



State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES

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July 9, 2019

His Excellency, Governor Christopher T. Sununu
 and the Honorable Executive Council
 State House
 Concord, New Hampshire 03301

Requested Action

Authorize the Department of Administrative Services (DAS), Risk Management Unit (RMU), to enter into a contract with Application Software, Inc., d.b.a. ASIFlex (VC# 169741), in an amount not to exceed \$431,100, including contingency funds, to administer the Flexible Spending Accounts (FSA), and Health Reimbursement Arrangements (HRA) programs for state employees pursuant to RSA 21:1:44a and b and consistent with state collective bargaining agreements, effective upon Governor and Executive Council approval, for a period of thirty-six (36) months, effective January 1, 2020 through December 31, 2022, with the option to renew for up to two additional years subject to the approval of Governor and Executive Council. Funding source: **Approximately 17% General Funds, 8% Federal Funds, 2% Enterprise Funds, 5% Highway Funds, 1% Turnpike Funds and 67% Other Funds.**

Funds to support this request are anticipated to be available in the following accounts in FY2020 and FY2021 upon the availability and continued appropriation of funds in the future operating budget, with the ability to adjust encumbrances between State Fiscal Years through the Budget Office, if needed and justified:

FSA Administrative Costs	<u>SFY2020</u>	<u>SFY2021</u>	<u>SFY2022</u>	<u>SFY2023</u>	<u>Totals</u>
10-14-14-141010-10460000 - DAS, FSA					
063-500539 FSA Admin Fees	\$32,850	\$65,700	\$65,700	\$32,850	\$197,100
HRA Administrative Costs					
01-14-14-140560-66000000 - Actives					
102-501572 HRA Admin Fees - Actives	\$37,830	\$75,660	\$75,660	\$37,830	\$226,980
01-14-14-140560-66600000 - Troopers					
102-501572 HRA Admin Fees - Troopers	\$1,170	\$2,340	\$2,340	\$1,170	\$7,020
HRA Fiscal Year Totals	\$39,000	\$78,000	\$78,000	\$39,000	\$234,000

FSA and HRA Fiscal Year Totals

\$71,850	\$143,700	\$143,700	\$71,850	\$431,100
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Explanation

The State provides full-time employees with the option to enroll in Flexible Spending Accounts (FSA) for health care expenses (Health FSAs) and/or dependent care expenses (Dependent Care FSAs) in accordance with the provisions of RSA 21-I:44a-b. The State also provides employees with Health Reimbursement Arrangements (HRAs) in accordance with the Collective Bargaining Agreements. The current contract with the ASIFlex expires on December 31, 2019.

DAS issued a Request for Proposal (RFP) for Flexible Spending Account and Health Reimbursement Arrangement Administrative Services on January 3, 2019. Notifications of the RFP were sent to eighty-three organizations by the Bureau of Purchase and Property, eighty-one identified through the appropriate Institute for Public Procurement (NIGP) industry code database. The RFP was also posted on the Bureau of Purchase and Property public website. On February 1, 2019, eight proposals were received from the following: Application Software, Inc. (d.b.a. ASIFlex), Benefit Strategies, CBIZ, ConnectYourCare (CYC), Optum, P&A Group, TASC and WageWorks.

The scoring of the proposals divided into two main categories: a Financial Section (50%) and a Technical Questionnaire (50%). The scoring of the Financial Section was based on the projected costs as determined by the State for the three-year period from January 1, 2020 to December 31, 2022. The scoring of the Technical Questionnaire was allocated to each of the following areas and corresponding weights: Experience, Financial Stability, Contractual, References and Compliance (5%), Administration (including debit cards) and Customer Service (15%), Technology and Reporting (15%), and Implementation and Performance Guarantees (15%). Based on the foregoing, the proposal submitted by ASIFlex received the highest-ranking score and was recommended by a unanimous vote of the evaluation team. The evaluation team members were Joyce Pitman (Director, DAS, Risk Management Unit (RMU)), Matthew Newland (Manager of Employee Relations, DAS, Division of Personnel), Peg Blacker (Health Benefit Program Manager, DAS, RMU), and Diane Caldon (Benefits Administrator, DAS, RMU).

As stated above and referenced in the attached Executive Summary of Overall Results, the financial score encompassed fifty (50) percent of the total proposal score. The lowest cost proposal received 100% of the 50 points allocated for the Financial Section of the RFP. All other financial proposals were scored on a linear sliding scale, with proposals losing 2.0 points of the 50 points allocated for every 1.0% more costly than the lowest cost proposal. Since the sliding scale was linear, proposals lost points for fractions of a percent such that a proposal 0.5% more costly than the lowest cost proposal lost 1 point and received a financial score of 49 points. Proposals that reflected a projected cost that was 25% more costly than the lowest cost proposal received zero (0) points for the Financial Section.

