

**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

953



**FROM:** Human Resources Department

**SUBMITTAL DATE:**  
December 1, 2010

**SUBJECT:** 2011 Flexible Spending Account Administrative Service Agreement with Application Software, Inc., doing business as ASIFlex

**RECOMMENDED MOTION:** That the Board of Supervisors 1) approve the ASIFlex Flexible Spending Account Administrative Service Agreement terms for the County's Flexible Spending Account (FSA) programs; 2) authorize the Chairperson to sign four (4) copies of the Agreement, and 3) retain one (1) copy of the signed Agreement and return three (3) copies of the Agreement to Human Resources for distribution.

**BACKGROUND:** On September 28, 2010, Agenda Item 3.52, the Board of Supervisors approved ASIFlex as the new Flexible Spending Account Administrator for the County's Flexible Spending Account (FSA) programs and administrative service fees for the period of January 1, 2011 through December 31, 2016. The Agreements are the official documents confirming rates and services previously approved by the Board. The County's FSA programs are funded by a combination of participant fees charged to departments and unused account balances that are required to be forfeited by the IRS at the end of each plan year. Therefore, there is no additional cost to the County for these services.

*Barbara A. Olivier*  
Barbara A. Olivier  
Asst. County Executive Officer/Human Resources Dir.

<b>FINANCIAL DATA</b>	Current F.Y. Total Cost:	\$ 69,000	In Current Year Budget:	Yes
	Current F.Y. Net County Cost:	\$ 0	Budget Adjustment:	N/A
	Annual Net County Cost:	\$ 0	For Fiscal Year:	2010/2011

<b>SOURCE OF FUNDS:</b> Employee and Department Contributions	<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
	<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**  
  
APPROVE  
  
BY: *Elizabeth J. Olson*  
Elizabeth J. Olson  
**County Executive Office Signature**

FORM APPROVED COUNTY COUNSEL  
BY: *TAMMY V. DEU* 12/8/2010 DATE  
Departmental Concurrence

- Policy
- Policy
- Consent
- Consent

Dept't Recomm.:  
Per Exec. Ofc.:

**Prev. Agn. Ref.:** September 28, 2010, Item 3.52 | **District:** All | **Agenda Number:**

**3.37**

**County of Riverside  
Administrative Service Agreement**

This Administrative Service Agreement (the "Agreement") is made and entered into effect the 1<sup>st</sup> day of January 2011, by and between County of Riverside, a political subdivision of the State of California (hereinafter "County"), and Application Software, Inc., a California corporation (hereinafter "ASI").

**RECITALS**

Whereas, County has requested ASI to provide administrative services for the following Benefit Programs offered under an Internal Revenue Code Section 125 Cafeteria Plan established by County: (i) Health Flexible Spending Arrangement (Health FSA) as described in Schedule A, and (ii) Dependent Care Assistance Program (DCAP) as described in Schedule B; and

Whereas, County has also requested ASI to provide administrative services for Qualified Transportation Plan and/or Bicycle Commuting and Repair Expense Reimbursement (QTER) Policy under IRS Code Section 132(f) as described in Schedule C; and

Whereas, County has also requested ASI to provide Cobra and/or HIPAA Portability administrative services for Health FSA as described in Schedule D.

Whereas, the Health FSA, DCAP, QTER, and plans to which the COBRA and/or HIPAA portability administration applies will hereinafter be collectively referred to as the "Program".

**NOW THEREFORE, in consideration of** the mutual promises and conditions contained in this Agreement, County and ASI agree as follows:

**Section 1  
Effective Date and Term**

**1.1 Effective Date.** The effective date of this Agreement is January 1, 2011.

**1.2 Term.** The initial term shall be for a five (5) year period commencing on the Effective Date through December 31, 2016, unless this Agreement is terminated in accordance with the provisions of Section 9.

## **Section 2 Scope of Undertaking**

### **2.1 Scope of Undertaking.**

County of Riverside has sole and final authority to control and manage the operation of the Program. ASI is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of County of Riverside. County of Riverside and ASI shall not be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor.

ASI does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission or breach of duty by County of Riverside. ASI shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASI generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by County of Riverside under the Program.

Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute ASI as a party to the Program or to confer upon ASI any authority or control respecting management of the Program, authority or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program. Nothing in this Agreement shall be deemed to impose upon ASI any obligation to any employee of County of Riverside or any person who is participating in the Program ("Participant").

### **2.2 Non-Discretionary Duties.**

Except as otherwise expressly set forth herein, the services to be performed by ASI under this Agreement shall be ministerial in nature and will generally be performed in accordance with the terms of the Benefit Programs established by the County.

### **2.3 Limited Fiduciary Duties**

Notwithstanding the foregoing, County delegates to ASI certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 4, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of County for the payment of Program benefits claims as set forth in Section 6, as further modified by Schedules A, B, C and/or D.

The parties agree that ASI is fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. ASI shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

## **Section 3 County Responsibilities**

### **3.1 General Fiduciary Duties.**

Except as otherwise specifically delegated to ASI in this Agreement, County has sole authority and responsibility for the Program and its operation, including the authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing and interpreting the provisions of the Program and making all determinations thereunder. County gives ASI the authority to act on behalf of County in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by County and ASI. County is considered the Plan Administrator and Named Fiduciary of the Program benefits.

### **3.2 Funding**

County shall promptly fund an account maintained for the payment of Program benefits as described in Section 6.

### **3.3 Information to ASI**

Upon request, County agrees to provide ASI with information necessary for ASI's performance of duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. ASI shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the County or its agents. Such information shall be provided to ASI in the time and in the manner agree to by County and ASI, the Eligibility Reports should be provided to ASI by electronic medium. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Program.

County shall be responsible for ensuring the accuracy of its Eligibility Reports, and bears the burden of proof in any dispute with ASI relating to the accuracy of any Eligibility Reports.

ASI incurs no liability to County or any Participant as a consequence of an inaccurate Eligibility Report provided by County. ASI will provide recovery services as listed in Section 4.12 of this Agreement.

ASI shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Eligibility Reports are considered Protected Health Information (PHI) and, when transmitted by or maintained in electronic media shall be considered electronic PHI, and subject to the Privacy and Security Rules under HIPAA, HITECH, Section 5 of this Agreement, and Attachment 1.

### **3.4 Plan Documents**

County is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide ASI with all relevant documents, including but not limited to, the Program documents and any Program amendments. ASI is responsible for notifying County Benefits Staff of legislative updates that will affect the Program's compliance and Program's administration. County will notify ASI of any changes to the Program at least 30 days before the effective date of such changes.

ASI will provide sample plan documents and forms for review by County and County's legal counsel, including plan document/summary plan description, election

forms and other documents. ASI will customize such documentation only to the extent to incorporate County's responses to certain plan design questions submitted by ASI. In addition, ASI will provide sample document changes to reflect revisions in applicable legislation or regulations. Although ASI has taken steps to ensure that its sample documents and forms are of high quality and comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to the County or the Program.

County acknowledges that ASI is not providing tax or legal advice and that County should ask its legal counsel to review such documents for legal and tax compliance. County bears sole responsibility for determining the legal and tax status of the Program. Further, ASI is not a law firm and has no authority to provide legal advice.

### **3.5 Liability for Claims**

ASI is responsible for payment of claims made pursuant to and the benefits to be provided by, the Program. ASI does not insure or underwrite the liability of County under the Program. County is responsible for all expenses incident to the Program, except for:

- Expenses specifically assumed by ASI in this Agreement; and
- Any expenses, claims, actions, losses, damages and/or liability arising out of or relating to: (i) ASI's breach of any provisions of this Agreement; (ii) ASI's failure to comply with any applicable Federal, state or local law and regulation; and (iii) the negligent acts or omissions or willful misconduct of ASI in its performance under this Agreement.

### **3.6 Financial and Medical Records**

In order to permit County and/or ASI to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, the County must either, in accordance with applicable state and federal law:

- Notify each Participant and provide each Participant an opportunity to opt out (if required); or
- Obtain from each Participant written authorization for release of the requested records.

### **3.7 HIPAA Privacy**

County shall provide ASI with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Certification that County amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to County for plan administrative purposes;
- Certification that County agrees to the conditions set forth in the plan amendment;
- Copies of any authorizations of Participants or beneficiaries to use or disclose PHI (and any later changes to or revocations of such authorizations);
- Notice of any restrictions on the use or disclosure of PHI that County agrees to under the Privacy Rule; and
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that County agrees to under the Privacy Rule.

County shall not request ASI to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by County, except that ASI may use or disclose PHI for purposes of Data Aggregation and the management and administrative activities of ASI, provided that ASI complies with Section 5 of this Agreement and Attachment 1.

