

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



ITEM: 3.30
(ID # 17730)

MEETING DATE:

Tuesday, December 14, 2021

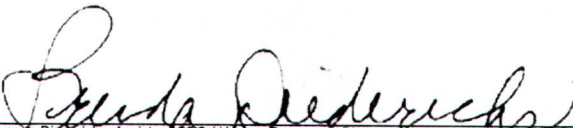
FROM : HUMAN RESOURCES:

SUBJECT: HUMAN RESOURCES: Approve the Administrative Service Agreement with Application Software, Inc. for the County's Flexible Spending Account programs through December 31, 2026, All Districts. [Total Cost \$0]

RECOMMENDED MOTION: That the Board of Supervisors:

1. Approve the Administrative Service Agreement between County of Riverside and Application Software, Inc. (Attachment A) for the County's Flexible Spending Account programs, effective January 1, 2022 through December 31, 2026, and Authorize the Chair of the Board to sign three (3) copies of the agreement on behalf of the County; and
2. Direct the Clerk of the Board to retain one (1) copy of the Administrative Service Agreement and return two (2) copies of the agreement to Human Resources for distribution.

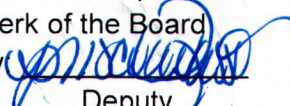
ACTION:Policy


Brenda Diederichs, Assistant CEO / Human Resources Director 11/30/2021

MINUTES OF THE BOARD OF SUPERVISORS

On motion of Supervisor Washington, seconded by Supervisor Spiegel and duly carried by unanimous vote, IT WAS ORDERED that the above matter is approved as recommended

Ayes: Jeffries, Spiegel, Washington, Perez and Hewitt
Nays: None
Absent: None
Date: December 14, 2021
xc: HR

Kecia R. Harper
Clerk of the Board
By 
Deputy

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

FINANCIAL DATA	Current Fiscal Year:	Next Fiscal Year:	Total Cost:	Ongoing Cost
COST	\$0	\$0	\$0	\$0
NET COUNTY COST	\$0	\$0	\$0	\$0
SOURCE OF FUNDS:			Budget Adjustment:	No
			For Fiscal Year:	
			FY 21/22–26/27	

C.E.O. RECOMMENDATION: Approve

BACKGROUND:

Summary

The Flexible Benefits Program was first adopted as of November 20, 1986 to allow employees to select among various non-taxable benefits and cash compensation. The County offers a Flexible Spending Account (FSA) Program which allows eligible employees to make pre-tax contributions to Health Care Reimbursement (HCFSA) and Dependent Care Reimbursement (DCFSA) plans established under Internal Revenue Code Section 125. The establishment of the Flexible Spending Account Program was approved by the Board on August 10, 1999, Item 3.62. Administrative services for the HCFSA and DCFSA plans are presently provided by Application Software, Inc. (ASI), pursuant to the administrative services contract originally approved by the Board on September 28, 2010, Item 3.52. The County, through the Human Resources Director, is the plan administrator.

Prev. Agn. Ref: 9/28/10, Item 3.52 Districts: ALL

Impact on Residents and Businesses

There is no direct impact to residents or businesses in the County of Riverside.

SUPPLEMENTAL

Additional Fiscal Information

There is no direct cost to the County for the recommended action. The County's FSA is funded by a combination of participant fees charged to the department and unused account balances that are forfeited under the IRS regulations at the end of each plan year. Therefore, there is no additional cost to the County for these services.

Contract History and Price Reasonableness

ASI is a Third-Party Administrator of employee benefit programs and has over 400 clients nationwide. With exceptional customer service and support teams, ASI is known as a premier third-party benefit administrator in the benefits industry for managing Flexible Spending Accounts.

ATTACHMENTS:

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

ATTACHMENT A. Administrative Service Agreement Between County of Riverside and
Application Software, Inc.



Meghan Hahn, Senior Management Analyst

12/5/2021



Gregory V. Priamos, Director County Counsel

12/2/2021

**Administrative Service Agreement
Between County of Riverside and Application Software, Inc.**

This Administrative Service Agreement ("Agreement") is made and entered into effective the 1st day of January 2022, by and between the County of Riverside ("County"), a political subdivision of the State of California, and Application Software, Inc., dba ASIFlex ("ASI"), a Missouri corporation.

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 the County: (i) Health Care Flexible Spending Account ("Health FSA") as described in Schedule A, and (ii) Dependent Care Flexible Spending Account ("Dependent FSA") as described in Schedule B, which are collectively referred to as "Program" or "Programs"; and

WHEREAS, County has also requested ASI to provide COBRA and/or HIPAA Portability administrative services for the Health FSA as described in Schedule C.

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 The initial term shall be for one (1) year, commencing on January 1, 2022 ("Effective Date") through December 31, 2022, and shall automatically renew in one year periods for up to four (4) successive years, unless this Agreement is earlier terminated pursuant to Section 9.

**Section 2
Scope of Undertaking**

2.1 Scope of Undertaking.

County 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 the County. County 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 the County. ASI shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. Except as otherwise expressly set forth herein, ASI generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by the County 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 the County or to 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 Programs established by the County.

