

BOARD OF COMMISSIONERS
SARPY COUNTY, NEBRASKA

RESOLUTION AWARDING BID FOR FLEXIBLE SPENDING AND COBRA ADMINISTRATIVE SERVICES FOR THE HUMAN RESOURCES DEPARTMENT

WHEREAS, pursuant to Neb. Rev. Stat. §23-104(6), the County has the power to do all acts in relation to the concerns of the County necessary to the exercise of its corporate powers; and,

WHEREAS, pursuant to Neb. Rev. Stat. §23-103, the powers of the County as a body are exercised by the County Board; and,

WHEREAS, bids for the flexible spending and COBRA administrative services have been solicited, made, opened and reviewed pursuant to applicable Nebraska State Statutes; and,

WHEREAS, based on those proceedings, this Board has duly deliberated and considered the bids received; and,

WHEREAS, this Board desires to proceed forthwith in order to expedite and facilitate service to the citizens of Sarpy County.

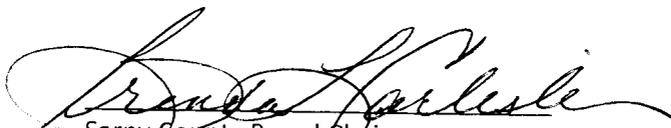
NOW, THEREFORE, BE IT RESOLVED BY THIS BOARD OF COUNTY COMMISSIONERS THAT:

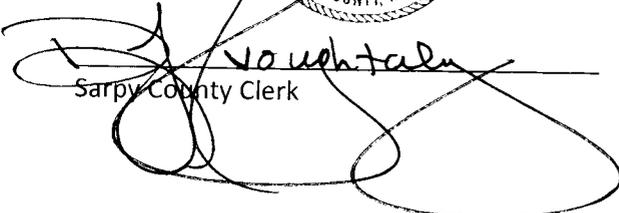
1. Based upon the recommendation of the Purchasing Department, and upon a comparison of the bids to the bid specifications, the bid is hereby awarded to the low bidder ASIFlex and ASI COBRA for Flexible Spending and COBRA Administrative Services in the amounts identified on the Bid Form is accepted, ratified, and confirmed.
2. This Board's Chairman, Clerk, and Attorney are hereby authorized and directed to execute such ancillary documents as may be required to evidence the contract and take any and all steps necessary or required in order to carry out the terms of such contract after said documents have been reviewed by the Attorney, Fiscal Administrator, and County Administrator.

The above resolution was approved by a vote of the Sarpy County Board of Commissioners at a public meeting duly held in accordance with applicable law on the 6th day of October, 2015.

ATTEST:

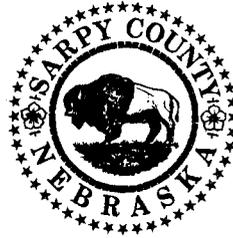



 Sarpy County Board Chairman


 Sarpy County Clerk

Sarpy County Purchasing Department

SARPY COUNTY COURTHOUSE
1210 GOLDEN GATE DRIVE, SUITE 1220
PAPILLION, NE 68046



Brian Hanson, Purchasing Agent
(402) 593-2349
Debby Peoples, Asst. Purchasing Agent
(402) 593-4164
Beth Garber, Purchasing/Contract Administrator
(402) 593-4476

MEMO

To: Sarpy County Board of Commissioners

From: Beth Garber

Re: Flexible Spending/COBRA Services

On August 13, 2015, seven (7) bids were opened for Flexible Spending and COBRA Administrative Services for the Human Resources Department. After reviewing the bids, it is recommended the bid be awarded to the low bidder, ASIFlex/ASICobra.

The County's current flexible spending services agreement with PayFlex has a monthly per participant administration fee of \$5.50. PayFlex's COBRA agreement is a standard 2% administration fee with various miscellaneous costs for notifications and events. The flexible spending agreement proposed from ASI has a monthly per participant administration fee of \$2.85 for participants who sign up for direct deposit and \$2.95 for all others. The proposed COBRA agreement is the standard 2% administration fee with various miscellaneous costs for notifications and events.

ASI has been in business for over 32 years and has clients including: State of Nebraska, State of Iowa, State of Colorado and State of Missouri. All of ASI's references were positive. The County will be connected with a personalized customer service representative for any concerns or issues that may arise. Also, ASI has a representative located in Omaha. Human Resources and the County Clerk's Office are not opposed to ASI; however, they do have concerns about the amount of changes to employee benefits.

October 1, 2015

A handwritten signature in black ink that reads "Beth Garber". The signature is written in a cursive style and is positioned above a horizontal line.

Beth Garber

cc: Deb Houghtaling
Mark Wayne
Scott Bovick
Brian Hanson
Bonnie Moore
Fred Uhe

Flexible Spending Account Plan COBRA Administrative Services
for the
Human Resources Department