The remaining 50% of the allocated points were distributed amongst the Technical Questionnaire. In the categories listed above, scoring criteria were applied and bidder responses were evaluated as optimal, average and below average on a scale of 100% to 0%. In accordance with the State's procurement rules, non-financial section scoring was based on the quality of each bidder's response and not based on any outside knowledge of the programs and/or services offered by each bidder. All eight proposals were competitive, making the

financial section of the proposal the determining factor for recommendation by the evaluation team.

ASIFlex's proposal earned the most competitive financial score. In accordance with the sliding scale applied to financial scores, ASIFlex received the full 50 points available as the lowest bidder and surpassed the next lowest bidder's financial score by 37.85 percentage points. Additionally, ASIFlex scored well on the Technical Questionnaire review, with a weighted score of 49 percentage points out of 50 percentage points. In particular, ASIFlex scored strongly in the areas of company experience with other large state government clients, administrative flexibility, customer service performance expectations and extended customer service business hours that include Saturdays.

This procurement reflects the increasingly competitive nature of the FSA and HRA Administration Services market. The last procurement was conducted in mid-2014 for a January 1, 2015 effective date. In 2014, the State received six responses with ASIFlex receiving the highest score, which included a quoted three-year contract price of \$610,774. The second most competitive bid in 2014 based solely on price was quoted 42% higher than ASIFlex. The quoted 3-year total contract prices amongst the six bidders ranged from \$610,774 to \$1,452,560.

With continued market pressures, this year's procurement brought in eight bidders with five new contenders vying for the State's business. The quoted 3-year total contract prices amongst the eight bidders ranged from \$349,371 to \$767,826. The difference in price between the two procurement cycles demonstrates how increased competition is pushing bidders to sharpen their pencils. In addition to being the lowest cost service provider by 19%, ASIFlex, in an effort to retain the State's business, beat their own contract price by reducing their administrative fee 43% resulting in approximately \$261,403 in savings from their previous contract. This aggressive self-imposed reduction eliminated ASIFlex willingness to consider further negotiations on price.

The services provided by ASIFlex will have a direct bearing on how our employees access the tax-free FSA dollars they elect to set aside to pay for their healthcare and dependent care expenses. ASIFlex will also manage the employee HRA accounts, which hold the wellness incentive dollars used to pay for medical plan deductibles, copayments and other expenses as per the collective bargaining agreements. As the incumbent, ASIFlex has proven to be a solid business partner in terms accurate claims processing and quality customer and client service.

Based on the foregoing, I am respectfully recommending approval of the contract with ASIFlex.

Respectfully submitted,



Charles M. Arlinghaus
Commissioner

Executive Summary – Overall Results

RFP # 2019-218

Criteria	Weight	Vendor Name							
		ASIFlex	Benefit Strategies	CBIZ	CYC	Optum	P&A	TASC	WageWorks
Financial - Fees in Excess of Lowest (Lowest = 100%)	50%	100.00%	118.92%	219.77%	166.46%	210.48%	162.77%	129.03%	128.30%
	Net Points	50.00	12.15	0.00	0.00	0.00	0.00	0.00	0.00
Experience, Financial Stability, Contractual, references and Compliance (Sections A, B, G)	5%	95.00%	93.33%	70.00%	90.00%	86.67%	100.00%	98.33%	96.67%
	Net Points	4.75	4.67	3.50	4.50	4.33	5.00	4.92	4.83
Administration (including Debit Card) and Customer Service (Sections C, D, E)	15%	98.86%	80.68%	78.41%	92.05%	80.68%	93.18%	97.73%	98.86%
	Net Points	14.83	12.10	11.76	13.81	12.10	13.98	14.66	14.83
Technology and Reporting (Sections F, H)	15%	96.15%	92.31%	88.46%	96.15%	80.77%	100.00%	100.00%	100.00%
	Net Points	14.42	13.85	13.27	14.42	12.12	15.00	15.00	15.00
Implementation and Performance Guarantees (Sections I, J)	15%	100.00%	100.00%	81.25%	93.75%	100.00%	100.00%	100.00%	100.00%
	Net Points	15.00	15.00	12.19	14.06	15.00	15.00	15.00	15.00
Total Weighted Score	100.00	99.00	57.77	40.72	46.79	43.55	48.98	49.58	49.66
Overall Ranking		[1]	[2]	[8]	[6]	[7]	[5]	[4]	[3]

FINANCIAL SCORING NOTE: The most financially competitive fee receives 100% of the 50 points allocated to this category. Higher fees are subject to a point reduction system (2 points reduction for every 1% increase from the lowest fee quote, up to a maximum 25%). Fees that exceed the lowest fee quote by 25% or more receive 0 points.

