis report, based on renewal negotiation, covers program and claims cost projections as well as complete information on benefit designs
- Facilitate decision process by coordinating close collaboration and discussions among the Gallagher team and Client

DAY TO DAY ADMINISTRATIVE ASSISTANCE

EMPLOYEE EDUCATION PROGRAMS:

- Facilitate focus groups
- Monthly benefit communication directed to employees
- Educational meetings on coverage and trends

COMMUNICATION MATERIALS:

- Assist with the drafting and distribution of Open Enrollment-New Member Orientation summary information and any other communications pertaining to the health and welfare program
- Provide annual open enrollment guidance and employee meeting materials
- Assist with participant wellness initiatives, as directed by Client

BENEFIT ADMINISTRATION ASSESSMENT:

- Periodic evaluation of internal plan enrollment and benefit termination processes
- Review, coordinate and implement Client agreed upon plan “best practices” to help limit plan liability and increase participant satisfaction
- Help identify opportunities for streamlining and improving administration procedures

MARKET BENCHMARKING STUDIES:

- Local Area Surveys
- Industry Surveys

BENEFIT PLAN DESIGN (OR REDESIGN):

- Help Client identify business and HR objectives that impact benefits
- Review with Client possible benefit strategies to meet their objectives
- Help Client evaluate/review current scope of benefits package – e.g., types & levels of coverage
- Work with Client to develop funding and contribution strategies
- Assist with budget projections for design alternatives
- Assist with review of an employee onsite clinic

ADDITIONAL ITEMS AS OUTLINED IN RFP 77-18SM:

3.1 Questions/Work Examples

The Offeror shall provide detailed answers, and Work Examples, to the following questions/requests:

- 3.1.1 How long has the offeror provided employee benefit consultant services?
- 3.1.2 How would you evaluate the option of remaining self-insured or seeking to move to a fully insured program?
- 3.1.3 Are there new coverage options that the County should consider in seeking proposals for health insurance services?
- 3.1.4 What are the advantages and disadvantages for the employer and employee in offering a high deductible health plan in conjunction with a health savings account?
- 3.1.5 Provide a recent example of how your firm has assisted a client to effectively address the challenge of rising health care costs without drastically decreasing benefits to employees.

3.2 The successful Offeror shall:

- 3.2.1 Review and make recommendations to the Owner regarding existing and potential benefit plans and programs as well as modifications to the existing plan design, cost (rates), cost shares, and quality of employee benefit plans and programs.
- 3.2.2 Assist the Owner in the development of Request for Proposals (RFP) for the solicitation of future employee benefits plans and programs. This shall include, but not be limited to, assisting the Owner in the management of the (RFP) process and prepare a comprehensive report of the recommendations and make presentations to the owner regarding the selection recommendations.
- 3.2.3 Assist in the design, implementation and administration of new and existing programs in the following areas:
 - 3.2.3.1 Medical
 - 3.2.3.2 Dental
 - 3.2.3.3 Vision
 - 3.2.3.4 Life Insurance
 - 3.2.3.5 Accidental Death & Dismemberment
 - 3.2.3.6 Disability Insurance
 - 3.2.3.7 Long Term Care Insurance
 - 3.2.3.8 Pharmacy Carve Out Programs
 - 3.2.3.9 COBRA Outsourcing
 - 3.2.3.10 Family Medical Leave
 - 3.2.3.11 Employee Assistance and Behavior Health Programs
 - 3.2.3.10 Dependent Care Reimbursement Accounts
 - 3.2.3.11 Consumer Directed Health Plans such as HSA and HRA
 - 3.2.3.12 Third Party Benefit Administration & Record Keeping
 - 3.2.3.13 Wellness Center

- 3.2.4 Assist in developing and implementing contracts with selected health providers in accordance with the Owner's timeliness and requirements