Thursday, 2:00 p.m.
August 13, 2015

	Estimated Usage	Ameriflex		TASC		EBS		Lifetime Benefit Solutions	
		Unit	Extended - Annual	Unit	Extended - Annual	Unit	Extended - Annual	Unit	Extended - Annual
FSA Administration Fees									
Initial Set-Up & Training Fees			\$0.00		\$0.00		\$0.00		\$450.00
Annual Administration Fee (Lump Sum)	266				\$100.00		\$0.00		\$0.00
Monthly Administration Fee (per Participant)	266	\$4.50	\$14,364.00	\$4.00	\$12,768.00	\$5.25	\$16,758.00	\$4.15	\$13,246.80
Connection to Insurance Accounts		\$1.00							
HIPPA Compliance Fee									
Dedicated Client Manager					\$400 year 1; \$100 subsequent				
Nondiscrimination Testing					\$1,200.00				
Monthly Administration Fee (Manual)	266						\$900.00		\$275.00
Monthly Admin Fee (Green - email/dd)	266							\$2.95	\$9,416.40
Insufficient EFT Funds Charge								\$50.00	
Preparation of Form 5500									\$300.00
Replacement Cards									
My Plan Connect		\$1.00							
Annual Renewal Fee			\$175.00						
Estimated Annual Subtotal (without Set-Up)			\$14,539.00		\$12,868.00		\$16,758.00		\$13,246.80
COBRA Administration Fees									
Initial Set-Up & Training Fees			\$0.00		\$0.00		\$300.00		\$250.00
Administrative Fee (%)			2%		2%		2%		2% (returned to County)
New Set Up Fee (Per Participant)	4			\$30.00	\$120.00				
Per Participant Fee	578	\$0.60	\$4,161.60	\$0.75	\$5,202.00	\$1.75	\$12,138.00	\$0.75	\$5,202.00
Initial Notification Letters		\$0.00	\$0.00						
Per Qualifying Event	48	\$0.00	\$0.00						
Termination/Conversion Notice Letter	6	\$0.00	\$0.00						
Certificate of Coverage	3								
Annual Renewal Fee			\$175.00		\$100.00				
DOL General Initial Rights to All Employees				\$1.75					
Carrier Notifications					\$1,500.00				
Send Premiums to Carriers					\$400.00				
Mail Open Enrollment Material				TBD					
Current Continuee Conversion	4							\$20.00	\$80.00
Notification Certified Mail								\$0.25 add. PEPM; min. admin fee \$75	
Minimum Monthly Bill		\$80.00	\$960.00					\$55.00	\$660.00
Late Invoice Payment		\$35.00							
Returned Payment Fee		\$25.00							
Estimated Annual Subtotal (without Set-Up)			\$4,336.60		\$5,422.00		\$12,138.00		\$5,202.00
Estimated Annual Total (without Set-Up)			\$18,875.60		\$18,290.00		\$28,896.00		\$18,448.80

Flexible Spending Account Plan COBRA Administrative Services
for the
Human Resources Department

Thursday, 2:00 p.m.
August 13, 2015

	Estimated Usage	Diversified Benefit Services, Inc.		ASI		Payflex	
		Unit	Extended - Annual	Unit	Extended - Annual	Unit	Extended - Annual
FSA Administration Fees							
Initial Set-Up & Training Fees							
Annual Administration Fee (Lump Sum)	266	\$3/\$750 max	\$750.00				\$500.00
Monthly Administration Fee (per Participant)	266	\$4.55	\$14,523.60	\$2.95	\$9,416.40	\$4.65	\$14,842.80
Connection to Insurance Accounts							
HIPPA Compliance Fee							
Dedicated Client Manager							
Nondiscrimination Testing							
Monthly Administration Fee (Manual)	266						
Monthly Admin Fee (Green - email/dd)	266			\$2.85	\$9,097.20		
Insufficient EFT Funds Charge							
Preparation of Form 5500							
Replacement Cards				\$5.00			
My Plan Connect							
Annual Renewal Fee							
Estimated Annual Subtotal (without Set-Up)			\$15,273.60		\$9,416.40		\$15,342.80
COBRA Administration Fees							
Initial Set-Up & Training Fees							
Administrative Fee (%)			2%		2%		2%
New Set Up Fee (Per Participant)	4	\$0.60	\$4,161.60				
Per Participant Fee	578			\$50 min.	\$600.00		
Initial Notification Letters		\$2.75		\$3.00		\$3.00	
Per Qualifying Event	48			\$15.00	\$720.00	\$21.00	\$1,008.00
Termination/Conversion Notice Letter	6					\$5.00	\$30.00
Certificate of Coverage	3						
Annual Renewal Fee			\$200.00				
DOL General Initial Rights to All Employees							
Carrier Notifications			\$50 per benefit plan/per month				
Send Premiums to Carriers							
Mail Open Enrollment Material		\$15 packet/\$100 minimum		\$8.00			
Current Continuee Conversion	4	\$15.00	\$60.00	\$8 record - waived if formatted			
Notification Certified Mail							
Minimum Monthly Bill						\$150.00	\$1,800.00
Late Invoice Payment							
Returned Payment Fee							
Estimated Annual Subtotal (without Set-Up)			\$4,361.60		\$1,320.00		\$1,800.00
Estimated Annual Total (without Set-Up)			\$19,635.20		\$10,736.40		\$17,142.80

COMPANY NAME: Application Software, Inc. dba ASIFlex | ASI
COBRA, LLC

Sarpy County, Nebraska
Flexible Spending Administrative Services
Bid Form

FSA Administration Fees:

Initial Set-Up & Training Fees: \$ 0.00

Annual Administration Fee:
(Lump Sum Fee) \$ 0.00

Monthly Administration Fees: \$ 2.85 "GO GREEN" for participants
signed up for both email/text alerts and
direct deposit; \$2.95 for other participants.
(Per Participant Fee)

Other Fees (Please Define):

Two consecutive days of benefits fairs/meetings first year with one ASI representative, included at no additional cost; subsequent days \$250 per day. Additional or replacement debit cards \$5.00 each and billed directly to participant health care FSA.

COBRA Administration Fees:

Initial Set-Up and Training Fees:
(One time fees) \$ 0.00

Administrative Fee:
(% of premium billed) 2 %

New Set Up Fee:
(Per participant) \$ 0.00

Initial Notification Letters: \$ 3.00

Per Qualifying Event: \$ 15.00

Termination/Conversion Notice Letter: \$ N/A

Certificate of Coverage, Separately Issued: \$ 0.00 if required

Other Fees (Please Define):

Takeover - \$8.00 per participant record; fee waived if data provided in ASI COBRA format.
 Open Enrollment - \$8.00 per mailing, plus postage.

Company Information

Years in business: 32

of employees 70

Total sales last 3 years Confidential
Not available for dissemination.