2.3 Limited Fiduciary Duties

Notwithstanding the foregoing, the County delegates to ASI certain functions which are deemed to be of a fiduciary nature, including the 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 the County for the payment of Program benefits claims as set forth in Section 6, as further described in Schedules A, B and/or C.

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 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. Eligibility Reports should be provided to ASI by electronic medium. 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.

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 set forth 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 Protected Health Information ("PHI") and, when transmitted by or maintained in electronic media, is electronic PHI, which are 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 Human Resources 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. 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 the Program 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 respective 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 HIPAA 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 5.2.3 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 by written amendment signed by 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. If ASI consistently fails to meet the stated performance guarantees, the County may avail itself of the remedies set forth 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) and 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 shall make the initial determination as to whether 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.

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 ASI. 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: (i) Questions of eligibility or entitlement of the claimant for coverage under the Program; (ii) Questions with respect to the amount due; or (iii) Any other appeal.

4.8 Forfeited Funds

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

Any unclaimed benefit payments will be deemed forfeited. Forfeited funds remain as funds belonging to the County. 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 ASI to perform its duties under this Agreement.

4.10 Communication

ASI agrees to provide consulting services for the 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.

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

Contract Materials and Confidentiality

5.1 Ownership of Contract Materials

5.1.1 "Contract Materials" mean: (a) all materials, reports, findings, data or documents in any form, including electronic, created, compiled or assembled by ASI under this Agreement; and (b) all information relating to claims in any form, including electronic, which are created by, made available to, or maintained by ASI for purposes of carrying out its obligations under this Agreement, including, but not limited to, information which ASI receives from County, claimants or third parties.

5.1.2 All Contract Materials are the sole property of the County. ASI may use or access the Contract Materials as necessary to perform its obligations under this Agreement. ASI agrees not to release or circulate in whole or in part such Contract Materials without the prior written authorization of the County.

5.1.3 Upon the expiration or termination of this Agreement, ASI shall deliver, in an electronic form, to the County or its designee, any and all Contract Materials, including but not limited to, the hardcopy and imaged files that ASI has maintained. ASI will encrypt any electronic data relating to Program prior to such delivery.

5.1.4 If ASI, within seven (7) years from the date of expiration or termination of this

Agreement, is subject to audit, claim or lawsuit related to this Agreement, ASI may submit a written request to the County to inspect and copy the hardcopy or imaged files for claims, which was previously maintained by ASI on behalf of County. To the extent legally permissible, the County agrees to grant such request provided that ASI agrees in writing to terms and conditions as determined by the County to be appropriate, including without limitations, to ensure compliance with all applicable laws and to ensure the confidentiality and security of claims.

5.2 Confidentiality

5.2.1 ASI shall not use for personal gain or make other improper use of Confidential Information which is acquired in connection with this Agreement. The term "Confidential Information" includes but is not limited to: all records, reports and information pertaining to Participants under the Program; medical, personnel or security records; and County information or data which is not subject to public disclosure. If ASI is requested or required to disclose any Confidential Information, ASI shall promptly notify the County.

5.2.2 ASI shall protect from unauthorized disclosure names, other identifying information, and any other information relating to any County employees receiving services pursuant to this Agreement ("Employee Data"). ASI shall not use Employee Data for any purpose other than carrying out ASI's obligations under this Agreement. ASI shall promptly transmit to the County all third party requests for disclosure of Employee Data not emanating from the Participant who is the subject of such information. Except as otherwise specifically permitted by this Agreement, or authorized by the Participant who is the subject of Employee Data, or authorized in advance in writing by the County, ASI shall not disclose any Employee Data to anyone other than the County. For purposes of this paragraph, identity shall include, but not be limited to, name, identifying number, symbol, or other identifying particulars assigned to the individual, such as finger or voice print or a photograph.

5.2.3 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 related relevant 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, Dependent FSA

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 Health FSA or the Dependent FSA assets of the County, as applicable. 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 Health FSA 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.

ASI currently subcontracts with WEX Health, Inc. a Delaware Corporation, to issue Health FSA debit cards. ASI may change the foregoing debit card provider provided that any change shall not result in additional cost to the County for the term of this Agreement. 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.

Section 7

Hold Harmless/Indemnification and Insurance

7.1 Hold Harmless/Indemnification

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 (individually and collectively hereinafter referred to as "Indemnitees") from any liability, claim, damage or action whatsoever, based or asserted upon any services 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, death or any other element of any kind or nature whatsoever arising from the performance of ASI, its officers, employees, subcontractors, agents or representatives Indemnitors from this Agreement. ASI shall defend, at its sole cost and expense, the Indemnitees (including but not limited to attorney fees, cost of investigation, defense and settlements or awards) in any claim or action based upon such alleged acts omissions or services of ASI. With respect to any action or claim subject to indemnification herein by ASI, ASI shall, at their 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 to Indemnitees as set forth herein.

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 Indemnitees herein from third party claims.