## **Section 4 ASI Responsibilities**

### **4.1 Delegated Responsibilities**

ASI's responsibilities shall be expressly delegated to ASI in this Agreement (including the obligations listed in any Schedule to this Agreement) or any other written and signed Agreement between County and ASI. ASI generally provides certain reimbursement and recordkeeping services, as described further below.

## **4.2 Service Delivery**

ASI agrees to provide customer service personnel by telephone during the business hours Monday – Friday, 4 a.m. to 6 p.m. PST; Saturday 7 a.m. to 11 a.m. PST. ASI also agrees to provide electronic administrative services 24 hours per day, 7 days per week.

ASI will not be deemed in default of this Agreement, nor held responsible for any cessation, interruption or delay in the performance of its obligations hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain Internet access, or any change in or the adoption of any law, judgment or decree. ASI guarantees in the event of a disaster that disables ASI's main servers, the redundant servers will be physically moved to ASI's location, and will be up and processing within one business day.

## **4.3 Performance Guarantees**

ASI has agreed to the performance guarantees set forth in the Schedules. In the event ASI fails to meet the performance guarantees, ASI shall be subject to the penalties set forth in the Schedules. The sole remedy for failure to meet the performance guarantees shall be the penalties set forth in the Schedules. If, however, ASI consistently fails to meet the stated performance guarantees, the County may avail itself of the remedies contained in Section 9.

Nothing contained herein shall be construed to limit or restrict any rights and remedies that County may have against ASI, including but not limited to any rights and remedies arising out of or relating to: (i) ASI's breach of any provisions of this Agreement; (ii) ASI's failure to comply with any applicable Federal, state or local law and regulation; and (iii) the negligent acts or omissions or willful misconduct of ASI in its performance of this Agreement.

Nothing contained herein shall be construed to limit or diminish ASI's obligation to indemnify, defend and hold harmless County under Section 7 of this Agreement.



#### **4.4 Benefits Payment**

ASI agrees to, on behalf of County operate under the express terms of this Agreement and the Program. ASI makes the initial determination if persons covered by the Program (as described in the Eligibility Reports) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Section 4.

The Parties agree that:

- ASI will be responsible for processing Prior Reimbursement Requests (including any run-out claims submitted after the Effective Date, at no additional cost) and maintaining legally required records of all Prior Reimbursement Requests and Prior Administration sufficient to comply with applicable legal (e.g., IRS substantiation requirements);
- County shall indemnify and hold ASI harmless for any liability relating to Prior Reimbursement Requests and Prior Administration that occurred before the Effective Date as a result of the County's negligent acts or omissions or willful misconduct; and
- ASI shall indemnify, defend and hold harmless County under Section 7 of this Agreement for any liability relating to the Prior Reimbursement Requests and Prior Administration that occurred after the Effective Date as a result of ASI's negligent acts or omissions or willful misconduct.

#### **4.5 Bonding**

ASI has, and will maintain, a fidelity bond for all persons involved in collecting money or making claim payments, and all officers of the company. This bond covers the handling of County's and Participants' money and must protect such money from losses by dishonesty, theft, forgery or alteration, and unexplained disappearance.

#### **4.6 Reporting**

ASI agrees to make available to County each month via electronic medium (unless otherwise agreed by the parties) a master report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month.

For those Program benefits subject to HIPAA, County must provide certification that the plan document requires the County to comply with applicable Privacy and Security Rules under HIPAA before ASI will make available the reports provided for in this Section to the County. ASI agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month.

For those Program benefits subject to HIPAA, County is responsible for ensuring that any beneficiary of the Participant who submits a claim agrees to the disclosure of PHI to the Participant, if required by the Privacy Rule.

#### **4.7 Claims Appeals**

ASI agrees to refer to County or its designee, Plan Administrator, and/or Named Fiduciary for the following:

- The second and final level of appeal of an adverse benefit determination; and
- Any class of claims County may specify, including:
  - Questions of eligibility or entitlement of the claimant for coverage under the Program;
  - Questions with respect to the amount due; or
  - Any other appeal.

#### **4.8 Forfeited Funds**

County of Riverside will maintain a bank account that will contain funds that will be drawn down upon for claims reimbursement. The County will retain all interest and forfeitures. ASI will be responsible for reconciling ASI's disbursement account and County of Riverside will be responsible for County of Riverside's account.

At the close of the plan year, ASI will notify participants of any uncashed benefit checks and provide a thirty (30) day response. Any unclaimed benefit payments at the close of the thirty (30) day response period will be deemed forfeited. Forfeited funds remain as funds belonging to the County. The County, at its sole discretion, may choose to use such forfeited funds to offset administrative expenses.

#### **4.9 Additional Documents**

If County requires, and County and ASI mutually agree upon payment of applicable service charges, then ASI shall furnish County:

- Sample documents for review by County with its legal counsel, for creation of customized documentation for the Program to be approved and executed by County including board resolution, summary plan description, plan document and plan amendments; and
- Sample administrative forms needed for AIS to perform its duties under this Agreement.

#### **4.10 Communication**

ASI agrees to provide consulting services for and development of certain communication information.

#### **4.11 Recordkeeping**

ASI agrees to maintain for the duration of this Agreement the usual and customary books, records and documents ASI has prepared or received possession in the performance of its duties hereunder. These books, records, and documents, including electronic records, are the property of County, and County has the right of continuing access to them during normal business hours at ASI offices with reasonable prior notice.

If this Agreement terminates, ASI agrees that:

- In accordance with Attachment 1 – BAA Addendum, ASI shall, as directed by County, return or destroy all PHI and/or Electronic PHI received from the County, or created or received by ASI on behalf of the County, or if it is infeasible to return or destroy such PHI and/or Electronic PHI, ASI shall extend the protections to such PHI and/or Electronic PHI in accordance with Attachment 1 – BAA Addendum; and
- With respect to any books, records and documents which are not PHI and

Electronic PHI, ASI shall, as directed by the County, deliver all such books, records, and documents to County.

If this Agreement terminates, ASI may retain a copy of any books, records and documents which are not PHI and Electronic PHI, provided that ASI complies with all of the following:

- ASI has a legitimate purpose for the retention of such records;
- ASI shall provide written notice of such retention to the County prior to the termination of this Agreement;
- ASI shall retain a copy of such records for not more than six (6) years from the termination of this Agreement;
- ASI shall extend the protections of this Agreement to such records for so long as ASI maintains such records, including Section 10.11 (Non-Disclosure of Proprietary and Confidential Information);
- ASI shall extend its obligations to indemnify, defend and hold harmless the County pursuant to Section 7 of this Agreement for so long as ASI maintains such records; and
- ASI shall destroy its copy of such records on the expiration of the above-stated retention period, submit a written certification to County of such destruction, and thereafter retain no copies of such records.

#### **4.12 Erroneous Payments**

If ASI makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, ASI shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment.

County agrees to assist ASI in its efforts to recover such erroneous payments by sending a notice of erroneous payment to the Participant, in the event of overpayment, or to the ineligible person within 30 days of County's receipt of a written request for assistance from ASI, provided that ASI shall first make a diligent effort to recover any erroneous payment prior to submitting such request for assistance. ASI agrees that County's assistance will be limited to one (1) notice for each erroneous payment.

If ASI negligently issues an erroneous payment under this Agreement and if such

amount cannot be recovered, ASI will be liable to County for such erroneous payment. However, such liability will not extend to any claims payments incurred by the use of a participant's debit card. ASI will make a good faith effort to detect and deny payment on fraudulent claims. However, ASI will not be liable to County for erroneous payments made to a Participant for any such fraudulently submitted claims.

#### **4.13 Notices to County**

ASI shall provide to County all notices as set forth in Section 10.14 (including any required opt-out notice) reflective of its privacy policies and practices as required by state and/or federal law (including the Gramm-Leach-Bliley Act).

### **Section 5**

#### **Compliance with Privacy and Security Rules Under HIPAA**

##### **Applies to All Services, except DCAP and QTER**

#### **5.1 Compliance with Privacy and Security Rules Under HIPAA and HITECH.**

The Parties to this Agreement are subject to all relevant requirements contained in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191, enacted August 21, 1996, the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009 ("HITECH"), Public Law 111-5, enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto. The Parties shall adhere to all terms and conditions as outlined and specified in Attachment 1, Business Associate Agreement (BAA) Addendum, attached hereto and by this reference incorporated herein. The Parties agree to cooperate in accordance with the terms and intent of this Agreement and the BAA Addendum for implementation of relevant laws and/or regulations promulgated under HIPAA and HITECH, as may be amended from time to time.

### **Section 6**

#### **Payment of Benefits and Funding Responsibilities**

##### **Applies to Health FSA, DCAP, and QTER**

#### **6.1 Payment of Benefits**

County authorizes ASI to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of County for the payment of Program benefits. Each week or at such other interval as mutually agreed upon, ASI will notify County of the amount needed to pay approved benefit claims and County shall pay or transfer into the bank account the amount needed for the payment of Program benefits. County shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section. ASI has authority to provide notifications, instructions, or directions that are necessary to accomplish the disbursement of such Program funds to, or on behalf of, Participants in payment of approved claims.