References

Company
 Name: State of Nebraska
 Address: Lincoln, NE
 Contact Name: Janet Hansen Phone Number: 402-471-4443
 Date of Purchase: 1/1/2000 Email: janet.hansen@nebraska.gov

Company
 Name: Nebraska State College System
 Address: Lincoln, NE
 Contact Name: Carolyn Murphy Phone Number: 402-471-2505
 Date of Purchase: 1/1/2009 Email: cmurphy@nscs.edu

Company
 Name: Pima County
 Address: Tucson, AZ
 Contact Name: Gayl Hayes Phone Number: 520-724-8465
 Date of Purchase: 1/1/2005 Email: gayl.hayes@pima.gov

Note: ASI has also included client letters of recommendation, as well as a financial reference letter.

ADMINISTRATIVE SERVICES AGREEMENT

This **Administrative Services Agreement** (the Agreement) is made and entered into as of this 1st day of October, 2015, by and between Sarpy County, Nebraska (hereinafter Client) and Application Software, Inc., dba ASIFlex (hereinafter ASIFlex).

Background

Check applicable boxes and attach Attachments

For Cafeteria Plan. Client has requested ASIFlex to provide administrative services for the following Benefit Programs, as described in Attachment A, offered under an Internal Revenue Code §125 Cafeteria Plan established by Client:

- Premium Only Plan (POP)
- Health Flexible Spending Arrangement (Health FSA)
- Dependent Care Assistance Program (DCAP)
- HSA Contribution Benefit

For Health Reimbursement Arrangements (HRA). Client has requested ASIFlex to provide administrative services for the Health Reimbursement Arrangement established under Revenue Ruling 2002-41 and Notice 2002-45 as described in Attachment A.

For Qualified Transportation Plan (QTP). Client has requested ASIFlex to provide administrative services for the Qualified Transportation Plan and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f) as described in Attachment A.

The POP, Health FSA, DCAP, HSA Contribution Benefit, HRA, and QTP will hereinafter be collectively referred to as the Program.

In consideration of the mutual promises and conditions contained in this Agreement, Client and ASIFlex agree as follows:

Section 1 Effective Date and Term

Applies to All Services

1.1 Effective Date

The effective date of this Agreement is December 1, 2015 (Effective Date).

1.2 Term

The initial term shall be the twenty five (25) month period commencing on the Effective Date. This Agreement will renew automatically for successive periods of 12 months unless this Agreement is terminated in accordance with the provisions of Section 9.

Section 2
Scope of Undertaking

Applies to All Services

2.1 Scope of Undertaking

Client has sole and final authority to control and manage the operation of the Program. ASIFlex 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 Client. ASIFlex and Client shall not be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor.

ASIFlex 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 Client. ASIFlex shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASIFlex generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by Client under the Program.

Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute ASIFlex as a party to the Program or to confer upon ASIFlex 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 ASIFlex any obligation to any employee of Client 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 ASIFlex 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 Client.

2.3 Limited Fiduciary Duties (*Applies to Health FSA and HRA only*)

Notwithstanding the foregoing, pursuant to Section 405(c)(1) of ERISA (if applicable), Client delegates to ASIFlex 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 Client for the payment of Program benefits claims as set forth in Section 6, as further modified by Attachment A.

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

Section 3
Client's Responsibilities

Applies to All Services

3.1 General Fiduciary Duties

Except as otherwise specifically delegated to ASIFlex in this Agreement, Client has the 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. Client gives ASIFlex the authority to act on behalf of Client in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by Client and ASIFlex. Client is considered the Plan Administrator and Named Fiduciary of any Program benefits subject to ERISA.

3.2 Funding

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

3.3 Information to ASIFlex

Upon request, Client agrees to provide ASIFlex with information necessary for ASIFlex'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. ASIFlex shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the Client or its agents. Such information shall be provided to ASIFlex in the time and in the manner agreed to by Client and ASIFlex. ASIFlex shall have no responsibility with regard to benefits paid in error due to Client's failure to timely update such information.

Client also agrees to provide ASIFlex with frequent updated reports summarizing eligibility data (Eligibility Reports). Unless otherwise agreed by Client and ASIFlex, the Eligibility Reports should be provided to ASIFlex 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.

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

ASIFlex incurs no liability to Client or any Participant as a consequence of an inaccurate Eligibility Report. Additionally, ASIFlex is under no obligation to credit Client for any claims expenses or administrative fees incurred or paid to ASIFlex as a consequence of Client failing to review Eligibility Reports for accuracy.

ASIFlex 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, and Section 5 of this Agreement.

3.4 Plan Documents

Client is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide ASIFlex with all relevant documents, including but not limited to, the Program documents and any Program amendments. Client will notify ASIFlex of any changes to the Program at least 30 days before the effective date of such changes.

If requested by Client in Section 4.8, ASIFlex will provide sample plan documents and forms for review by Client and Client's legal counsel, including plan document/summary plan description, election forms and other documents. ASIFlex will customize such documentation only to the extent to incorporate Client's responses to certain plan design questions submitted by ASIFlex. In addition, ASIFlex will provide sample document changes to reflect revisions in applicable legislation or regulations. Although

ASIFlex has taken steps to ensure that its sample documents and forms are of high quality and generally comply with the applicable laws, it cannot be aware of all of the facts and circumstances that may apply to the Client or the Program.

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

3.5 Liability for Claims

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of Client under the Program. Except for expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

3.6 Financial and Medical Records

In order to permit Client and/or ASIFlex to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, the Client 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

Client shall provide ASIFlex with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Certification that Client amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to Client for plan administrative purposes;
- Certification that Client 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 restriction on the use or disclosure of PHI that Client 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 Client agrees to under the Privacy Rule.

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

Administration sufficient to comply with applicable legal (e.g., IRS substantiation) requirements. ASIFlex will be responsible for processing run-out claims submitted after the Effective Date and maintaining legally required records for such run-out claims.

4.4 Bonding

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

4.5 Reporting

ASIFlex agrees to make available to Client 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, Client must provide certification that the plan document requires the Client to comply with applicable Privacy and Security Rules under HIPAA before ASIFlex will make available the reports provided for in this Section to the Client. ASIFlex 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, Client 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.

4.6 Claims Appeals

ASIFlex agrees to refer to Client 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 Client 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.