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 Professional Liability

ASI shall maintain Professional Liability Insurance providing coverage for the performance of work included within this Agreement, with a limit of liability of not less than **\$1,000,000** per occurrence and **\$2,000,000** annual aggregate. If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and ASI shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that CONTRACTOR has Maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

7.2.5 General Insurance Provisions - All lines

a) Any insurance carrier providing insurance coverage hereunder shall be admitted to the State of California and have an A M BEST rating of not less than A: VIII (A:8) unless such requirements are waived, in writing, by the County Risk Manager. If the County's Risk Manager waives a requirement for a particular insurer such waiver is only valid for that specific insurer and only for one policy term.

b) ASI must declare its insurance self-insured retention for each coverage required herein. If any such self-insured retention exceed **\$500,000** per occurrence each such retention shall have the prior written consent of the County Risk Manager before the commencement of operations under this Agreement. Upon notification of self-insured retention unacceptable to the COUNTY, and at the election of the County's Risk Manager, ASI's carriers shall either; 1) reduce or eliminate such self-insured retention as respects this Agreement with the COUNTY, or 2) procure a bond which guarantees payment of losses and related investigations, claims administration, and defense costs and expenses.

c) 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.*

d) 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.

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

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

g) ASI agrees to notify COUNTY of any claim by a third party or any incident or event that may give rise to a claim arising from the performance of this Agreement.

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 the County of the respective amounts paid for claims and/or administrative expenses.

8.3 Payment of Service Charges

ASI shall submit monthly invoices to County for services rendered by ASI pursuant to this Agreement based upon the rates set forth in Schedules A and B. County shall make payment to ASI within 30 business days of County's receipt of the invoice notice of the amount due.

Section 9

Termination of Agreement

9.1 Termination Without Cause

Either party may terminate this Agreement without cause upon providing the other party with at least ninety (90) days prior written notice of termination stating the effective date of termination.

9.2 Termination For Cause

9.2.1 Either party may, upon 5 days written notice to the other party, terminate this Agreement for cause due to the other party's breach of any material term of this Agreement, provided that written notice of breach was given to the breaching party and the breaching party failed to cure such breach within 30 days.

9.2.2 Either party may, upon written notice to the other party, terminate this Agreement immediately due to the other party's filing of bankruptcy, insolvency or for reorganization, or the appointment of a receiver, trustee or conservator, or assignment to creditors.

9.2.3 County may, upon written notice to ASI, terminate this Agreement immediately for cause as set forth below: (a) ASI's failure to secure and/or maintain the necessary governmental licenses, approvals, permits or certifications required for the performance of ASI's obligations hereunder; and/or (b) ASI's failure to maintain adequate general and professional liability insurance coverage, as provided herein.

9.3 Termination of Program; Limited Continuation

This Agreement automatically terminates on the termination date of the Program, unless County and ASI mutually agree in writing that this Agreement shall continue for the following purposes: (a) payment of Program benefits, expenses, or claims incurred prior to the date of Program termination; and/or (b) 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, County shall pay the monthly service charges incurred during the period that this Agreement is so continued.

9.4 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 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 the County, at its option, 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 of 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

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.

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

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

10.11 Non-Disclosure of Proprietary Information

ASI represents that in contemplation of entering into this Agreement (and as a result of the contractual relationship created hereby), ASI has revealed and disclosed to the County certain Proprietary Information. For purposes of this Section, "Proprietary Information" means any information disclosed by ASI to the County during the public bidding process in connection with this Agreement that is identified by ASI as confidential and/or proprietary or words of similar import, except to the extent that: (1) such information is or becomes generally available to the public without the fault or negligence of the County; (2) the unrestricted use of such information by the County has been expressly authorized in writing by ASI authorized representative; and/or (3) such information may be subject to disclosure pursuant to law or as required by law, including but not limited to the California Public Records Act (Government Code Section 6250 et seq.) and Brown Act (Government Code Section 54950 et seq.).

Subject to Section 10.12 (Public Disclosure of Documents) of this Agreement and/or except as otherwise required by law, the County agrees to keep ASI Proprietary Information in strict confidence, not disclose such information to any third parties or to any of its employees not having a legitimate need to know such information, and not to use information for any purpose not related to and necessary for the performance of County's obligations under this Agreement, unless required to do so by a court of competent jurisdiction or regulatory body having authority to require such disclosure.

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 ASI 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

All correspondence and notices required or contemplated by this Agreement shall be delivered to the respective parties at the addresses set forth below, or such other addresses as the parties may hereafter designate in writing, and are deemed to have been duly given on the date of delivery if delivered personally, or on the seventh business day after their deposit in the United States mail, postage prepaid:

County of Riverside
Human Resources
4080 Lemon St. 1st 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 Riverside, State of California.

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

10.16 Heading

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.

10.17 Compliance with Law

ASI shall comply with applicable Federal, State and local laws and regulation. ASI shall not be discriminate in the provision of services, allocation of benefits, accommodation in facilities, or employment of personnel on the basis of ethnic group identification, race, religious creed, color, national origin, ancestry, physical handicap, medical condition, marital status or sex in the performance of this Agreement; and, to the extent they shall be found to be applicable hereto, shall comply with the provisions of the California Fair Employment and Housing Act (Government Code § 12900 et seq.), the Federal Civil Rights Act of 1964 (P.L. 88-352), the Americans with Disabilities Act of 1990 (42 U.S.C. § 1201 et seq.) and all other applicable laws or regulations.