## **6.2 Funding of Benefits**

Funding for any payment to, or on behalf of, Participants under the Program, including, but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of County, and County agrees to accept liability for, and provide sufficient funds to satisfy, all payments to Participants under the Program, including claims for reimbursement for covered expenses, if such expenses are incurred and the claim is presented for payment during the term of this Agreement.

## **6.3 Custodial Account**

County will advise the Participants and beneficiaries of the Program that the benefits under the Program shall at all times be paid out of the FSA assets of the County. County understands and agrees that any account maintained by ASI for the purpose of holding funds from the County or covered individual to pay benefit claims and/or Program premiums will be a custodial account maintained by ASI on behalf of its employer clients, and that any amounts attributable to the County will be accounted for separately in a notational sub-account that is fully protected by the Federal Deposit Insurance Corporation.

ASI will have no rights with respect to such funds maintained in the County's custodial account. ASI agrees that all funds in such account shall be used only as expressly set forth in this Agreement, and ASI shall not engage in any act which results or will result in a diversion of the funds in the custodial account.

## **6.4 Debit Card**

ASI agrees to:

- Process debit card swipes reported to ASI on behalf of the County;
- Request receipt notification on all swipes not eligible for electronic adjudication under the current IRS guidelines;
- Report to the debit card provider any account reimbursements that are a result of activities mentioned above; and
- Request data from debit card providers each business day to ensure participants are properly reimbursed for their expenses.

Any interchange shared between the debit card provider and ASI will be retained wholly by ASI. Any fees charged to ASI by the debit card provider shall be the responsibility of ASI, unless noted in Schedule A of this Agreement. ASI currently contracts with Evolution Benefits for the Health FSA Debit Card. Under this Agreement, ASI reserves the right to change card providers during the year, given at least 90 days notice to the County; and at no additional cost for the term of this Agreement.

## **Section 7**

### **Hold Harmless/Indemnification and Insurance**

#### **7.1 Hold Harmless/Indemnification**

**7.1.1** ASI shall indemnify and hold harmless the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability, claim, damage or action whatsoever, based or asserted upon any act or omission of ASI, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Agreement, including but not limited to property damage, bodily injury, or death. ASI shall defend, at its sole cost and expense, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, the County of Riverside, its Agencies, Districts, Special Districts and Departments, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives in any such action or claim. With respect to any action or claim subject to indemnification herein by ASI, ASI shall, at its sole cost, have the right to use counsel of its own choice

and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes ASI's indemnification of County. ASI's obligations hereunder shall be satisfied when ASI has provided to County the appropriate form of dismissal (or similar document) relieving the County from any liability for the action or claim involved. The specified insurance limits required in this Agreement shall in no way limit or circumscribe ASI's obligations to indemnify and hold harmless the County.

**7.1.2** In the event there is conflict between this clause and California Civil Code Section 2782, this clause shall be interpreted to comply with Civil Code 2782. Such interpretation shall not relieve ASI from indemnifying the County to the fullest extent allowed by law.

## **7.2 Insurance**

Without limiting or diminishing ASI's obligation to indemnify or hold the County harmless, ASI shall procure and maintain or cause to be maintained, at its sole cost and expense, the following insurance coverages during the term of this Agreement:

### **7.2.1 Workers' Compensation**

If ASI has employees as defined by the State of California, ASI shall maintain statutory Workers' Compensation Insurance (Coverage A) as prescribed by the laws of the State of California. Policy shall include Employers' Liability (Coverage B) including Occupational Disease with limits not less than **\$1,000,000** per person per accident. The policy shall be endorsed to waive subrogation in favor of the County of Riverside, and, if applicable, to provide a Borrowed Servant/Alternate Employer Endorsement.

### **7.2.2 Commercial General Liability**

Commercial General Liability insurance coverage, including but not limited to, premises liability, contractual liability, products and completed operations liability, personal and advertising injury covering claims which may arise from or out of ASI's performance of its obligations hereunder. Policy shall name all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors,



officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds. Policy's limit of liability shall not be less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit.

### **7.2.3 Vehicle Liability**

If vehicles or mobile equipment are used in the performance of the obligations under this Agreement, then ASI shall maintain liability insurance for all owned, non-owned or hired vehicles so used in an amount not less than **\$1,000,000** per occurrence combined single limit. If such insurance contains a general aggregate limit, it shall apply separately to this agreement or be no less than two (2) times the occurrence limit. Policy shall name all Agencies, Districts, Special Districts, and Departments of the County of Riverside, their respective directors, officers, Board of Supervisors, employees, elected or appointed officials, agents or representatives as Additional Insureds.

### **7.2.4 General Insurance Provisions - All lines**

a) ASI shall cause ASI's insurance carrier(s) to furnish the County of Riverside with either 1) a properly executed original Certificate(s) of Insurance and certified original copies of Endorsements effecting coverage as required herein, or 2) if requested to do so orally or in writing by the County Risk Manager, provide original Certified copies of policies including all Endorsements and all attachments thereto, showing such insurance is in full force and effect. Further, said Certificate(s) and policies of insurance shall contain the covenant of the insurance carrier(s) that thirty (30) days written notice shall be given to the County of Riverside prior to any material modification, cancellation, expiration or reduction in coverage of such insurance. In the event of a material modification, cancellation, expiration, or reduction in coverage, this Agreement shall terminate forthwith, unless the County of Riverside receives, prior to such effective date, another properly executed original Certificate of Insurance and original copies of endorsements or certified original policies, including all endorsements and attachments thereto evidencing coverage's set forth herein and the insurance required herein is in full force and effect. ***ASI shall not commence operations until the County has been furnished original Certificate (s) of Insurance and certified***

***original copies of endorsements or policies of insurance including all endorsements and any and all other attachments as required in this Section. An individual authorized by the insurance carrier to do so on its behalf shall sign the original endorsements for each policy and the Certificate of Insurance.***

b) It is understood and agreed to by the parties hereto and the insurance company(s), that the Certificate(s) of Insurance and policies shall so covenant and shall be construed as primary insurance, and the County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

c) ASI shall pass down the insurance obligations contained herein to all tiers of subcontractors working under this Agreement.

d) The insurance requirements contained in this Agreement may be met with a program(s) of self-insurance acceptable to the County.

## **Section 8 Service Charges**

### **8.1 Service Charges**

The amounts of the monthly services charges of ASI are described in the Schedules and are guaranteed for the term of this Agreement.

### **8.2 Billing of Service Charges**

All services charges of ASI, whether provided for in this or any other Section, shall be billed separately from statements for payment of claims so that proper accounting can be made by County of the respective amounts paid for claims and or administrative expenses.

### **8.3 Payment of Service Charges**

ASI will determine all service charges under this Section and bill County on monthly invoice. County shall make payment to ASI within 30 business days of receipt

of invoice notice of the amount due.

## **Section 9**

### **Termination of Agreement**

#### **9.1 Automatic Termination**

This Agreement automatically terminates on the earliest of the following:

- The effective date of any legislation which makes the Program and/or this Agreement illegal;
- The date County or ASI becomes insolvent, or bankrupt, or subject to liquidation, receivership, or conservatorship; or
- The termination date of the Program. This termination is subject to any Agreement between County and ASI regarding payment of benefits after the Program is terminated.

#### **9.2 Termination Without Cause**

Either party may terminate this Agreement without cause upon providing the other party with thirty (30) days prior written notice of termination stating the effective date of termination.

#### **9.3 Termination For Cause**

This Agreement may be terminated as of the earliest of the following:

- By ASI upon the failure of County to pay any service charges within thirty (30) business days after they are due and payable as provided in Section 8;
- By ASI upon the failure of County to perform its obligations, including its obligations as Plan Administrator and/or Named Fiduciary where applicable, and in accordance with this Agreement, including the provisions of Section 3;
- By County upon the failure of ASI to perform its obligations in accordance with this Agreement, including the provisions of Section 4;
- By either County or ASI, as of the end of the term of this Agreement, by giving the other party thirty (30) days written notice; or
- By either County or ASI, upon a material breach of the other party's duties

under this Agreement, or upon non-material breaches of a recurrent nature, after thirty (30) days notice in the event of a material breach, or sixty (60) days notice in the event of a non-material breach of a recurrent nature, and the right to cure such breach by the breaching party. In the event the breaching party fails to cure such breach in a timely manner and to the satisfaction of the non-breaching party, the non-breaching party has the right to immediately terminate the Agreement.

#### **9.4 Limited Continuation After Termination.**

If the Program is terminated, County and ASI may mutually agree in writing that this Agreement shall continue for the purpose of payment of Program benefits, expenses, or claims incurred prior to the date of Program termination. In addition, County and ASI may mutually agree in writing that this Agreement shall continue for the purpose of payment of any claims for which requests for reimbursements have been received by ASI before the date of such termination.