4.7 Forfeited Funds

Any unclaimed benefit payments (e.g. uncashed benefit checks) are deemed forfeited.

(Client initial if applicable: _____) Client may use forfeited funds to offset reasonable administrative expenses.

or,

4.12 Notices to Client

ASIFlex shall provide to Client all notices (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 QTP

5.1 Compliance with Privacy and Security Rules Under HIPAA

Contemporaneously with this Agreement, Client and ASIFlex have entered into a Business Associate Agreement pursuant to HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH Act).

Section 6 Payment of Benefits and Funding Responsibility

Applies to Health FSA, DCAP, HRA and QTP

6.1 Payment of Benefits

Client authorizes ASIFlex to pay Program benefits by checks written (or other draft payment or debit) each day or at such other interval as mutually agreed upon. ASIFlex will notify Client of the amount needed to pay approved benefit claims, and Client shall agree to allow ASI to debit the Client's bank account to reimburse ASI for such payments. Alternatively, Client may pay or transfer into ASI's bank account the amount needed for the payment of Program benefits. Client shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section. ASIFlex has sole authority to provide whatever notifications, instructions, or directions 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 on behalf of the Participants under the Program, including, but not limited to, all benefits to Participants in accordance with the Program, is the sole responsibility of Client, and Client 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 terms of this Agreement.

6.3 Representation of Plan Assets

Client further represents and agrees that:

- Client shall advise the Participants and beneficiaries of the Program that the benefits under the Program shall at all times be paid out of the general assets of the Client.

Client is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASIFlex does not insure or underwrite the liability of the Client under the Program. Except for expenses required for ASIFlex to be in the business of providing services under this Agreement and expenses specifically assumed by ASIFlex in this Agreement, Client is responsible for all expenses incident to the Program.

6.4 Debit Card (*Client initial if applicable:* )

ASIFlex agrees to:

- Process debit card swipes reported to ASIFlex on behalf of the Client;
- 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 ASIFlex will be retained wholly by ASIFlex. Any fees charged to ASIFlex by the debit card provider shall be the responsibility of ASIFlex, unless noted in Attachment A of this Agreement. ASIFlex currently contracts with Evolution Benefits for the ASIFlex Debit Card. Under this Agreement, ASIFlex reserves the right to change card providers during the year, providing at least 90 day notice to the Client.

**Section 7
Indemnification**

Applies to All Services

7.1 Indemnification by Client

Upon ASIFlex's adherence to the standard of care set forth in Section 4, Client shall indemnify ASIFlex and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees or other obligations, resulting from, or arising out of, any act or omission of Client in connection with the performance of its duties hereunder. In addition, Client shall indemnify ASIFlex and hold it harmless from and against any liability, expense, demand, or other obligation, resulting from, or out of any premium charge, tax or similar assessment (federal or state), for which the Program or Client is liable.

Client agrees to reimburse ASIFlex for all attorney's fees and costs incurred by ASIFlex as a result of any collection action taken by ASIFlex to recover overdue service charges required to be paid in accordance with this Agreement or any Attachment hereto.

7.2 Indemnification by ASIFlex

Upon Client's adherence to the standard of care set forth in Section 3, ASIFlex shall indemnify Client and hold it harmless from and against all loss, liability, damage, expense, attorneys' fees or other obligations, resulting from, or arising out of, any act or omission of ASIFlex in connection with the performance of its duties hereunder.

Section 8
Service Charges

Applies to All Services

8.1 Service Charges

The amounts of the monthly services charges of ASIFlex are described in the Attachments. ASIFlex may change the amount of such service charges for renewal terms by providing at least 60 days' written or electronic notice to Client. Such notice must be provided prior to the expiration date of the current contract year. ASIFlex may also change the monthly service charges as of the date any change is made in the Program.

8.2 Billing of Service Charges

All services charges of ASIFlex, 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 Client of the respective amounts paid for claims and for administrative expenses.

8.3 Payment of Service Charges

ASIFlex will determine all service charges under this Section and bill Client monthly. Alternatively, if the parties agree, ASIFlex may deduct payment for monthly service charges from the bank account maintained by Client as described in Section 6. Client shall make payment to ASIFlex within 30 business days of receipt of notice of the amount due,.

Section 9
General Provisions

Applies to All Services

9.1 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.

9.2 Compliance; Non-Waiver

Failure by Client or ASIFlex 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 9 below.

9.3 Assignment; Amendment

Neither Client nor ASIFlex can assign this Agreement without the other party's written consent. This Agreement may be amended only by written agreement of duly authorized officers of Client and ASIFlex.

9.4 Audits

Each party is 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.

9.5 Non-Disclosure of Proprietary Information

- **General.** Client and ASIFlex 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. Client and ASIFlex 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 law, 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.

For purposes of this Section, confidential information is any information in 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 this Section 9 shall survive the termination of this Agreement.

9.6 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 parties' Chief Executive Officers (or their 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 Chief Executive Officers within such 30 day period, either party may then

proceed to 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. The arbitrator shall be jointly selected by the Client and ASIFlex. 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 Nebraska. 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.

9.7 Notices and Communications

- **Notices.** All notices provided for herein shall be sent by either:

Confirmed facsimile;

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.**

Client's address for notices as described above is:

Sarpy County Clerk's Office
1210 Golden Gate Drive, Suite 1250
Papillion, NE 68046

ASIFlex's address for notices as described above is:

ATTN: John Riddick
201 W. Broadway, Suite 4-C
Columbia, MO 65203

- **Communications.** Client agrees that ASIFlex may communicate confidential, protected, privileged or otherwise sensitive information to Client through a named contact designated by Client (Named Contact) and specifically agrees to indemnify ASIFlex and hold it harmless:

For any such communications directed to Client through the Named Contact attempted via facsimile, mail, telephone, e-mail or any other media, acknowledging the possibility that such communications may be inadvertently misrouted or intercepted; and

From any claim for the improper use or disclosure of any PHI by ASIFlex if such information is used or disclosed in a manner consistent with its duties and responsibilities hereunder.