10.18 Licenses and Permits

ASI shall comply with all State or other licensing requirements necessary for the provisions of services hereunder. ASI warrants that it has all necessary licenses, permits, approvals, certificates, waivers and exemptions necessary for performance of this Agreement as required by the laws and regulations of the United States, the State of California, the County and all other governmental agencies with jurisdiction, and shall maintain these throughout the term of this Agreement.

10.19 Certification of Signatory Authority

ASI certifies that the individual signing below has the authority to execute this Agreement on behalf of ASI, and may legally bind ASI to the terms and conditions of this Agreement, and any attachments hereto.

[SIGNATURES ON THE FOLLOWING PAGE]

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

COUNTY OF RIVERSIDE, a political
subdivision of the State of California

By: Karen S. Spiegel

Name: Karen Spiegel

Title: Chairwoman, Board of Supervisors

Date: DEC 14 2021

Application Software, Inc., dba ASIFlex, a
Missouri corporation

By: Jan Jackson

Name: Jan Jackson

Title: VP & General Counsel

Date: 11-5-2021

ATTEST:

Clerk of the Board

Kecia Harper

By: [Signature]

Approved as to Form:

County Counsel

By: [Signature]

Deputy County Counsel

LISA SANCHEZ

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

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 Administrative Service Agreement between ASI and 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.

Dependent FSA 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.

Protected Health Information or PHI has the meaning assigned to such term under HIPAA regulations at 45 C.F.R. §160.103.

Plan means the Health FSA or Dependent FSA, as applicable.

Plan Administrator means the County of Riverside.

Program has the meaning given in the Recitals.

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 Care 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:

Standard Services Charges	Cost
PPPM Service Charge	\$2.65 or \$2.75*
Health Care FSA Debit Card	Cost
PPPM Distributed Card	waived
Replacement or Additional Debit Card Set	\$5.00**
Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included
Online Enrollment	Included
Open Enrollment Meetings	Included
Discrimination Testing (ASI will conduct)	Included
Form 5500 Preparation	Included
Summary Annual Reports	Included

*The fee structure is guaranteed for a period of five (5) years. If the employee is signed up for direct deposit and electronic communications (email and/or text alerts), then the rate will be \$2.65 PPPM. Otherwise, the rate will be \$2.75 PPPM.

**Charged to the participant's Health Care FSA account.

If a Plan Participant is enrolled in the Health FSA and Dependent FSA, service charges will not exceed \$2.75 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 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 to three business days of the day on which ASI receives the claim. Benefit payments shall be made by ACH or check payable to the Participant. If not signed up for electronic payment via ACH direct deposit, claims of less than \$25.00 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$25.00, except that any remaining amount shall be paid after the end of the Plan Year without regard to the \$25.00 check threshold.
- 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 compliance with COBRA or compliance with HIPAA portability provisions (except as may be delegated in Schedule C).
- Determining whether Client's PPP, Health FSA or Dependent FSA documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.
- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the PPP, Health FSA or Dependent FSA,
- 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 D, and the penalty for non-conformance.

Schedule B
Dependent Care Flexible Spending Account (Dependent 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 129 Dependent Care Flexible Spending Account is offered. County has delegated certain administrative responsibilities with respect to the Dependent FSA to ASI.

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

Standard Services Charges	Cost
PPPM Service Charge	\$2.65 or \$2.75*
Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included
Online Enrollment	Included
Open Enrollment Meetings	Included
Discrimination Testing (ASI will conduct)	Included
Form 5500 Preparation	Included
Summary Annual Reports	Included

*The fee structure is guaranteed for a period of five (5) years. If the employee is signed up for direct deposit and electronic communications (email and/or text alerts), then the rate will be \$2.65 PPPM. Otherwise, the rate will be \$2.75 PPPM.

If a Plan Participant is enrolled in the Health FSA and Dependent FSA, service charges will not exceed \$2.75 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 requirements and administrative obligations with regard to the Dependent FSA, 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 Dependent FSA 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 Dependent 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 to three business days of the day on which ASI receives the claim. Benefit payments shall be made by ACH or check payable to the Participant. If not signed up for electronic payment via ACH direct deposit, claims of less than \$25.00 may be carried forward and aggregated with future claims until the total amount is equal to or greater than \$25.00, except that any remaining amount shall be paid after the end of the Plan Year without regard to the \$25.00 check threshold.
- 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

- Determining whether Client's PPP, Health FSA or Dependent FSA documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.
- Determining if and when an event has occurred under the IRS permitted election change regulations such that a change in election is permitted under the PPP, Health FSA or Dependent FSA.
- 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 D, and the penalty for non-conformance.

Schedule C
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 considered part of Schedule A.

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 inquiries 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.

Schedule D
Performance Guarantees

ASI agrees to provide the following levels of service in the performance of its obligations under the Agreement and Schedules A, B and C. 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.