If this Agreement is continued in accordance with this Section 9.4, County shall pay the monthly service charges incurred during the period that this Agreement is so continued and a final termination fee equal to the final month's service charge.

#### **9.5 Survival of Certain Provisions.**

Termination of this agreement does not terminate the rights or obligations of either party arising out of the period prior to such termination. The indemnity, confidentiality, privacy, and security provisions of this Agreement shall survive its termination.

### **Section 10 General Provisions**

## **10.1 Assignment**

ASI shall not delegate or assign any interest in this Agreement, whether by operation of law or otherwise, without the prior written consent of County. Any attempt to delegate or assign any interest herein in contravention of this Section shall be deemed void and of no force or effect.

## **10.2 Payment**

In the event ASI receives payment under this Agreement which is later disallowed by County for nonconformance with the terms of the Agreement, ASI shall promptly refund the disallowed amount to the County on request; or at its option the County may offset the amount disallowed from any payment due to ASI.

## **10.3 Partial Delivery of Services**

ASI shall not provide partial delivery of services unless specifically stated in the Agreement.

## **10.4 Right to Acquire Services**

Nothing in this Agreement shall prohibit the County from acquiring the same type services from other sources, when deemed by the County to be in its best interest.

## **10.5 Compliance with Law**

ASI shall comply with all applicable Federal, State and local laws and regulations. ASI will comply with all applicable County policies and procedures. In the event that there is a conflict between the various laws or regulations that may apply, ASI shall comply with the more restrictive law or regulation.

## **10.6 Complete Agreement; Amendment**

This Agreement, including any attachments or schedules, constitutes the entire Agreement of the parties with respect to its subject matter and supersedes all prior and contemporaneous representations, proposals, discussions and communications, whether oral or in writing. This Agreement may be changed or modified only by a written amendment signed by authorized representatives of both parties.

## **10.7 Force Majeure**

In the event County is unable to comply with any provision of this Agreement due to causes beyond its reasonable control, including, but not limited to, natural disaster, acts of God, labor controversy, civil disturbance, disruption of the public markets, war or armed conflict, or the inability to obtain Internet access, or any change in or the adoption of any law, judgment or decree, County shall not be deemed in default of this Agreement for such failure to comply, nor held responsible and/or liable to Contractor for any cessation, interruption or delay in the performance of its obligations hereunder.

## **10.8 Severability; Headings**

If any term of this Agreement is declared invalid by a court, the invalid term 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 headings of sections and subsections contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

## **10.9 Compliance; Non-Waiver**

Failure by County or ASI 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 shall be valid unless in each instance the waiver or modification is accomplished pursuant to the amendment provisions of Section 10.6 of this Agreement.

## **10.10 Audits**

Each party authorized to perform audits of the records of payment to all Participants and other data specifically related to performance of the parties under this Agreement upon reasonable prior written notice to the other. Audits shall be performed during normal working hours. Audits may be performed by an agent of either party provided such agent signs an acceptable confidentiality agreement and business associate agreement required by HIPAA and the HITECH Act. Each party agrees to provide reasonable assistance and information to the auditors. Each party also agrees to provide such additional information and reports as the other party shall reasonably request.

#### **10.11 Non-Disclosure of Proprietary Information**

- **General.** Except as provided in Section 10.12 of this Agreement, County and ASI each acknowledge that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), each party has revealed and disclosed, and shall continue to reveal and disclose to the other, proprietary and/or confidential information of such party. County and ASI agree that each party shall:
  - Keep such proprietary and/or confidential information of the other party in strict confidence;
  - Not disclose proprietary and/or confidential information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and
  - Not use proprietary and/or confidential information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).
  
- **Confidential Information Defined.** Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered confidential information for purposes hereof:
  - If, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or

- If the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party.
- If such information may be subject to public disclosure under the California Public Records Act (Government Code Section 6250 et seq.) and Brown Act (Government Code Section 54950 et seq.)

For the purposes of this Section, confidential information is any information written, human-readable, machine-readable, or electronically recorded form (and legended as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records, and correspondence concerning the parties' respective businesses or finances. The terms and conditions of Section 10.11 shall survive the termination of this Agreement.

#### **10.12 Public Disclosure of Documents**

Notwithstanding any other provisions contained in this Agreement, ASI acknowledges and agrees that any proprietary and/or confidential information, communications, and documents given by or to the County and meetings involving the County may be subject to the applicable law on public disclosures and/or meetings, including California Public Records Act (Government Code Section 6250 et seq.) and Brown Act (Government Code Section 54950 et seq.). ASI further acknowledges and agrees that the County may fully comply with the requirements of such laws without the consent of ASI. The provisions of this Section 10.12 shall survive the termination of this Agreement.

#### **10.13 Dispute Resolution; Arbitration**

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the ASI's Chief Executive Officers and the County Executive Officer/Human Resources Director (or their respective designees) meet in person within 30 days of written notice of dispute issued by either party. In the event the dispute is not resolved after reasonable efforts by the parties within such 30 day period, either party may then proceed arbitration under this



Section. All disputes, controversies or claims arising out of or relating to the operation or interpretation of this Agreement shall be settled by arbitration before one arbitrator in accordance with the Commercial Rules of the American Arbitration Association. This Agreement shall be governed by the laws of the State of California. The arbitrator shall be jointly selected by the County and ASI. Any award rendered by the arbitrator shall be final and binding upon the parties and judgment upon any such award may be entered in any court having jurisdiction thereof. Arbitration shall take place in Riverside, California. The fees and expenses of the arbitrator shall be borne equally by the parties. Each party shall pay its own fees and costs relating to any arbitral proceedings, including experts' and attorneys' fees. The arbitrator shall render his/her determination in a manner consistent with the terms of this Agreement, and the arbitrator shall not be entitled to award punitive or exemplary damages.

#### **10.14 Notices and Communications**

- **Notices.** All notices provided for herein shall be sent by either:
  - Guaranteed overnight mail, with tracing capability;
  - Certified mail; or
  - First class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth below or such other addresses as either party may designate in writing to the other from time to time for such purposes.

All notices provided for herein shall be deemed given or made when received.

- **Addresses.**

County of Riverside  
Human Resources  
4080 Lemon St. 1<sup>st</sup> floor  
Riverside, CA 92502  
Attn: Benefits Manager

ASI  
201 W. Broadway #4C  
Columbia, Mo 65203

#### **10.15 Governing Law; Venue**

This Agreement shall be construed, enforced and governed by the laws of the State of California. All actions and proceedings arising in connection with this

Agreement shall be tried and litigated exclusively in the state or federal (if permitted by law and a party elects to file an action in federal court) courts located in the county of Riverside, State of California.

The provisions of the Government Claims Act (Government Code Section 900, et seq.) shall be followed first for any disputes under this Agreement.

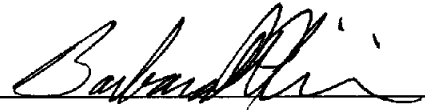
**In Witness Whereof**, County and ASI have caused this Agreement to be executed in their names by their undersigned officers, the same being duly authorized to do so.

**ATTEST:**

**COUNTY OF RIVERSIDE**

Clerk of the Board  
Kecia Harper-Ihem

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

By: \_\_\_\_\_  
Barbara Olivier, Assistant CEO/HR Director


Date: \_\_\_\_\_

Date: 12/2/10

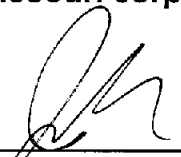
**Approved as to form:**  
Pamela J. Walls  
County Counsel

By: \_\_\_\_\_  
Chairman, Board of Supervisors

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Deputy County Counsel

**Application Software, Inc.,  
a Missouri corporation**

By: \_\_\_\_\_  
John Riddick, President

Date: 11/24/10

Attachment 1  
HIPAA Business Associate Addendum to the Agreement  
Between the County of Riverside  
and  
Application Software, Inc.

This HIPAA Business Associate Agreement (the "Addendum") supplements, and is made part of the **Administrative Service Agreement** (the "Underlying Agreement") between the County of Riverside ("County") and **Application Software, Inc.** ("Contractor") and shall be effective as of the date the Underlying Agreement is approved by both Parties (the "Effective Date").