9.8 Termination of Agreement

- **Automatic.** 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 Client or ASIFlex 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 Client and ASIFlex regarding payment of benefits after the Program is terminated.

- **Optional.** This Agreement may be terminated as of the earliest of the following:

By ASIFlex upon the failure of Client to pay any service charges within 10 business days after they are due and payable as provided in Section 8;

By ASIFlex upon the failure of Client to perform its obligations, including its obligations as Plan Administrator and/or Named Fiduciary where applicable, as such terms are defined in ERISA, and in accordance with this Agreement, including the provisions of Section 3;

By Client upon the failure of ASIFlex to perform its obligations in accordance with this Agreement, including the provisions of Section 4;

By either Client or ASIFlex, as of the end of the term of this Agreement, by giving the other party 30 days written notice; or

By either Client or ASIFlex, upon a material breach of the other party's duties under this Agreement, or upon non-material breaches of a recurrent nature, after 30 days' notice in the event of a material breach, or 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.

- **Limited Continuation After Termination.** If the Program is terminated, Client and ASIFlex 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, Client and ASIFlex 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 ASIFlex before the date of such termination.

If this Agreement is continued in accordance with this subsection, Client 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.

- **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.

9.9 Complete Agreement; Governing Law

This Agreement (including the Attachments) is the full Agreement of the parties with respect to the subject matter hereof and supersedes all prior Agreements and representations between the parties. This Agreement shall be construed, enforced and governed by the laws of the State of Nebraska.

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

9.10 Residency Verification

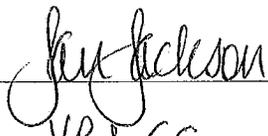
ASIFlex agrees to comply with the residency verification requirements of Neb. Rev. Stat. §4-108 through §4-114. ASIFlex is required and hereby agrees to use a federal immigration verification system to determine the work eligibility status of new employees physically performing services within the State of Nebraska. A federal immigration verification system means the electronic verification of the work authorization program authorized by the Illegal Immigration Reform and Immigrant Responsibility Act of 1996, 8 U.S.C. 1324a, known as the E-Verify Program, or an equivalent federal program designated by the United States Department of Homeland Security or other federal agency authorized to verify the work eligibility status of a newly hired employee.

Sarpy County, Nebraska

Application Software, Inc.

By: 
10-6-15

Title: Chairman, Sarpy County Board
of Commissioners

By: 
Title: VP & GC

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 ASIFlex Administrative Services Agreement, including all Attachments hereto.

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.

Client has the meaning given in the recitals.

ERISA means the Employee Retirement Income Security Act of 1974, as amended.

Effective Date has the meaning given in Section 1.

Electronic PHI has the meaning assigned to such term under HIPAA.

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 named fiduciary as defined in ERISA §402(a)(1).

Participant has the meaning given in Section 2.

Plan means the Health FSA or DCAP, as applicable.

Plan Administrator means the administrator as defined in ERISA §3(16)(A).

Prior Administration means services arising prior to the Effective Date.

Prior Reimbursement Requests 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.

**ATTACHMENT A
SERVICE CHARGES**

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

Client has established a Code §125 Cafeteria Plan to allow eligible employees who make a proper election to pay for their share of certain benefit plan coverage with pre-tax salary reductions. Client has delegated certain administrative responsibilities with respect to the selected benefit options. Depending upon the benefit options chosen by the Client, the Client has established:

- a Code §125 Cafeteria Plan under which a Code §105 Health FSA is offered;
- a Code §125 Cafeteria Plan under which a Code §129 Dependent Care Assistance Program is offered;
- a Health Reimbursement Arrangement under Revenue Ruling 2002-41 and Notice 2002-45; and
- a Qualified Transportation Plan and/or Bicycle Commuting Expense Reimbursement Policy under Code §132(f).

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

Standard Services Charges*	Cost
FSA PPPM** Service Charge	\$2.85 for those signed up for direct deposit and email/text alerts; \$2.95 for all others
HRA PPPM Service Charge	N/A
QTP PPPM Service Charge	N/A

Additional Service Charges	Cost
Set-Up Fee	Waived
Sample Documents and Forms	Included at no charge
Staff Training	Included at no charge
Online Enrollment	Included at no charge
Open Enrollment Meetings - Notes: 2 consecutive days of benefit fairs/meetings the 1 st year with 1 ASI representative included at no cost.	\$250 per day
Non-discrimination Testing (Must be requested by Client)	Included at no charge
Form 5500 Preparation (Must be requested by Client)	Included at no charge
Debit Card (Must be requested by Client)	Included at no charge; additional/replacement card sets \$5.00 each and billed to participant health care FSA

**PPPM = per participant per month

If the Client terminates the services, there will be a charge for a runoff period, should the Client choose to request one. This charge will be negotiated at the time of termination.

Services Included

Client is responsible for all legal requirements and administrative obligations with regard to the benefit options selected, except for the following administrative duties specifically delegated to ASIFlex:

- ASIFlex shall make available (by electronic medium and paper copy) enrollment forms and instructions.
- Upon receiving instructions from Client with regard to a Participant's change in status or other event that permits an election change under IRS regulations, ASIFlex shall make the requested change in the Participant's election as soon as possible.
- If requested, ASIFlex shall prepare the information necessary to enable Client to satisfy its Form 5500 filing obligation with regard to the Health FSA and HRA options chosen by Client. Client shall be responsible for reviewing the information provided by ASIFlex to ensure its accuracy, and Client shall prepare and submit any Form 5500.
- If requested, ASIFlex shall assist Client in preparing preliminary, mid-year, and final nondiscrimination tests for the POP, Health FSA, DCAP and HRA options chosen by Client:

Key employee concentration testing required under Code §125;
The 55% average benefits test required under Code §129; and
The 25% shareholder concentration test required under Code §129.