Projected Analysis – Financial Comparison and Ranking – 1/1/2020 to 12/31/2022

Fees	ASIFlex	Benefit Strategies	CBIZ	CYC	Optum	P&A	TASC	WageWorks
Monthly Estimate	\$ 970,175	\$ 11,000.73	\$ 21,528.50	\$ 16,154.60	\$ 20,427.00	\$ 15,796.41	\$ 12,521.05	\$ 12,451.25
Total Y1 Fee	\$ 116,457.00	\$ 1,427,850.00	\$ 255,942.00	\$ 193,855.20	\$ 245,124.00	\$ 189,553.32	\$ 150,262.20	\$ 149,415.00
Total Y2 Fee	\$ 116,457.00	\$ 1,383,350.00	\$ 255,942.00	\$ 193,855.20	\$ 245,124.00	\$ 189,553.32	\$ 150,262.20	\$ 149,415.00
Total Y3 Fee	\$ 116,457.00	\$ 1,383,350.00	\$ 255,942.00	\$ 193,855.20	\$ 245,124.00	\$ 189,553.32	\$ 150,262.20	\$ 149,415.00
Projected 3 Year Total Cost	\$ 349,371.00	\$ 4,194,550.00	\$ 767,826.00	\$ 581,565.60	\$ 735,372.00	\$ 568,659.96	\$ 450,786.60	\$ 448,245.00
Fee Ranking	1	2	0	6	7	5	4	3
Change from Lowest Fee (%)	0%	333.114%	610.455%	1242.195%	3103.001%	3213.200%	6101.416%	3001.074%
Change from Lowest Fee (C)	0%	\$362,893	\$1,511,884	\$232,195	\$395,001	\$213,200	\$101,416	\$301,074
Change from Lowest Fee (C)	0%	362%	610%	1242%	3103%	3213%	6101%	3001%

Subject: ADMINISTRATION OF FLEXIBLE SPENDING ACCOUNT PLAN (FSA) & HEALTH REIMBURSEMENT ARRANGEMENT PLAN (HRA)



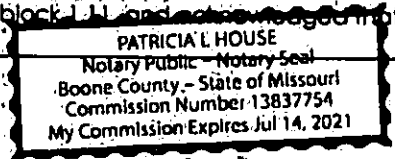


Notice: This agreement and all of its attachments shall become public upon submission to Governor and Executive Council for approval. Any information that is private, confidential or proprietary must be clearly identified to the agency and agreed to in writing prior to signing the contract.

AGREEMENT

The State of New Hampshire and the Contractor hereby mutually agree as follows:

GENERAL PROVISIONS (Form P-37)

1. IDENTIFICATION.

1.1 State Agency Name Department of Administrative Services - Risk Management Unit		1.2 State Agency Address 25 Capitol Street, Room 412 Concord, NH 03301	
1.3 Contractor Name Application Software Inc. dba ASIFlex		1.4 Contractor Address 201 West Broadway, Bldg 4C, Columbia, MO 65203	
1.5 Contractor Phone Number 1-800-659-3035	1.6 Account Number 10-14-14-141010-10460000 (FSA) 01-14-14-140560-66000000 (HRA Actives) 01-14-14-140560-66600000 (HRA Troopers)	1.7 Completion Date 12/31/22	1.8 Price Limitation \$431,100
1.9 Contracting Officer for State Agency Joyce Pitman, Deputy Director of Risk and Benefits		1.10 State Agency Telephone Number 603-271-3180	
1.11 Contractor Signature 		1.12 Name and Title of Contractor Signatory John M. Riddick, President	
1.13 Acknowledgement: State of <u>Missouri</u> , County of <u>Boone</u> On <u>the 18th of June</u> <u>2019</u> , before the undersigned officer, personally appeared the person identified in block 1.12, or satisfactorily proven to be the person whose name is signed in block 1.11, and acknowledged that s/he executed this document in the capacity indicated in block 1.12.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal]			
1.13.2 Name and Title of Notary or Justice of the Peace			
1.14 State Agency Signature  Date: <u>8-19-19</u>		1.15 Name and Title of State Agency Signatory <u>Charles Arlinghaus, Commissions</u>	
1. Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____ Director, On: _____			
2. Approval by the Attorney General (Form, Substance and Execution) (if applicable) By:  On: <u>8/20/19</u>			
3. Approval by the Governor and Executive Council (if applicable) By: _____ On: _____			

2. EMPLOYMENT OF CONTRACTOR/SERVICES TO BE PERFORMED. The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages contractor identified in block 1.3 ("Contractor") to perform, and the Contractor shall perform, the work or sale of goods, or both, identified and more particularly described in the attached EXHIBIT A which is incorporated herein by reference ("Services").