RECITALS

WHEREAS, County and Contractor entered into the Underlying Agreement pursuant to which the Contractor provides services to County, and in conjunction with the provision of such services certain protected health information ("PHI") and/or certain electronic protected health information ("ePHI") may be created by or made available to Contractor for the purposes of carrying out its obligations under the Underlying Agreement; and,

WHEREAS, the provisions of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), Public Law 104-191 enacted August 21, 1996, and the Health Information Technology for Economic and Clinical Health Act ("HITECH") of the American Recovery and Reinvestment Act of 2009, Public Law 111-5 enacted February 17, 2009, and the laws and regulations promulgated subsequent thereto, as may be amended from time to time, are applicable to the protection of any use or disclosure of PHI and/or ePHI pursuant to the Underlying Agreement; and,

WHEREAS, County is a covered entity, as defined in the Privacy Rule; and,

WHEREAS, Contractor when a creator or recipient of, or when they have access to, PHI and/or ePHI of the County, is a business associate as defined in the Privacy Rule; and,

WHEREAS, pursuant to 42 USC §17931 and §17934, certain provisions of the Security Rule and Privacy Rule apply to a business associate of a covered entity in the same manner that they apply to the covered entity, the additional security and privacy requirements of HITECH are applicable to business associates and must be incorporated into the business associate agreement, and a business associate is liable for civil and criminal penalties for failure to comply with these security and/or privacy provisions; and,

WHEREAS, the parties mutually agree that any use or disclosure of PHI and/or ePHI must be in compliance with the Privacy Rule, Security Rule, HIPAA, HITECH and any other

applicable law; and,

WHEREAS, the parties intend to enter into this Addendum to address the requirements and obligations set forth in the Privacy Rule, Security Rule, HITECH and HIPAA as they apply to Contractor as a business associate of the County, including the establishment of permitted and required uses and disclosures of PHI and/or ePHI created or received by Contractor during the course of performing services on behalf of County, and appropriate limitations and conditions on such uses and disclosures;

NOW, THEREFORE, in consideration of the mutual promises and covenants contained herein, the parties agree as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Addendum shall have the same meaning as those terms in HITECH, HIPAA, Security Rule and/or Privacy Rule, as may be amended from time to time.
  - A. "Breach" when used in connection with PHI means the acquisition, access, use or disclosure of PHI in a manner not permitted by the Privacy Rule which compromises the security or privacy of the PHI, and shall have the meaning given such term in 45 CFR §164.402. For purposes of this definition, "compromises the security or privacy of PHI" means poses a significant risk of financial, reputational, or other harm to the individual, unless a use or disclosure of PHI does not include the identifiers listed at 45 CFR §164.514(e)(2), date of birth and zip code. Breach excludes:
    - (1) Any unintentional acquisition, access or use of PHI by a workforce member or person acting under the authority of a covered entity or business associate, if such acquisition, access or use was made in good faith and within the scope of authority and does not result in further use or disclosure in a manner not permitted under the Privacy Rule.
    - (2) Any inadvertent disclosure by a person who is authorized to access PHI at a covered entity or business associate to another person authorized to access PHI at the same covered entity, business associate, or organized health care arrangement in which the County participates, and the information received as a result of such disclosure is not further used or disclosed in a manner not permitted by subpart E of the Privacy Rule.
    - (3) A disclosure of PHI where a covered entity or business associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain such information.
  - B. "Data aggregation" has meaning given such term in 45 CFR §164.501.
  - C. "Designated record set" as defined in 45 CFR §164.501 means a group of records maintained by or for a covered entity that may include: the medical records and billing records about individuals maintained by or for a covered health care provider; the enrollment, payment, claims adjudication, and case or medical management record

systems maintained by or for a health plan; or, used, in whole or in part, by or for the covered entity to make decisions about individuals.

- D. "Electronic protected health information" ("ePHI") as defined in 45 CFR §160.103 means protected health information transmitted by or maintained in electronic media.
- E. "Electronic health record" means an electronic record of health-related information on an individual that is created, gathered, managed, and consulted by authorized health care clinicians and staff, and shall have the meaning given such term in 42 USC §17921(5).
- F. "Health care operations" has the meaning given such term in 45 CFR §164.501.
- G. "Individual" as defined in 45 CFR §160.103 means the person who is the subject of protected health information.
- H. "Person" as defined in 45 CFR §160.103 means a natural person, trust or estate, partnership, corporation, professional association or corporation, or other entity, public or private.
- I. "Privacy Rule" means the HIPAA regulations codified at 45 CFR Parts 160 and 164, Subparts A and E.
- J. "Protected health information" ("PHI") has the meaning given such term in 45 CFR §160.103, which includes ePHI.
- K. "Required by law" has the meaning given such term in 45 CFR §164.103.
- L. "Secretary" means the Secretary of the Department of Health and Human Services ("HHS").
- M. "Security Rule" means the HIPAA Regulations codified at 45 CFR Parts 160 and 164, Subparts A and C.
- N. "Unsecured protected health information" and "unsecured PHI" as defined in 45 CFR §164.402 means PHI not rendered unusable, unreadable, or indecipherable to unauthorized individuals through use of a technology or methodology specified by the Secretary in the guidance issued under 42 USC §17932(h)(2) on the HHS web site.

**2. Scope of Use and Disclosure by Contractor of County's PHI and/or ePHI.**

- A. Except as otherwise provided in this Addendum, Contractor may use, disclose, or access PHI and/or ePHI as necessary to perform any and all obligations of Contractor under the Underlying Agreement or to perform functions, activities or services for, or on behalf of, the County as specified in this Addendum, if such use or disclosure does not violate HIPAA, HITECH, the Privacy Rule and/or Security Rule.
- B. Unless otherwise limited herein, in addition to any other uses and/or disclosures permitted or authorized by this Addendum or required by law, in accordance with 45 CFR §164.504(e)(2), Contractor may:

- (1) Use PHI and/or ePHI if necessary for Contractor's proper management and administration and to carry out its legal responsibilities; and,
  - (2) Disclose PHI and/or ePHI for the purpose of Contractor's proper management and administration or to carry out its legal responsibilities, only if:
    - (a) The disclosure is required by law; or,
    - (b) Contractor obtains reasonable assurances, in writing, from the person to whom Contractor will disclose such PHI and/or ePHI that the person will:
      - (i) Hold such PHI and/or ePHI in confidence and use or further disclose it only for the purpose for which Contractor disclosed it to the person, or as required by law; and,
      - (ii) Notify Contractor of any instances of which it becomes aware in which the confidentiality of the information has been breached; and,
  - (3) Use PHI to provide data aggregation services relating to the health care operations of the County pursuant to the Underlying Agreement or as requested by the County; and,
  - (4) De-identify all PHI and/or ePHI of County received by Contractor under this Addendum provided that the de-identification conforms to the requirements of the Privacy Rule and/or Security Rule and does not preclude timely payment and/or claims processing and receipt.
- C. Notwithstanding the foregoing, in any instance where applicable state and/or federal laws and/or regulations are more stringent in their requirements than the provisions of HIPAA, including, but not limited to, prohibiting disclosure of mental health and/or substance abuse records, the applicable state and/or federal laws and/or regulations shall control the disclosure of records.

3. **Prohibited Uses and Disclosures.**

- A. Contractor may neither use, disclose, nor access PHI and/or ePHI in a manner not authorized by the Underlying Agreement or this Addendum without patient authorization or de-identification of the PHI and/or ePHI and as authorized in writing from the County.
- B. Contractor may neither use, disclose, nor access PHI and/or ePHI it receives from County or from another business associate of County, except as permitted or required by this Addendum, or as required by law.
- C. Contractor agrees not to make any disclosure of PHI and/or ePHI that County would be prohibited from making.

D. Contractor shall not use or disclose PHI for any purpose prohibited by the Privacy Rule, Security Rule, HIPAA and/or HITECH, including, but not limited to 42 USC §§17935 and 17936. Contractor agrees:

- (1) Not to use or disclose PHI for fundraising or marketing purposes, unless pursuant to the Underlying Agreement and as permitted by and consistent with the requirements of 42 USC §17936;
- (2) Not to disclose PHI, except as otherwise required by law, to a health plan for purposes of carrying out payment or health care operations, if the individual has requested this restriction pursuant to 42 USC §17935(a) and 45 CFR §164.522, and has paid out of pocket in full for the health care item or service to which the PHI solely relates; and,
- (3) Not to receive, directly or indirectly, remuneration in exchange for PHI, unless permitted by 42 USC §17935(d)(2) and with the prior written consent of County. This prohibition shall not apply to payment by County to Contractor for services provided pursuant to the Underlying Agreement.

4. **Obligations of County.**

- A. County agrees to make its best efforts to notify Contractor promptly in writing of any restrictions on the use or disclosure of PHI and/or ePHI agreed to by County that may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- B. County agrees to make its best efforts to promptly notify Contractor in writing of any changes in, or revocation of, permission by any individual to use or disclose PHI and/or ePHI, if such changes or revocation may affect Contractor's ability to perform its obligations under the Underlying Agreement, or this Addendum.
- C. County agrees to make its best efforts to promptly notify Contractor in writing of any known limitation(s) in its notice of privacy practices to the extent that such limitation may affect Contractor's use or disclosure of PHI and/or ePHI.
- D. County agrees not to request Contractor to use or disclose PHI and/or ePHI in any manner that would not be permissible under HITECH, HIPAA, the Privacy Rule, and/or Security Rule.
- E. County agrees to obtain any authorizations necessary for the use or disclosure of PHI and/or ePHI, so that Contractor can perform its obligations under this Addendum and/or Underlying Agreement.