- ASIFlex shall make initial decisions with regard to Participant claims and disburse any benefit payments that it determines to be due normally within 3 days, but in no case later than within 30 business days, of the day on which ASIFlex receives the claim. Benefit payments shall be made by check or ACH payable to the Participant. 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 threshold.
- ASIFlex 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. If the Client is subject to ERISA, ASIFlex shall follow the requirements of ERISA with regard to denial of claims.
- ASIFlex shall provide its standard reporting package for exchanging information.

Services Not Included

- Client's compliance with COBRA portability provisions.
- Determining whether Client's POP, Health FSA, DCAP, HRA and QTP 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 POP, Health FSA and

DCAP.

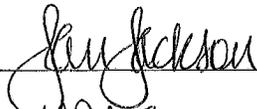
- Client's responsibility for the determination on the second and any final level of appeal.

Sarpy County, Nebraska

Application Software, Inc.

By:  10-6-15

Title: Chairman, Sarpy County Board of
Commissioners

By:  _____
Title: VP & GC

Approved as to Form:



Business Associate Agreement
between Sarpy County, Nebraska and ASI COBRA, LLC

This Agreement is made and entered into this 1st day of October, 2015, by and between Sarpy County ("Covered Entity") and ASI COBRA, LLC ("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 COBRA, including premium billing, collection 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 Sarpy County.
- (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 October 1st, 2015, 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 Nebraska, 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.

SARPY COUNTY, NEBRASKA

ASI COBRA, LLC

By:  By: 
Title: Chairman, Sarpy County Title: GC

Approved as to Form: Board of Commissioners
10-6-15



**COBRA Administrative Services Agreement between
SARPY COUNTY, NEBRASKA and ASI COBRA, LLC**

This Agreement is entered into as of December 1, 2015, between Sarpy County, Nebraska ("Employer") and ASI COBRA, LLC ("TPA").

- A. Employer has adopted and sponsors the Sarpy County Health Plan(s) ("Plan"), which is a group health plan within the meaning of the Public Health Service Act as amended ("PHSA"), and the Internal Revenue Code of 1986, as amended (the "Code"), for eligible employees and their dependents.
- B. The Plan is required to offer continuation of coverage to certain individuals pursuant to the provisions of §4980B of the Code and the PHSA (42 U.S.C. 300bb-1 et seq) (collectively referred to herein as "COBRA").
- C. Employer desires to obtain COBRA administrative services, and TPA desires to provide such administrative services.

In consideration of the mutual promises set forth in this Agreement, the Employer and TPA agree as follows.

ARTICLE I - INTRODUCTION

1.1 Agreement Effective Date and Term

This Agreement is effective December 1, 2015 ("Effective Date"). The initial term of the Agreement will be the initial 25-month period commencing on the Effective Date. The Agreement may be renewed for two additional 12-month periods following the initial term at the price herein quoted. Thereafter, this Agreement will renew automatically for successive periods of 12 months unless this Agreement is terminated in accordance with the provisions of Section 7.4. However, these automatic renewals are subject to price modifications agreed to in advance by both parties.

1.2 Scope of Services

Services to be provided under the Agreement are set forth in Article III. TPA will comply with the specifications and requirements established in the Agreement.

1.3 Definitions

"Continuation Coverage" means the coverages following a Qualifying Event provided to a Qualified Beneficiary as required by COBRA.

"Continuation Coverage Period" means the period commencing on the date of a Qualifying Event and continuing for the maximum period specified in COBRA.

"Employer" means [CLIENT].

"Litigation" means any litigation or other proceeding including but not limited to any judicial or administrative proceeding involving a dispute arising under COBRA or this Agreement, or an audit or proceeding by the Internal Revenue Service or the United States Department of Labor involving directly or indirectly the duties or responsibilities of the Employer or the TPA.

"Plan Administrator" means the administrator as defined in ERISA §3(16)(A) ERISA §3(16)(A).

“Qualified Beneficiary” means any individual specified in COBRA who is eligible to elect Continuation Coverage.

“Qualifying Event” means an event upon which a Qualified Beneficiary must be given the opportunity to elect Continuation Coverage as specified in COBRA.

“TPA” means ASI COBRA.

ARTICLE II - EMPLOYER OBLIGATIONS

2.1 Information to Be Furnished to TPA

During the term of this Agreement, Employer will furnish TPA with the information necessary to provide COBRA administrative services, including, but not limited to:

- (a) The names of all Qualified Beneficiaries eligible to elect Continuation Coverage, as well as the COBRA Qualifying Event date and the type of event (i.e., termination), employee census information including the coverage that the employee had at the time of the Qualifying Event, and dependent information for all dependents covered under the employee's Plan at the time of the Qualifying Event.
- (b) The names and other pertinent information of all employees newly eligible to elect coverage under the Plan.
- (c) Mailing addresses and any other information necessary to enable TPA to perform the administrative services under this Agreement;
- (d) Information concerning any violations of COBRA known to Employer immediately upon acquiring such information.

All information required under this Section 2.1 will be provided in such format and at such intervals as is reasonably required by, and acceptable to, Employer and TPA.

2.2 Premiums and Grace Periods

Employer will determine the cost to the Plan for Continuation Coverage and establish the premium to be charged to Qualified Beneficiaries. Employer will also establish the length of the grace period within which a Qualified Beneficiary may pay premiums for Continuation Coverage without the loss of such coverage.

2.3 Provision of Names of Those Authorized to Act

Employer will provide TPA with the names of individuals authorized to act for the Employer in connection with this Agreement.

2.4 Collection of Due and Unpaid Premiums

Employer will be responsible for remittance of due and unpaid premiums owed by Qualified Beneficiaries to whom Continuation Coverage was provided and who did not remit premiums for such Continuation Coverage. All efforts to collect such amounts will be the joint responsibility of TPA and Employer.