3. EFFECTIVE DATE/COMPLETION OF SERVICES.

3.1 Notwithstanding any provision of this Agreement to the contrary, and subject to the approval of the Governor and Executive Council of the State of New Hampshire, if applicable, this Agreement, and all obligations of the parties hereunder, shall become effective on the date the Governor and Executive Council approve this Agreement as indicated in block 1.18, unless no such approval is required, in which case the Agreement shall become effective on the date the Agreement is signed by the State Agency as shown in block 1.14 ("Effective Date").

3.2 If the Contractor commences the Services prior to the Effective Date, all Services performed by the Contractor prior to the Effective Date shall be performed at the sole risk of the Contractor, and in the event that this Agreement does not become effective, the State shall have no liability to the Contractor, including without limitation, any obligation to pay the Contractor for any costs incurred or Services performed. Contractor must complete all Services by the Completion Date specified in block 1.7.

4. CONDITIONAL NATURE OF AGREEMENT.

Notwithstanding any provision of this Agreement to the contrary, all obligations of the State hereunder, including, without limitation, the continuance of payments hereunder, are contingent upon the availability and continued appropriation of funds, and in no event shall the State be liable for any payments hereunder in excess of such available appropriated funds. In the event of a reduction or termination of appropriated funds, the State shall have the right to withhold payment until such funds become available, if ever, and shall have the right to terminate this Agreement immediately upon giving the Contractor notice of such

termination. The State shall not be required to transfer funds from any other account to the Account identified in block 1.6 in the event funds in that Account are reduced or unavailable.

5. CONTRACT PRICE/PRICE LIMITATION/PAYMENT.

5.1 The contract-price, method of payment, and terms of payment are identified and more particularly described in EXHIBIT B which is incorporated herein by reference.

5.2 The payment by the State of the contract price shall be the only and the complete reimbursement to the Contractor for all expenses, of whatever nature incurred by the Contractor in the performance hereof, and shall be the only and the complete compensation to the Contractor for the Services. The State shall have no liability to the Contractor other than the contract price.

5.3 The State reserves the right to offset from any amounts otherwise payable to the Contractor under this Agreement those liquidated amounts required or permitted by N.H. RSA 80:7 through RSA 80:7-c or any other provision of law.

5.4 Notwithstanding any provision in this Agreement to the contrary, and notwithstanding unexpected circumstances, in no event shall the total of all payments authorized, or actually made hereunder, exceed the Price Limitation set forth in block 1.8.

6. COMPLIANCE BY CONTRACTOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.

6.1 In connection with the performance of the Services, the Contractor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Contractor, including, but not limited to, civil rights and equal opportunity laws. This may include the requirement to utilize auxiliary aids and services to ensure that persons with communication disabilities, including vision, hearing and speech, can communicate with, receive information from, and convey information to the Contractor. In addition, the Contractor shall comply with all applicable copyright laws.

6.2 During the term of this Agreement, the Contractor shall not discriminate against employees or applicants for employment because of race, color, religion, creed, age, sex, handicap, sexual orientation, or national origin and will take affirmative action to prevent such discrimination.

6.3 If this Agreement is funded in any part by monies of the United States, the Contractor shall comply with all the provisions of Executive Order No. 11246 ("Equal Employment Opportunity"), as supplemented by the regulations of the United States Department of Labor (41 C.F.R. Part 60), and with any rules, regulations and guidelines as the State of New Hampshire or the United States issue to implement these regulations. The Contractor further agrees to permit the State or United States access to any of the Contractor's books, records and accounts for the purpose of ascertaining compliance with all rules, regulations and orders, and the covenants, terms and conditions of this Agreement.

7. PERSONNEL

7.1 The Contractor shall at its own expense provide all personnel necessary to perform the Services. The Contractor warrants that all personnel engaged in the Services shall be qualified to perform the Services, and shall be properly licensed and otherwise authorized to do so under all applicable laws.

7.2 Unless otherwise authorized in writing, during the term of this Agreement, and for a period of six (6) months after the Completion Date in block 1.7, the Contractor shall not hire, and shall not permit any subcontractor or other person, firm or corporation with whom it is engaged in a combined effort to perform the Services to hire, any person who is a State employee or official, who is materially involved in the procurement, administration or performance of this Agreement. This provision shall survive termination of this Agreement.