Category	Standard Performance	Percent at Risk*
<u>CUSTOMER SERVICE</u>		
Avg. Speed to Answer	30 seconds or less	2%
Abandonment Rate	Not to exceed 5%	2%
<u>CLAIMS PROCESSING</u>		
Avg. Processing Time	97% paid within 3 business days	2%
Claim Accuracy	97% paid accurately	2%

**Business Associate Agreement
between County of Riverside and Application Software, Inc.**

This Agreement is made and entered into this 14TH day of December, 2021, by and between County of Riverside ("Covered Entity") and Application Software, Inc., dba ASI and ASIFlex ("Business Associate") (both parties collectively referred to herein as the "Parties").

Business Associate has entered into an arrangement with Covered Entity wherein Business Associate shall provide Covered Entity with administrative services for the flexible spending account programs, including claims payment and other related services; and

Business Associate acknowledges that it is a "Business Associate" of Covered Entity as those terms are defined by the Health Insurance Portability and Accountability Act and its implementing regulations (45 C.F.R. Parts 160-164) ("HIPAA").

In Consideration of the mutual covenants and conditions contained in this Agreement, the Parties agree as follows:

I. Definitions. Capitalized terms in this Agreement and not otherwise defined herein shall have the meanings set forth in HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 ("HITECH Act"), which definitions are hereby incorporated by reference.

- (a) *Breach*. "Breach" shall have the same meaning as the term "breach" in 45 CFR §164.402.
- (b) *Breach Notification Rule*. "Breach Notification Rule" shall mean the Standards and Implementation Specifications for Notification of Breaches of Unsecured Protected Health Information under 45 CFR Parts 160 and 164, subparts A and D.
- (c) *Business Associate*. "Business Associate" shall mean Application Software, Inc.
- (d) *Covered Entity*. "Covered Entity" shall mean County of Riverside.
- (e) *Electronic Protected Health Information*. "Electronic Protected Health Information" shall have the same meaning as the term "electronic protected health information" in 45 CFR §160.103.
- (f) *Electronic Transactions Rule*. "Electronic Transactions Rule" shall mean the final regulations issued by HHS concerning standard transactions and code sets under 45 CFR Parts 160 and 162.
- (g) *Enforcement Rule*. "Enforcement Rule" shall mean the Enforcement Provisions set forth in 45 CFR Part 160.
- (h) *Genetic Information*. "Genetic Information" shall have the same meaning as the term "genetic information" in 45 CFR §160.103.
- (i) *HHS*. "HHS" shall mean the Department of Health and Human Services.
- (j) *HIPAA Rules*. "HIPAA Rules" shall mean the Privacy Rule, Security Rule, Breach Notification Rule, and Enforcement Rule.

- (k) *HITECH Act*. "HITECH Act" shall mean the Health Information Technology for Economic and Clinical Health Act, enacted as part of the American Recovery and Reinvestment Act of 2009.
- (l) *Privacy Rule*. "Privacy Rule" shall mean the Privacy Standards and Implementation Specifications at 45 CFR Parts 160 and 164, subparts A and E.
- (m) *Protected Health Information*. "Protected Health Information" shall have the same meaning as the term "protected health information" in 45 CFR §160.103, limited to the information created, received, maintained, or transmitted by Business Associate from or on behalf of Covered Entity pursuant to this Agreement.
- (n) *Required by Law*. "Required by Law" shall have the same meaning as the term "required by law" in 45 CFR §164.103.
- (o) *Security Incident*. "Security Incident" shall have the same meaning as the term "security incident" in 45 CFR §164.304.
- (p) *Security Rule*. "Security Rule" shall mean the Security Standards and Implementation Specifications at 45 CFR Parts 160 and 164, subparts A and C.
- (q) *Subcontractor*. "Subcontractor" shall have the same meaning as the term "subcontractor" in 45 CFR §160.103.
- (r) *Transaction*. "Transaction" shall have the meaning given the term "transaction" in 45 CFR §160.103.
- (s) *Unsecured Protected Health Information*. "Unsecured Protected Health Information" shall have the meaning given the term "unsecured protected health information" in 45 CFR §164.402.

II. Privacy and Security of Protected Health Information

- (a) **Permitted Uses and Disclosures.** Business Associate is permitted to use and disclose Protected Health Information only as set forth below:
 - (i) **Functions and Activities on Covered Entity's Behalf.** To provide the following services: third party administrative services for the contracted programs.
 - (ii) **Business Associate's Operations.** Business Associate may use Protected Health Information for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate. Business Associate may disclose Protected Health Information for the proper management and administration of the Business Associate or to carry out Business Associate's legal responsibilities, provided that—
 - (A) The disclosure is Required by Law; or
 - (B) Business Associate obtains reasonable assurance from any person or entity to which Business Associate will disclose Protected Health Information that the person or entity will—
 - (1) Hold the Protected Health Information in confidence and use or further disclose the Protected Health Information only for the purpose for which Business Associate disclosed Protected Health Information to the person or entity or as Required by Law; and