5. **Obligations of Contractor.** In connection with the use or disclosure of PHI and/or ePHI, Contractor agrees to:

- A. Use or disclose PHI only if such use or disclosure complies with each applicable requirement of 45 CFR §164.504(e). Contractor shall also comply with the additional

privacy requirements that are applicable to covered entities in HITECH, as may be amended from time to time.

- B. Not use or further disclose PHI and/or ePHI other than as permitted or required by this Addendum or as required by law. Contractor shall promptly notify County if Contractor is required by law to disclose PHI and/or ePHI.
- C. Use appropriate safeguards to prevent use or disclosure of PHI and/or ePHI other than as provided for by this Addendum.
- D. Mitigate, to the extent practicable, any harmful effect that is known to Contractor of a use or disclosure of PHI and/or ePHI by Contractor in violation of this Addendum.
- E. Report to County any use or disclosure of PHI and/or ePHI not provided for by this Addendum or otherwise in violation of HITECH, HIPAA, the Privacy Rule, and/or Security Rule of which Contractor becomes aware.
- F. Require any subcontractors or agents to whom Contractor provides PHI and/or ePHI to agree to the same restrictions and conditions that apply to Contractor with respect to such PHI and/or ePHI, including the restrictions and conditions pursuant to this Addendum.
- G. Make available to the County or the Secretary, in the time and manner designated by the County or Secretary, Contractor's internal practices, books and records relating to the use, disclosure and privacy protection of PHI received from County, or created or received by Contractor on behalf of County, for purposes of determining, investigating or auditing Contractor's and/or County's compliance with the Privacy Rule.
- H. Request, use or disclose only the minimum amount of PHI necessary to accomplish the intended purpose of the request, use or disclosure in accordance with 42 USC §17935(b) and 45 CFR §164.502(b)(1).
- I. Comply with requirements of satisfactory assurances under 45 CFR §164.512 relating to notice or qualified protective order in response to a third party's subpoena, discovery request, or other lawful process for the disclosure of PHI, which Contractor shall promptly notify County upon Contractor's receipt of such request from a third party.
- J. Not require an individual to provide patient authorization for use or disclosure of PHI as a condition for treatment, payment, enrollment in any health plan (including the health plan administered by the County), or eligibility of benefits, unless otherwise excepted under 45 CFR §164.508(b)(4) and authorized in writing by the County.
- K. Use appropriate administrative, technical and physical safeguards to prevent inappropriate use, disclosure, or access of PHI and/or ePHI.
- L. Obtain and maintain knowledge of applicable laws and regulations related to HIPAA and HITECH, as may be amended from time to time.



6. **Access to PHI, Amendment and Disclosure Accounting.** Contractor agrees to:

A. **Access to PHI and electronic health record.** Provide access to PHI in a designated record set to the County or an individual as directed by the County, within five (5) days of request from County, to satisfy the requirements of 45 CFR §164.524. If Contractor uses or maintains electronic health records, Contractor shall, at the request of County, provide electronic health records in electronic format to enable County to fulfill its obligations under 42 USC §17935(e).

B. **Amendment of PHI.** Make PHI available for amendment and incorporate amendments to PHI in a designated record set the County directs or agrees to at the request of an individual, within thirty (30) days of receiving a written request from County, in accordance with 45 CFR §164.526.

C. **Accounting of disclosures of PHI and electronic health record.** Assist the County to fulfill its obligations to provide accounting of disclosures of PHI under 45 CFR §164.528 and, where applicable, electronic health records under 42 USC §17935(c) if Contractor uses or maintains electronic health records. Contractor shall:

(1) Document such disclosures of PHI and/or electronic health records, and information related to such disclosures, as would be required for the County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record in accordance with 45 CFR §164.528.

(2) Within thirty (30) days of receiving a written request from County, provide to County or any individual as directed by County information collected in accordance with this section to permit the County to respond to a request by an individual for an accounting of disclosures of PHI and/or electronic health record.

(3) Make available for the County information required by this section for six (6) years preceding the individual's request for accounting of disclosures of PHI, and for three (3) years preceding the individual's request for accounting of disclosures of electronic health record.

7. **Security of ePHI.** In the event Contractor needs to create, receive, or have access to County ePHI, in accordance with 42 USC §17931 and 45 CFR §§164.314(a)(2)(i), and 164.306, Contractor shall:

A. Implement the administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of ePHI that Contractor creates, receives, maintains, or transmits on behalf of County as required by the Security Rule, including without limitations, each of the requirements of the Security Rule at 45 CFR §§164.308, 164.310, and 164.312;

B. Comply with each of the requirements of 45 CFR §164.316 relating to the implementation of policies, procedures and documentation requirements with respect to ePHI;

C. Protect against any reasonably anticipated threats or hazards to the security or integrity of ePHI;

- D. Protect against any reasonably anticipated uses or disclosures of ePHI that are not permitted or required under the Privacy Rule;
  - E. Ensure compliance by Contractor's workforce;
  - F. Ensure that any agent, including a subcontractor, to whom it provides ePHI agrees to implement reasonable appropriate safeguards to protect it;
  - G. Report to County any security incident of which Contractor becomes aware; and,
  - H. Comply with any additional security requirements that are applicable to covered entities in Title 42 (Public Health and Welfare) of the United States Code, as may be amended from time to time, including but not limited to HITECH.
8. **Breach of Unsecured PHI.** In the case of breach of unsecured PHI, Contractor shall comply with the applicable provisions of 42 USC §17932 and 45 CFR Part 164, Subpart D, including but not limited to 45 CFR §164.410.
- A. **Discovery and notification.** Following the discovery of a breach of unsecured PHI, Contractor shall notify the County in writing of such breach without unreasonable delay and in no case later than 60 calendar days after discovery of a breach, except as provided in 45 CFR §164.412.
    - (1) Breaches treated as discovered. A breach is treated as discovered by Contractor as of the first day on which such breach is known to Contractor or, by exercising reasonable diligence, would have been known to Contractor, which includes any person, other than the person committing the breach, who is an employee, officer, or other agent of Contractor (determined in accordance with the federal common law of agency).
    - (2) Content of notification. The written notification to County relating to breach of unsecured PHI shall include, to the extent possible, the following information if known (or can be reasonably obtained) by Contractor:
      - (a) The identification of each individual whose unsecured PHI has been, or is reasonably believed by Contractor to have been accessed, acquired, used or disclosed during the breach;
      - (b) A brief description of what happened, including the date of the breach and the date of the discovery of the breach, if known;
      - (c) A description of the types of unsecured PHI involved in the breach, such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved;
      - (d) Any steps individuals should take to protect themselves from potential harm resulting from the breach;
      - (e) A brief description of what Contractor is doing to investigate the breach, to mitigate harm to individuals, and to protect against any further breaches; and,

- (f) Contact procedures for individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- B. **Cooperation.** With respect to any breach of unsecured PHI reported by Contractor, Contractor shall cooperate with County and shall provide County with any information requested by County to enable County to fulfill in a timely manner its own reporting and notification obligations, including but not limited to providing notice to individuals, media outlets and the Secretary in accordance with 42 USC §17932 and 45 CFR §§ 164.404, 164.406 and 164.408.
- C. **Breach log.** To the extent breach of unsecured PHI involves less than 500 individuals, Contractor shall maintain a log or other documentation of such breaches and provide such log or other documentation on an annual basis to the County not later than fifteen (15) days after the end of each calendar year for submission to the Secretary.
- D. **Delay of notification authorized by law enforcement.** If Contractor delays notification of breach of unsecured PHI pursuant to a law enforcement official's statement that required notification, notice or posting would impede a criminal investigation or cause damage to national security, Contractor shall maintain documentation sufficient to demonstrate its compliance with the requirements of 45 CFR §164.412.
- E. **Payment of costs.** With respect to any breach of unsecured PHI caused solely by the Contractor's failure to comply with one or more of its obligations under this Addendum and/or the provisions of HITECH, HIPAA, the Privacy Rule or the Security Rule, Contractor agrees to pay any and all costs associated with providing all legally required notifications to individuals, media outlets, and the Secretary. This provision shall not be construed to limit or diminish Contractor's obligations to indemnify, defend and hold harmless the County under Section 9 of this Addendum.