- 3.2.5 Provide proactive communication to all employees at the Owner's request and direction
- 3.2.6 Provide regular and timely proactive communication of changes and proposed changes in federal and state statutes and/or regulations that may impact the Owner's employee benefit plans and programs
- 3.2.7 Recommend procedures and/or policies to comply with changes and/or proposed changes federal and state statutes and/or regulations that may impact the Owner's employee benefit plans and programs
- 3.2.8 Review and prepare analysis of all reports submitted by the Owner's plan providers and recommend additional reports as needed
- 3.2.9 Perform research and provide responses to technical questions posed by the Owner
- 3.2.10 Provide financial and/or performance reviews of Owner's employee benefit plans and programs
- 3.2.11 Proactively provide the Owner with general guidance on current and future trends in employee benefit plans and programs, methods for improving cost containment, financial arrangements, and administration
- 3.2.12 As requested provide Owner reports of other employers' employee benefit plans and programs to determine competitiveness; assist the Owner with annual benefit market studies.
- 3.2.13 Provide annual on-site training programs regarding legislative updates and/or best Practice seminars
- 3.2.14 Provide day-to-day proactive consultation on matters including, but not limited to, plan interpretation and problem resolution, including attendance at monthly meetings, or more often if necessary, to facilitate and assist in the management of the Owner's employee benefit plans and programs
- 3.2.15 Make recommendations for items of negotiation and direct negotiation with employee benefit plan providers on matters including, but not limited to, premium rates, benefit levels, performance standards and guarantees, contractual terms and conditions, quality assurance standards, utilization and performance reports, statistical and/or financial reports, and plan specific data such as medical conditions, prescription drugs, high cost procedures, in-patient data, etc.
- 3.2.16 Provide such other services as requested by the Owner for which the consultant has the technical capability and capacity to render. Consultant shall quote additional projects and services to the Owner on a per-project basis as a not-to-exceed fee or at contract hourly rates for services, which ever method is in the Owner's best interest.
- 3.2.17 Maintain full and accurate records with respect to all matters and services provided to the owner for a minimum of five (5) years from the date of award of this contract.
- 3.2.18 Assist the owner in budget preparation, including, but not limited to, cost trends and multiple year projections
- 3.3 The successful Offeror shall:
 - 3.3.1 Analyze the Owner's contribution and employees' contribution for proper funding (Annual Requirement), and recommend employer and employee premium rate structure.
 - 3.3.2 Assist in the RFP process by preparing specifications, analyze the responses, and negotiate, as necessary, with Offerors and make recommendations to the governing body for award of coverage (As Required). An RFP for Medical/RX and Stop-Loss Insurance is due to be released in 2019, as the current contract plan final renewals occur July 1, 2018- June 30, 2019. The current Dental Insurance contract expires June 30, 2018 but has two (2) one-year renewal options remaining.
 - 3.3.3 Summarize in layman's language policy terms, exclusions, deductibles, claims reporting requirements and any other pertinent information (Annual Requirement - not later than April 1st of each year).
 - 3.3.4 Review existing employee communication/education plan and provide findings and recommendations.
 - 3.3.5 Provide "work plan" which utilizes who, what, how, when, why approach to solving issues/problems as identified in the above scope of services.
 - 3.3.6 Assist with administration of employee benefits program and employee communications.
 - 3.3.7 Provide up to date information concerning employee benefits issues such as trends and proposed legislation.
 - 3.3.8 Provide a source for answers to employee benefit problems as they occur.

**EXHIBIT B
COMPENSATION DISCLOSURE STATEMENT**

Line of Coverage	Insurance Company	Effective Date	Commission ¹ / Supplemental Compensation ²	Direct Fees ³
Consulting Services	N/A - Gallagher	11/1/2018	N/A	\$60,000 / year
Pharmacy Fee	TBD	7/1/2019	\$60,000 (\$x per script)* *Will be verified upon selection of Rx Program by Client.	

It should also be noted that:

- Gallagher is not an affiliate of the insurer or vendor whose contract is recommended. This means the insurer or vendor whose contract is recommended does not directly or indirectly have the power to exercise a controlling influence over the management or policies of Gallagher.
- Gallagher’s ability to recommend other insurance contracts or vendors is not limited by an agreement with any insurance carrier or vendor and Gallagher is effecting the transaction for applicable plan(s) in the ordinary course of Gallagher business. Thus, pertinent transaction(s) are at least as favorable to the applicable plan(s) as an arm’s length transaction with an unrelated party.
- Gallagher is not a trustee of the plan(s) and is neither the Plan Administrator of the plan(s), a Named Fiduciary of the plan(s), nor an employer which has employees in the plan(s).

For Employers and Plan Sponsors Subject to ERISA: This Disclosure Statement is being given to the Client (1) to make sure Client knows about Gallagher’s and Gallagher affiliates’ income before purchasing an insurance product and (2) for plans subject to ERISA, to comply with the disclosure, acknowledgment and approval requirement of Prohibited Transaction Class Exemption No. 84-24⁴, which protects both Client and Gallagher⁵. Disclosure must be made to an independent plan fiduciary for the ERISA Plan(s), and Client acknowledges and confirms that this is a reasonable transaction in the best interest of participants in its ERISA Plan(s).

For more information on Gallagher’s compensation arrangements, please visit www.ajg.com/compensation. In the event a client wishes to register a formal complaint regarding compensation Gallagher receives, please send an email to Compensation_Complaints@ajg.com.

¹ Commissions include all commissions/fees paid to Gallagher that are attributable to a contract or policy between a plan and an insurance company, or insurance service. This includes indirect fees that are paid to Gallagher paid by a third party, and includes, among other things, the payment of “finders’ fees” or other fees to Gallagher for a transaction or service involving the plan.

² Gallagher companies may receive supplemental compensation referred to in a variety of terms and definitions, such as contingent commissions, additional commissions and supplemental commission.

³ Direct Fees include compensation to Gallagher paid for directly by the plan sponsor.

⁴ Which allows an exemption from a prohibited transaction under Section 408(a) of the Employee Retirement Income Security Act of 1974 (ERISA).

⁵ In making these disclosures, no position is taken, nor is one to be inferred, regarding the use of assets of a plan subject to ERISA to purchase such insurance.