- (2) Promptly notify Business Associate of any instance of which the person or entity becomes aware in which the confidentiality of Protected Health Information was breached.
- (iii) **Minimum Necessary.** Business Associate will, in its performance of the functions, activities, services, and operations specified above, make reasonable efforts to use, to disclose, and to request only the minimum amount of Protected Health Information reasonably necessary to accomplish the intended purpose of the use, disclosure, or request, except that Business Associate will not be obligated to comply with this minimum-necessary limitation if neither Business Associate nor Covered Entity is required to limit its use, disclosure, or request to the minimum necessary under the HIPAA Rules. Business Associate and Covered Entity acknowledge that the phrase "minimum necessary" shall be interpreted in accordance with the HITECH Act and the HIPAA Rules.
- (b) **Prohibition on Unauthorized Use or Disclosure.** Business Associate will neither use nor disclose Protected Health Information, except as permitted or required by this Agreement or in writing by Covered Entity or as Required by Law. This Agreement does not authorize Business Associate to use or disclose Covered Entity's Protected Health Information in a manner that would violate the HIPAA Rules if done by Covered Entity, except as permitted for Business Associate's proper management and administration, as described above.
- (c) **Information Safeguards.**
- (i) **Privacy of Protected Health Information.** Business Associate will develop, implement, maintain, and use appropriate administrative, technical, and physical safeguards to protect the privacy of Protected Health Information. The safeguards must reasonably protect Protected Health Information from any intentional or unintentional use or disclosure in violation of the Privacy Rule and limit incidental uses or disclosures made pursuant to a use or disclosure otherwise permitted by this Agreement. To the extent the parties agree that the Business Associate will carry out directly one or more of Covered Entity's obligations under the Privacy Rule, the Business Associate will comply with the requirements of the Privacy Rule that apply to the Covered Entity in the performance of such obligations.
- (ii) **Security of Covered Entity's Electronic Protected Health Information.** Business Associate will comply with the Security Rule and will use appropriate administrative, technical, and physical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Health Information that Business Associate creates, receives, maintains, or transmits on Covered Entity's behalf.
- (iii) **No Transfer of PHI Outside United States.** Business Associate will not transfer Protected Health Information outside the United States without the prior written consent of the Covered Entity. In this context, a "transfer" outside the United States occurs if Business Associate's workforce members, agents, or subcontractors physically located outside the United States are able to access, use, or disclose Protected Health Information.
- (d) **Subcontractors.** Business Associate will require each of its Subcontractors to agree, in a written agreement with Business Associate, to comply with the provisions of the Security Rule; to appropriately safeguard Protected Health

Information created, received, maintained, or transmitted on behalf of the Business Associate; and to apply the same restrictions and conditions that apply to the Business Associate with respect to such Protected Health Information.

- (e) **Prohibition on Sale of Protected Health Information.** Business Associate shall not engage in any sale (as defined in the HIPAA rules) of Protected Health Information.
- (f) **Prohibition on Use or Disclosure of Genetic Information.** Business Associate shall not use or disclose Genetic Information for underwriting purposes in violation of the HIPAA rules.
- (g) **Penalties for Noncompliance.** Business Associate acknowledges that it is subject to civil and criminal enforcement for failure to comply with the HIPAA Rules, to the extent provided by the HITECH Act and the HIPAA Rules.

III. Compliance with Electronic Transactions Rule. If Business Associate conducts in whole or part electronic Transactions on behalf of Covered Entity for which HHS has established standards, Business Associate will comply, and will require any Subcontractor it involves with the conduct of such Transactions to comply, with each applicable requirement of the Electronic Transactions Rule and of any operating rules adopted by HHS with respect to Transactions.

IV. Individual Rights.

- (a) **Access.** Business Associate will, within ten (10) calendar days following Covered Entity's request, make available to Covered Entity (or, at Covered Entity's written direction, to an individual or the individual's designee) for inspection and copying Protected Health Information about the individual that is in a Designated Record Set in Business Associate's custody or control, so that Covered Entity may meet its access obligations under 45 CFR §164.524. Effective September 23, 2013, if Covered Entity requests an electronic copy of Protected Health Information that is maintained electronically in a Designated Record Set in the Business Associate's custody or control, Business Associate will provide an electronic copy in the form and format specified by the Covered Entity if it is readily producible in such format; if it is not readily producible in such format, Business Associate will work with Covered Entity to determine an alternative form and format that enable Covered Entity to meet its electronic access obligations under 45 CFR §164.524.
- (b) **Amendment.** Business Associate will, upon receipt of written notice from Covered Entity, promptly amend or permit Covered Entity access to amend any portion of an individual's Protected Health Information that is in a Designated Record Set in the custody or control of the Business Associate, so that Covered Entity may meet its amendment obligations under 45 CFR §164.526.
- (c) **Disclosure Accounting.** To allow Covered Entity to meet its obligations to account for disclosures of Protected Health Information under 45 CFR §164.528:
 - (i) **Disclosures Subject to Accounting.** Business Associate will record the information specified below ("Disclosure Information") for each disclosure of Protected Health Information, not excepted from disclosure accounting as specified below, that Business Associate makes to Covered Entity or to a third party.