9. **Hold Harmless/Indemnification.**

- A. Contractor agrees to indemnify and hold harmless County, all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents and representatives from any liability whatsoever, based or asserted upon any services of Contractor, its officers, employees, subcontractors, agents or representatives arising out of or in any way relating to this Addendum, including but not limited to property damage, bodily injury, death, or any other element of any kind or nature whatsoever arising from the performance of Contractor, its officers, agents, employees, subcontractors, agents or representatives from this Addendum. Contractor shall defend, at its sole expense, all costs and fees, including but not limited to attorney fees, cost of investigation, defense and settlements or awards, of County, all Agencies, Districts, Special Districts and Departments of the County, their respective directors, officers, Board of Supervisors, elected and appointed officials, employees, agents or representatives in any claim or action based upon such alleged acts or omissions.
- B. With respect to any action or claim subject to indemnification herein by Contractor, Contractor shall, at their sole cost, have the right to use counsel of their choice, subject to

the approval of County, which shall not be unreasonably withheld, and shall have the right to adjust, settle, or compromise any such action or claim without the prior consent of County; provided, however, that any such adjustment, settlement or compromise in no manner whatsoever limits or circumscribes Contractor's indemnification to County as set forth herein. Contractor's obligation to defend, indemnify and hold harmless County shall be subject to County having given Contractor written notice within a reasonable period of time of the claim or of the commencement of the related action, as the case may be, and information and reasonable assistance, at Contractor's expense, for the defense or settlement thereof. Contractor's obligation hereunder shall be satisfied when Contractor has provided to County the appropriate form of dismissal relieving County from any liability for the action or claim involved.

- C. The specified insurance limits required in the Underlying Agreement of this Addendum shall in no way limit or circumscribe Contractor's obligations to indemnify and hold harmless the County herein from third party claims arising from issues of this Addendum.
  - D. In the event there is conflict between this clause and California Civil Code §2782, this clause shall be interpreted to comply with Civil Code §2782. Such interpretation shall not relieve the Contractor from indemnifying the County to the fullest extent allowed by law.
  - E. In the event there is a conflict between this indemnification clause and an indemnification clause contained in the Underlying Agreement of this Addendum, this indemnification shall only apply to the subject issues included within this Addendum.
10. **Term.** This Addendum shall commence upon the Effective Date and shall terminate when all PHI and/or ePHI provided by County to Contractor, or created or received by Contractor on behalf of County, is destroyed or returned to County, or, if it is infeasible to return or destroy PHI and/ePHI, protections are extended to such information, in accordance with section 11.B of this Addendum.

11. **Termination.**

- A. **Termination for Breach of Contract.** A breach of any provision of this Addendum by either party shall constitute a material breach of the Underlying Agreement and will provide grounds for terminating this Addendum and the Underlying Agreement with or without an opportunity to cure the breach, notwithstanding any provision in the Underlying Agreement to the contrary. Either party, upon written notice to the other party describing the breach, may take any of the following actions:
  - (1) Terminate the Underlying Agreement and this Addendum, effective immediately, if the other party breaches a material provision of this Addendum.
  - (2) Provide the other party with an opportunity to cure the alleged material breach and in the event the other party fails to cure the breach to the satisfaction of the non-breaching party in a timely manner, the non-breaching party has the right to immediately terminate the Underlying Agreement and this Addendum.
  - (3) If termination of the Underlying Agreement is not feasible, the non-breaching party may report the problem to the Secretary, and upon the non-breaching party's request, the

breaching party at its own expense shall implement a plan to cure the breach and report regularly on its compliance with such plan to the non-breaching party.

**B. Effect of Termination.**

- (1) Upon termination of this Addendum, for any reason, Contractor shall return or destroy all PHI and/or ePHI received from the County, or created or received by the Contractor on behalf of the County, and, in the event of destruction, Contractor shall certify such destruction, in writing, to County. This provision shall apply to all PHI and/or ePHI which are in the possession of subcontractors or agents of Contractor. Contractor shall retain no copies of PHI and/or ePHI, except as provided below in paragraph (2) of this section.
- (2) In the event that Contractor determines that returning or destroying the PHI and/or ePHI is not feasible, Contractor shall provide written notification to County of the conditions that make such return or destruction not feasible. Upon determination by Contractor that return or destruction of PHI and/or ePHI is not feasible, Contractor shall extend the protections of this Addendum to such PHI and/or ePHI and limit further uses and disclosures of such PHI and/or ePHI to those purposes which make the return or destruction not feasible, for so long as Contractor maintains such PHI and/or ePHI.

**12. General Provisions.**

- A. **Amendment.** The parties agree to take such action as is necessary to amend this Addendum from time to time as is necessary for County to comply with HITECH, the Privacy Rule, Security Rule, and HIPAA generally.
- B. **Survival.** The obligations of Contractor under Sections 3, 5, 6, 7, 8, 9 and 11.B of this Addendum shall survive the termination or expiration of this Addendum.
- C. **Regulatory and Statutory References.** A reference in this Addendum to a section in HITECH, HIPAA, the Privacy Rule and/or Security Rule means the section(s) as in effect or as amended.
- D. **Conflicts.** The provisions of this Addendum shall prevail over any provisions in the Underlying Agreement that conflict or appear inconsistent with any provision in this Addendum.
- E. **Interpretation of Addendum.**
  - (1) This Addendum shall be construed to be part of the Underlying Agreement as one document. The purpose is to supplement the Underlying Agreement to include the requirements of the Privacy Rule, Security Rule, HIPAA and HITECH.
  - (2) Any ambiguity between this Addendum and the Underlying Agreement shall be resolved to permit County to comply with the Privacy Rule, Security Rule, HIPAA and HITECH generally.

## **Attachment 2**

### **Glossary**

For the purposes of this Agreement, the following words and phrases have the meanings set forth below. Wherever appropriate, the singular shall include the plural and the plural shall include the singular.

**Agreement** means this ASI Administrative Services Agreement between the County of Riverside, including all Schedules hereto and Attachments.

**COBRA** means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.

**Code** means the Internal Revenue code of 1986, as amended.

**DCAP** has the meaning given in the Recitals.

**Eligibility Reports** has the meaning described in Section 3.

**Effective Date** has the meaning given in Section 1.

**Electronic PHI** has the meaning assigned to such term under HIPAA regulations at 45 C.F.R. §160.103.

**Health FSA** has the meaning given in the Recitals.

**HIPAA** means the Health Insurance Portability and Accountability Act of 1996, as amended.

**Named Fiduciary** means the County of Riverside..

**Participant** has the meaning given in Section 2.

**PHI** has the meaning assigned to such term under HIPAA regulations at 45 C.F.R. §160.103.

**Plan** means the Health FSA or DCAP, as applicable.

**Plan Administrator** means the County of Riverside.

**Prior Administration** means services arising prior to the Effective Date.

**Prior Reimbursement Request** means claims incurred prior to the Effective Date.

**Program** has the meaning given in the Recitals.

**Protected Health Information** or **PHI** has the meaning assigned to such term under HIPAA.

**Runoff period** means the period of time during which claims, incurred during the plan year but not submitted before the end of the plan year, are paid.

**Schedule A**  
**Health Flexible Spending Account (Health FSA)**

Capitalized terms used in this Schedule but not defined have the meanings given in this Agreement.

County has established an Internal Revenue Service (IRS) Code Section 125 Cafeteria Plan under which a Code Section 105 Health FSA is offered. County has delegated certain administrative responsibilities with respect to the Health FSA to ASI.

As set forth in Section 8 of the Agreement, the applicable service charges shall be as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PEPM Service Charge	\$3.00*
<b>Health Care FSA Debit Card</b>	<b>Cost</b>
PPPM Distributed Card	\$1.00
Replacement Debit Card**	\$10.00
Co-branded Card with County of Riverside Logo	\$750
<b>Additional Service Charges</b>	<b>Cost</b>
Set-Up Fee	Waived
Sample Documents and Forms	Included
Staff Training	Included
Online Enrollment	Included
Open Enrollment Meetings	Included
Discrimination Testing (ASI will conduct)	Included
Form 5500 Preparation	Included
Summary Annual Reports	Included

\*The proposed fee structure is guaranteed for a period of five (5) years.

\*\*Charged to the participants FSA account.

If the County terminates the services, there will be a charge for a runoff period not to exceed the standard service charges, should the County choose to request one.



## **Services Included**

County is responsible for all legal requirement and administrative obligations with regard to the Health FSA, except for the following administrative duties specifically delegated to ASI:

- ASI shall make available (by electronic medium and paper copy) enrollment, reimbursement forms, instructions for filing Participant claims, and other Health FSA documents.
- Upon receiving instructions from County with regard to Participant's change in status or other event that permits an election change under IRS regulations, ASI shall make the requested change in the Participant's election within 24-48 hours of notification.
- Upon County's request, ASI shall prepare the information necessary to enable County to satisfy its Form 5500 filing obligation with regard to the Health FSA. The County shall be responsible for reviewing the information provided by ASI to ensure its accuracy, and, unless otherwise agreed by the parties in writing, ASI shall prepare and County shall submit any Form 5500.
- Upon County's request, ASI shall prepare preliminary, mid-year, and final nondiscrimination tests for the Health FSA:
  - ✦ Key employee concentration testing required under Code Section 125;
  - ✦ The 55% average benefits test required under Code Section 129; and
  - ✦ The 25% shareholder concentration test required under Code Section 129.
- ASI shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due within one (1) business day of the day on which ASI receives the claim. Benefit payments shall be made by ACH or check payable to the Participant. If the amount of the claim exceeds the amount the Participant has had withheld to date, ASI will contact County to make available such excess amount.