ARTICLE III - TPA RESPONSIBILITIES

3.1 TPA Services

TPA will:

- (a) Determine whether a Qualifying Event has occurred.
- (b) Determine who is eligible to receive COBRA coverage.
- (c) Determine when required COBRA notices must be furnished and provide all required COBRA notices to employees, spouses, dependents, and Qualified Beneficiaries.
- (d) Receive all required COBRA notices from employees, spouses, dependents, and Qualified Beneficiaries.
- (e) Determine the date by when COBRA elections must be made and provide all necessary election forms.
- (f) Receive and process duly executed COBRA election forms received from Qualified Beneficiaries.
- (g) Determine whether a COBRA Continuation Coverage election is valid.
- (h) Determine the duration of Continuation Coverage and whether an event has occurred terminating coverage.
- (i) Design, print and send reminder statements to Qualified Beneficiaries who have elected Continuation Coverage stating the amount of the monthly premium for Continuation Coverage.
- (j) Receive, process, and forward to the Employer amounts received as premiums from Qualified Beneficiaries for Continuation Coverage.
- (k) If the Plan provides conversion rights, notify Qualified Beneficiaries within 90 days preceding the termination of the COBRA Continuation Coverage Period of the right to convert to an individual health insurance policy upon the expiration of the COBRA Continuation Coverage Period.
- (l) Print and send new employee COBRA notices.

3.2 Eligibility Reports to Carriers

TPA will establish, maintain, and update an eligibility report to all carriers identified by Employer to TPA. Updated eligibility reports will be produced weekly for each carrier.

3.3 Maintenance of Roster of Qualified Beneficiaries

TPA will establish, maintain, and update a roster containing the names of all participants who elect Continuation Coverage under the Plan and provide such roster to Employer via the Employer Portal.

3.4 Deposit of Premium Payment

Upon receipt of premium payments from Qualified Beneficiaries for Continuation Coverage, TPA will deposit such amounts with the Employer's bank ("Bank") in an account established by and in the name of the Employer, until such amounts are required to be remitted to the applicable carrier. TPA will maintain and render accounting of the premiums received from Qualified Beneficiaries for Continuation Coverage, and remit the amounts collected to Employer at such times and in such manner as may be agreed upon by TPA and Employer, but not more frequently than monthly.

ARTICLE IV - INDEMNIFICATION PROVISIONS

4.1 Indemnification by Employer

To the extent allowable by law, Employer agrees to indemnify and hold harmless TPA from and against any and all claims, suits, actions, liability, losses, damages, costs, charges, expenses, judgments, and settlements that TPA sustains as a result of any act or omission of Employer in connection with this Agreement.

Employer will not be obligated to indemnify TPA if it is determined that a judgment, determination, or settlement in litigation was paid as a result of an act or omission by TPA that was:

- (a) criminal or fraudulent;
- (b) an intentional disregard of TPA's obligation under this Agreement; or
- (c) negligent.

Notwithstanding the foregoing, Employer will indemnify and hold TPA harmless to the extent Employer concurred in, instructed, directed, or caused such acts or omissions by TPA.

4.2 Indemnification by TPA

TPA agrees to indemnify and hold harmless Employer from and against any and all claims, suits, actions, liability, losses, damages, costs, charges, expenses, judgments, and settlements that Employer sustains as a result of any act or omission of TPA in connection with the performance of services under this Agreement.

TPA will not be obligated to indemnify Employer if it is determined that a judgment, determination, or settlement in litigation was paid as a result of an act or omission by Employer which was:

- (a) criminal or fraudulent;
- (b) an intentional disregard of Employer's obligation under this Agreement; or
- (c) negligent.

Notwithstanding the foregoing, TPA will indemnify and hold Employer harmless to the extent TPA concurred in, instructed, directed, or caused such acts or omissions by Employer."

ARTICLE V - GENERAL PROVISIONS

5.1 Exclusive Responsibility for Operation of Plan

For purposes of this Agreement, Employer has the sole and exclusive authority and responsibility for the Plan, its provision of benefits, and its operation. TPA is empowered to act solely as agent for, and on behalf of, the Employer and only as expressly stated in this Agreement.

5.2 TPA as Agent

TPA agrees to perform the services specified in Article III. It is expressly understood that TPA is hereby appointed solely as the agent of Employer and not as a fiduciary or Plan Administrator of the Plan.

5.3 Liability for Benefits

The payment of benefits is the obligation of Employer. In the event that benefits become payable, even though a Qualified Beneficiary who elected Continuation Coverage (or any other individual to whom benefits have been provided under the Plan) has not paid premiums for such coverage, TPA will have no liability for payment of such benefits.

5.4 Employment of Counsel and Resolution of Litigation

In the event of Litigation, Employer and TPA each:

- (a) Reserve the right to select and retain counsel to protect its interests;
- (b) Will notify the other Party concerning the existence of such Litigation promptly upon learning of such Litigation;
- (c) Will cooperate fully by providing the other Party with all relevant and unprivileged information and documents within its possession or control; and
- (d) Will reasonably assist the other Party in preparation for litigation and in the defense of Litigation.

5.5 Amendment

Employer may at any time request additions, alterations, deductions, or deviations (hereinafter "Change") to the Services provided hereunder. No such Change will be made to the Services unless made pursuant to a written amendment mutually agreed upon by the parties.

5.6 Records

- (a) *Maintenance of Records.* TPA will maintain separate records with respect to the services specified herein for seven calendar years following any year in which it performs services hereunder or, if longer, such period as provided under ERISA or other applicable law.
- (b) *Inspection of Records.* TPA will permit Employer to inspect, examine, and copy records during normal business hours and upon reasonable notice from the Employer.

5.7 Choice of Law

This Agreement and the obligations of Employer and TPA will be governed and construed in accordance with the laws of Nebraska.

5.8 Assignment

TPA may assign or transfer this Agreement and attachments or amendments issued hereunder in connection with the sale of its assets, stock, or securities or in connection with any change of control.

ARTICLE 6 - SERVICE FEES

6.1 Initial Case Set-Up Fee

An initial case set-up fee specified in Exhibit A, attached hereto and made a part hereof, will become payable to TPA at the time this Agreement is executed.