- (ii) **Disclosures Not Subject to Accounting.** Business Associate will not be obligated to record Disclosure Information or otherwise account for disclosures of Protected Health Information if Covered Entity need not account for such disclosures under the HIPAA Rules.
- (iii) **Disclosure Information.** With respect to any disclosure by Business Associate of Protected Health Information that is not excepted from disclosure accounting under the HIPAA Rules, Business Associate will record the following Disclosure Information as applicable to the type of accountable disclosure made:
 - (A) **Disclosure Information Generally.** Except for repetitive disclosures of Protected Health Information as specified below, the Disclosure Information that Business Associate must record for each accountable disclosure is (i) the disclosure date, (ii) the name and (if known) address of the entity to which Business Associate made the disclosure, (iii) a brief description of the Protected Health Information disclosed, and (iv) a brief statement of the purpose of the disclosure.
 - (B) **Disclosure Information for Repetitive Disclosures.** For repetitive disclosures of Protected Health Information that Business Associate makes for a single purpose to the same person or entity (including Covered Entity), the Disclosure Information that Business Associate must record is either the Disclosure Information specified above for each accountable disclosure, or (i) the Disclosure Information specified above for the first of the repetitive accountable disclosures; (ii) the frequency, periodicity, or number of the repetitive accountable disclosures; and (iii) the date of the last of the repetitive accountable disclosures.
- (iv) **Availability of Disclosure Information.** Business Associate will maintain the Disclosure Information for at least 6 years following the date of the accountable disclosure to which the Disclosure Information relates. Business Associate will make the Disclosure Information available to Covered Entity within ten (10) calendar days following Covered Entity's request for such Disclosure Information to comply with an individual's request for disclosure accounting.
- (d) **Restriction Agreements and Confidential Communications.** Covered Entity shall notify Business Associate of any limitations in the notice of privacy practices of Covered Entity under 45 CFR §164.520, to the extent that such limitation may affect Business Associate's use or disclosure of Protected Health Information. Business Associate will comply with any notice from Covered Entity to (1) restrict use or disclosure of Protected Health Information pursuant to 45 CFR §164.522(a), or (2) provide for confidential communications of Protected Health Information pursuant to 45 CFR §164.522(b), provided that Covered Entity notifies Business Associate in writing of the restriction or confidential communications obligations that Business Associate must follow. Covered Entity will promptly notify Business Associate in writing of the termination of any such restriction or confidential communications requirement and, with respect to termination of any such restriction, instruct Business Associate whether any of the Protected Health Information will remain subject to the terms of the restriction agreement.

V. Breaches and Security Incidents.

(a) Reporting.

- (i) **Impermissible Use or Disclosure.** Business Associate will report to Covered Entity any use or disclosure of Protected Health Information not permitted by this Agreement not more than ten (10) calendar days after Business Associate discovers such non-permitted use or disclosure.
 - (ii) **Breach of Unsecured Protected Health Information.** Business Associate will report to Covered Entity any potential Breach of Unsecured Protected Health Information not more than ten (10) calendar days after discovery of such potential Breach. Business Associate will treat a potential Breach as being discovered in accordance with 45 CFR §164.410. Business Associate will make the report to Covered Entity's Privacy Officer. If a delay is requested by a law-enforcement official in accordance with 45 CFR §164.412, Business Associate may delay notifying Covered Entity for the applicable time period. Business Associate's report will include at least the following, provided that absence of any information will not be cause for Business Associate to delay the report:
 - (A) Identify the nature of the Breach, which will include a brief description of what happened, including the date of any Breach and the date of the discovery of any Breach;
 - (B) Identify the types of Protected Health Information that were involved in the Breach (such as whether full name, Social Security number, date of birth, home address, account number, diagnosis, or other information were involved);
 - (C) Identify who made the non-permitted use or disclosure and who received the non-permitted disclosure;
 - (D) Identify what corrective or investigational action Business Associate took or will take to prevent further non-permitted uses or disclosures, to mitigate harmful effects, and to protect against any further Breaches;
 - (E) Identify what steps the individuals who were subject to a Breach should take to protect themselves;
 - (F) Provide such other information, including a written report and risk assessment under 45 CFR §164.402, as Covered Entity may reasonably request.
 - (iii) **Security Incidents.** Business Associate will report to Covered Entity any Security Incident of which Business Associate becomes aware. Business Associate will make this report once per month, on or before the 10th calendar day of such month, except if any such Security Incident resulted in a disclosure not permitted by this Agreement or Breach of Unsecured Protected Health Information, Business Associate will make the report in accordance with the provisions set forth above. Trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations will not be reported.
- (b) **Mitigation.** Business Associate shall mitigate, to the extent practicable, any harmful effect known to the Business Associate resulting from a use or disclosure in violation of this Agreement.