## **Services Not Included**

- County's compliance with COBRA or compliance with HIPAA portability

provisions (except as may be delegated in Schedule D).

- County's responsibility for the determination on the second and any final level of appeal.

### **Performance Guarantees**

ASI agrees to the performance guarantees set forth in Schedule E, and the penalty for non-conformance.

**Schedule B**  
**Dependent Care Reimbursement Account (DCRA)**

Capitalized terms used in this Schedule but not defined have the meanings given in this Agreement.

County has established an Internal Revenue Service (IRS) Code Section 125 Cafeteria Plan under which a Code Section 129 Dependent Care Reimbursement Account is offered. County has delegated certain administrative responsibilities with respect to the DCRA to ASI.

As set forth in Section 8 of the Agreement, the applicable service charges shall be as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PEPM Service Charge	\$3.00*
<b>Additional Service Charges</b>	<b>Cost</b>
Set-Up Fee	Waived
Sample Documents and Forms	Included
Staff Training	Included
Online Enrollment	Included
Open Enrollment Meetings	Included
Discrimination Testing (ASI will conduct)	Included
Form 5500 Preparation	Included
Summary Annual Reports	Included

\*The proposed fee structure is guaranteed for a period of five (5) years.

If the County terminates the services, there will be a charge for a runoff period not to exceed the standard service charges, should the County choose to request one.

**Services Included**

County is responsible for all legal requirements and administrative obligations with regard to the DCRA, except for the following administrative duties specifically delegated to ASI:

- ASI shall make available (be electronic medium and paper copy) enrollment and

reimbursement forms and instructions for filing Participant claims. Upon payment of additional fees, ASI shall make available other DCRA documents.

- Upon receiving instructions from County with regard to a Participant's change in status or other event that permits an election change under IRS regulations, ASI shall make the requested change in the Participant's election within 24-48 hours of notification.
- Upon County's request, ASI will prepare preliminary, mid-year, and final nondiscrimination tests for the DCRA:
  - ✦ Key employee concentration testing required under Code Section 125;
  - ✦ The 55% average benefits test required under Code Section 129; and
  - ✦ The 25% shareholder concentration test required under Code Section 129.
- ASI shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due within one (1) business day of the day on which ASI receives the claim. Benefit payments shall be made by check payable to the Participant.
- ASI shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate period of time for the Participant to resubmit the claim.

### **Services Not Included**

- County's responsibility for the determination on the second and any final level of appeal.

### **Performance Guarantees**

ASI agrees to the performance guarantees set forth in Schedule E, and the penalty for non-conformance.

**Schedule C**  
**Qualified Transportation Expense Reimbursement (QTER)**

Capitalized terms used in this Schedule but not defined have the meanings given in this Agreement.

County has established a Qualified Transportation Expense Reimbursement Policy under Internal Revenue Service (IRS) Code Section 132. County has delegated certain administrative responsibilities with respect to the QTER to ASI.

As set forth in Section 8 of the Agreement, the applicable service charges shall be as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PEPM Service Charge	\$3.00*
<b>Additional Service Charges</b>	<b>Cost</b>
Set-Up Fee	Waived
Sample Documents and Forms	Included
Staff Training	Included
Online Enrollment	Included
Open Enrollment Meetings	Included
Discrimination Testing (ASI will conduct)	Included
Form 5500 Preparation	Included
Summary Annual Reports	Included

\*The proposed fee structure is guaranteed for a period of five (5) years.

\*\*Charged to the participants FSA account.

There is no minimum service charge for this plan. If a plan Participant is enrolled in the Health FSA, DCRA, and QTER programs, service charges will not exceed \$6.00 per employee per month ("PEPM").

If the County terminates the services, there will be a charge for a runoff period not to exceed the standard service charges, should the County choose to request one.

## **Services Included**

County is responsible for all legal requirement and administrative obligations with regard to the QTER, except for the following administrative duties specifically delegated to ASI:

- ASI shall make available (by electronic medium and paper copy) enrollment, reimbursement forms, instructions for filing Participant claims, and other documents.
- Upon receiving instructions from County with regard to Participant's change in status or other event that permits an election change under IRS regulations, ASI shall make the requested change in the Participant's election within 24-48 hours of notification.
- Upon County's request, ASI shall prepare the information necessary to enable County to satisfy its Form 5500 filing obligation with regard to the QTER. The County shall be responsible for reviewing the information provided by ASI to ensure its accuracy, and, unless otherwise agreed by the parties in writing, ASI shall prepare and County shall submit any Form 5500.
- Upon County's request, ASI will prepare preliminary, mid-year, and final nondiscrimination tests for the QTER:
  - ✦ Key employee concentration testing required under Code Section 125;
  - ✦ The 55% average benefits test required under Code Section 129; and
  - ✦ The 25% shareholder concentration test required under Code Section 129.
- ASI shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due within one (1) business day of the day on which ASI receives the claim. Benefit payments shall be made by ACH or check payable to the Participant. If the amount of the claim exceeds the amount the Participant has had withheld to date, ASI will contact County to make available such excess amount.

## **Services Not Included**

- County's compliance with COBRA or compliance with HIPAA portability

provisions (except as may be delegated in Schedule D).

- County's responsibility for the determination on the second and any final level of appeal.

### **Performance Guarantees**

ASI agrees to the performance guarantees set forth in Schedule E, and the penalty for non-conformance.

**Schedule D**  
**COBRA and/or HIPAA Portability Administration**

Capitalized terms used in this Schedule but not defined have the meanings given in the Agreement to which this Schedule is attached.

County has requested ASI to provide COBRA administrative services for the following employee welfare benefit plans established by County:

- Health Flexible Spending Account (Health FSA)

County has requested ASI to provide HIPAA portability administrative services for the following employee welfare benefit plans established by County:

- Health Flexible Spending Account (Health FSA)

As set forth in Section 8 of the Agreement, the applicable service charges shall be as follows:

<b>Standard Services Charges</b>	<b>Cost</b>
PEPM Service Charge	\$3.00*
<b>Additional Service Charges</b>	<b>Cost</b>
Set-Up Fee	Waived
Sample Documents and Forms	Included
Staff Training	Included
Online Enrollment	Included
Open Enrollment Meetings	Included
Discrimination Testing (ASI will conduct)	Included
Form 5500 Preparation	Included
Summary Annual Reports	Included

There is no minimum monthly service charge fee for the services.

If the County terminates the services, there will be a charge for a runoff period not to exceed the standard service charges, should the County choose to request one.



## **Services Included**

County is responsible for all legal requirements and administrative obligations with regard to the COBRA and/or HIPAA Portability Administration, except for the following administrative duties specifically delegated to ASI:

- Distribute the initial COBRA notice and election notice.
- Process election forms submitted by qualified beneficiaries.
- Distribute notices for annual enrollment for qualified beneficiaries.
- Distribute notice of ineligibility upon a determination of ineligibility.
- Process premiums paid by qualified beneficiaries.
- Provide notice if change in premium payment.
- Send notice of termination where applicable.
- Respond to inquires by providers.
- Provide certificates of creditable coverage.
- Provide notice of insufficient premium payment where applicable.
- ASI shall provide its standard reporting package for exchanging information.

## **Performance Guarantees**

ASI agrees to the performance guarantees set forth in Schedule E, and the penalty for non-conformance.

**Schedule E**  
**Performance Guarantees**

ASI agrees to provide the following levels of service in the performance of its obligations under the Agreement and Schedules A, B, C and D. Should the following performance guarantees not be met by ASI, ASI shall be subject to a penalty for non-conformance. The penalty for non-conformance is the percentage at risk of the applicable fees in the month that the violation occurs.

<b>Category</b>	<b>Standard Performance</b>	<b>Percent at Risk*</b>
Eligibility	Contributions will be posted within 2 business days of receipt	2%
Claims Turnaround	99% of all claims will be paid within 5 business days of receipt	2%
Customer Service Response Time	Average answer time will not exceed 10 seconds	2%
Account Management	ASI is willing to have the County provide an annual review of its Account Management response time, knowledge of account, and ability to resolve account issues, and the results of this review be used to determine if ASI passed or failed.	2%
Reporting	99% of all regular management reports will be provided in the timeframe requested.	2%
Implementation	ASI is willing to have the County review and grade ASI's implementation process, which includes delivery time, transition of reports and data, and ability to seamlessly process claims, and the results of this review be used to determine if ASI passed or failed.	2%