6.2 Service Fee

A service fee specified in Exhibit A will be paid by Employer to TPA. At the end of the first 25-month term under this Agreement, TPA reserves the right to increase or modify the service fee any time upon 30 days notice to Employer. The service fee will be paid regardless of whether a Qualified Beneficiary electing Continuation Coverage pays the premiums for such coverage for the period billed or the month enrolled in such coverage.

6.3 Additional Fees

Charges for additional services requested by Employer not included in the Agreement will be agreed upon prior to the performance of such service by TPA.

6.4 When Fees Are Payable

TPA will transmit an invoice to Employer for service fees on or about the 20th day of each month and will transmit invoices to Employer for additional services immediately following the performance of such services. Payment of services is due upon receipt of such invoice.

6.5 Late Penalty Fee

TPA reserves the right to charge a 1% late penalty fee compounded monthly on all past due accounts. In the event Employer fails to pay fees due TPA within 30 days of the invoice date, a late payment penalty will be

assessed on the portion of the balance that is considered 31 days past due. The Employer is obligated to pay such penalty in addition to payment for services rendered upon receipt of penalty notification.

6.6 COBRA Administration Fee

TPA will retain the 2% COBRA Administration fee paid by the Qualified Beneficiary.

6.7 No Waiver

The Employer's or TPA's failure to insist on performance of any term or condition of this Agreement or to exercise any right or privilege hereunder will not be construed as a waiver of such term, condition, right, or privilege in the future.

ARTICLE VII - GENERAL PROVISIONS

7.1 Notices

All notices, certificates, or other communications hereunder will be sufficiently given and will be deemed given when mailed by certified or registered mail, postage prepaid, with proper address as indicated. TPA and Employer may, by written notice given by each to the other, designate any address or addresses to which notices or other communications to them will be sent when required as contemplated by this Agreement. Until otherwise provided by Employer and TPA, all notices, certificates, and communications to each of them will be addressed as follows:

EMPLOYER: Sarpy County Clerk's Office
1210 Golden Gate Drive, Suite 1250
Papillion, NE 68046

TPA: ASI COBRA
ATTN: John Riddick, President
P.O. Box 6044
Columbia, MO 65205-6044

7.2 Severability

The invalidity or unenforceability of any provision of this Agreement will not affect the other provisions of this Agreement, and this Agreement will be construed in all respects as if such invalid or unenforceable provision were omitted.

7.3 Survival of Obligations

The parties' obligations under this Agreement, which by their nature are intended to continue beyond the termination or expiration of this Agreement, will survive the termination or expiration of this Agreement.

7.4 Termination of Agreement

- (a) This Agreement will terminate upon the first to occur of the following:
- (1) The expiration of 30 days after written notice has been given by Employer or TPA to the other that Employer or TPA has breached any material obligation under this Agreement;
 - (2) The date specified in a written notice given by TPA to Employer of TPA's termination of this Agreement due to Employer's failure to remit to TPA charges for services; and
 - (3) The expiration of 90 days after written notice has been given by Employer or TPA to the other that either Employer or TPA desires to terminate this Agreement.

- (b) In the event of termination of this Agreement, TPA will, unless Employer and TPA otherwise agree:
- (1) Complete the processing of all amounts received by TPA as premiums payable by those who have elected Continuation Coverage prior to the termination;
 - (2) Release to Employer in any reasonably usable format agreed to by the Parties, all necessary records and files relating to billings, and in-force records that have been developed and maintained by TPA pursuant to this Agreement; and
 - (3) Deliver to Employer all unused materials, equipment, and specifications that were furnished by Employer.

Employer will fulfill all lawful obligations with respect to policies affected by the written agreement, regardless of any dispute between the Employer and TPA.

- (c) If TPA performs any services pursuant to this Agreement following its termination including but not limited to services described in this Section 7.4, TPA will be entitled to its fees or other charges on the same basis as if the Agreement has continued in effect for the period during which such services were performed. TPA will transmit an invoice to Employer for services rendered following termination of this Agreement, and this invoice will be payable upon receipt.

7.5 Entire Agreement

This Agreement, , all attached exhibits and the most current Business Associate Agreement, is entire and complete as to all of its terms and supersedes all previous agreements, promises, proposals and representations, whether oral or written. However, the Employer's RFP and the TPA's Response to the RFP may be consulted in the event further information or intent is needed. The Agreement may be executed in duplicate counterparts, each of which may be considered as original and fully enforceable. Except as otherwise provided in Article VII, no termination, revocation, waiver, modification, or amendment of this Agreement will be binding unless agreed to in writing and signed by Employer and TPA.

IN WITNESS WHEREOF, Employer and TPA have caused this Agreement to be executed by their duly authorized representatives as of the day and year set forth above.

Dated this 6th DAY OF October, 2015.

Sarpy County, NE

ASI COBRA, LLC

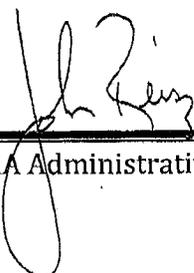
By: 
10-6-15

By: 

Title: Chairman, Sarpy County Board of Commissioners

Title: GC

Approved as to Form:



**Business Associate Agreement between
Sarpy County, Nebraska and Application Software, Inc.**

This Agreement is made and entered into this 1st day of October, 2015, by and between Sarpy County, Nebraska (“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 accounts, 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 Sarpy County.
- (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 this 1st day of November, 2015, and shall terminate upon the end date of the 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

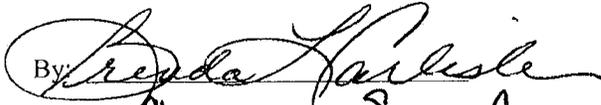
Health Information available to Covered Entity and to HHS to determine compliance with the HIPAA Rules.

- (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 Nebraska, 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.

Sarpy County, Nebraska

Application Software, Inc.

By: 

By: 

Title: Chairman, Sarpy County

Title: GC

Approved as to Form:

Board of Commissioners

10-6-15