(c) **Breach Notification to Third Parties.**

- (i) Where necessary or required by law, Business Associate agrees to provide by mail or (if specifically requested by the Individual) e-mail, written notification to each affected Individual of any Breach of Unsecured PHI not provided for by the Agreement of which it becomes aware and/or any Security Incident of which it becomes aware. If current contact information is unavailable, notice may be provided on Business Associate's website, or major print or broadcast media (i.e. newspapers or television) in the geographic areas where the affected Individuals most likely reside.
- (ii) Where necessary or required by law, Business Associate agrees to provide notice to prominent media outlets following the discovery of any Breach of Unsecured PHI not provided for by this Agreement of which it becomes aware and/or any Security Incident of which it becomes aware in which the PHI of more than 500 Individuals residing in the State or specific jurisdiction is, or is reasonably believed to have been accessed, acquired or disclosed during such Breach. If the Breach involves less than 500 Individuals, Business Associate agrees to maintain a log of the Breach and to submit the log to HHS annually.

VI. Term and Termination.

- (a) **Term.** This Agreement shall be effective as of September 22, 2013, and shall terminate on upon termination of underlying services agreement, subject to the provisions regarding return or destruction of PHI.
- (b) **Right to Terminate for Cause.** Covered Entity may terminate this Agreement if it determines, in its sole discretion, that Business Associate has breached any provision of this Agreement, and after written notice to Business Associate of the breach, Business Associate has failed to cure the breach within thirty (30) calendar days after receipt of the notice. Any such termination will be effective immediately or at such other date specified in Covered Entity's notice of termination.
- (c) **Treatment of Protected Health Information on Termination.**
 - (i) **Return or Destruction of Covered Entity's Protected Health Information Is Feasible.** Upon termination of this Agreement, Business Associate will, if feasible, return to Covered Entity or destroy all Protected Health Information in whatever form or medium, including all copies thereof and all data, compilations, and other works derived therefrom that allow identification of any individual who is a subject of the Protected Health Information. This provision shall apply to Protected Health Information that is in the possession of any Subcontractors of Business Associate. Further, Business Associate shall require any such Subcontractor to certify to Business Associate that it has returned or destroyed all such information which could be returned or destroyed. Business Associate will complete these obligations as promptly as possible, but not later than ten (10) calendar days following the effective date of the termination of this Agreement.
 - (ii) **Procedure When Return or Destruction Is Not Feasible.** Business Associate will identify any Protected Health Information, including any Protected Health Information that Business Associate has disclosed to Subcontractors, that cannot feasibly be returned to Covered Entity or

destroyed and explain why return or destruction is infeasible. Business Associate will limit its further use or disclosure of such information to those purposes that make return or destruction of such information infeasible. Business Associate will complete these obligations as promptly as possible, but not later than sixty (60) calendar days following the effective date of the termination or other conclusion of Agreement.

- (iii) **Continuing Privacy and Security Obligation.** Business Associate's obligation to protect the privacy and safeguard the security of Protected Health Information as specified in this Agreement will be continuous and survive termination or other conclusion of this Agreement.

VII. General Provisions.

- (a) **Definitions.** All terms that are used but not otherwise defined in this Agreement shall have the meaning specified under HIPAA, including its statute, regulations, and other official government guidance.
- (b) **Inspection of Internal Practices, Books, and Records.** Business Associate will make its internal practices, books, and records relating to its use and disclosure of Protected Health Information available to Covered Entity and to HHS to determine compliance with the HIPAA Rules.
- (c) **Amendment to Agreement.** This Agreement may be amended only by a written instrument signed by the parties. In case of a change in applicable law, the parties agree to negotiate in good faith to adopt such amendments as are necessary to comply with the change in law.
- (d) **No Third-Party Beneficiaries.** Nothing in this Agreement shall be construed as creating any rights or benefits to any third parties.
- (e) **Interpretation.** Any ambiguity in the Agreement shall be resolved to permit Covered Entity and Business Associate to comply with the applicable requirements under the HIPAA Rules.
- (f) **Governing Law, Jurisdiction, and Venue.** This Agreement shall be governed by the law of California, except to the extent preempted by federal law.
- (g) **Severability.** The invalidity or unenforceability of any provisions of this Agreement shall not affect the validity or enforceability of any other provision of this Agreement, which shall remain in full force and effect.
- (h) **Construction and Interpretation.** The section headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement. This Agreement has been negotiated by the parties at arm's-length and each of them has had an opportunity to modify the language of the Agreement. Accordingly, the Agreement shall be treated as having been drafted equally by the parties, and the language shall be construed as a whole and according to its fair meaning. Any presumption or principle that the language is to be construed against any party shall not apply. This Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which, taken together, shall constitute one and the same agreement.
- (i) **Notices.** All notices and communications required by this Agreement shall be in writing. Such notices and communications shall be given in one of the following forms: (i) by delivery in person, (ii) by a nationally-recognized, next-day courier

service, (iii) by first-class, registered or certified mail, postage prepaid; or (iv) by electronic mail to the address that each party specifies in writing.

- (j) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties with respect to its subject matter and constitutes and supersedes all prior agreements, representations and understandings of the parties, written or oral, with regard to this same subject matter.

The Parties hereto execute this Agreement the date indicated above.

County of Riverside

Application Software, Inc.

By: Karen S. Spiegel
KAREN SPIEGEL
Title: CHAIR, BOARD OF SUPERVISORS

By: Ken Jackson
VP & General Counsel

ATTEST:

KECIA R. HARPER, Clerk

By: [Signature]

DEPUTY