7.3 The Contracting Officer specified in block 1.9, or his or her successor, shall be the State's representative. In the event of any dispute concerning the interpretation of this Agreement, the Contracting Officer's decision shall be final for the State.

8. EVENT OF DEFAULT/REMEDIES.

8.1 Any one or more of the following acts or omissions of the Contractor shall constitute an event of default hereunder ("Event of Default");

8.1.1 failure to perform the Services satisfactorily or on schedule;

8.1.2 failure to submit any report required hereunder; and/or

8.1.3 failure to perform any other covenant, term or condition of this Agreement.

8.2 Upon the occurrence of any Event of Default, the State may take any one, or more, or all, of the following actions:

8.2.1 give the Contractor a written notice specifying the Event of Default and requiring it to be remedied within, in the absence of a greater or lesser specification of time, thirty (30) days from the date of the notice; and if the Event of Default is not timely remedied, terminate this Agreement, effective two (2) days after giving the Contractor notice of termination;

8.2.2 give the Contractor a written notice specifying the Event of Default and suspending all payments to be made under this Agreement and ordering that the portion of the contract price which would otherwise accrue to the Contractor during the period from the date of such notice until such time as the State determines that the Contractor has cured the Event of Default shall never be paid to the Contractor;

8.2.3 set off against any other obligations the State may owe to the Contractor any damages the State suffers by reason of any Event of Default; and/or

8.2.4 treat the Agreement as breached and pursue any of its remedies at law or in equity, or both.

9. DATA/ACCESS/CONFIDENTIALITY/PRESERVATION.

9.1 As used in this Agreement, the word "data" shall mean all information and things developed or obtained during the performance of, or acquired or developed by reason of, this Agreement, including, but not limited to, all studies, reports, files, formulae, surveys, maps, charts, sound recordings, video recordings, pictorial reproductions, drawings, analyses, graphic representations, computer programs, computer printouts, notes, letters, memoranda,

papers, and documents, all whether finished or unfinished.

9.2 All data and any property which has been received from the State or purchased with funds provided for that purpose under this Agreement, shall be the property of the State, and shall be returned to the State upon demand or upon termination of this Agreement for any reason.

9.3 Confidentiality of data shall be governed by N.H. RSA chapter 91-A or other existing law. Disclosure of data requires prior written approval of the State.

10. TERMINATION. In the event of an early termination of this Agreement for any reason other than the completion of the Services, the Contractor shall deliver to the Contracting Officer, not later than fifteen (15) days after the date of termination, a report ("Termination Report") describing in detail all Services performed, and the contract price earned, to and including the date of termination. The form, subject matter, content, and number of copies of the Termination Report shall be identical to those of any Final Report described in the attached EXHIBIT A.

11. CONTRACTOR'S RELATION TO THE STATE. In the performance of this Agreement, the Contractor is in all respects an independent contractor, and is neither an agent nor an employee of the State. Neither the Contractor nor any of its officers, employees, agents or members shall have authority to bind the State or receive any benefits, workers' compensation or other emoluments provided by the State to its employees.

12. ASSIGNMENT/DELEGATION/SUBCONTRACTS. The Contractor shall not assign, or otherwise transfer any interest in this Agreement without the prior written notice and consent of the State. None of the Services shall be subcontracted by the Contractor without the prior written notice and consent of the State.

13. INDEMNIFICATION. The Contractor shall defend, indemnify and hold harmless the State, its officers and employees, from and against any and all losses suffered by the State, its officers and employees, and any and all claims,

liabilities or penalties asserted against the State, its officers and employees, by or on behalf of any person, on account of, based or resulting from, arising out of (or which may be claimed to arise out of) the acts or omissions of the Contractor. Notwithstanding the foregoing, nothing herein contained shall be deemed to constitute a waiver of the sovereign immunity of the State, which immunity is hereby reserved to the State. This covenant in paragraph 13 shall survive the termination of this Agreement.

14. INSURANCE.

14.1 The Contractor shall, at its sole expense, obtain and maintain in force, and shall require any subcontractor or assignee to obtain and maintain in force, the following insurance:

14.1.1 comprehensive general liability insurance against all claims of bodily injury, death or property damage, in amounts of not less than \$1,000,000 per occurrence and \$2,000,000 aggregate; and

14.1.2 special cause of loss coverage form covering all property subject to subparagraph 9.2 herein, in an amount not less than 80% of the whole replacement value of the property.

14.2 The policies described in subparagraph 14.1 herein shall be on policy forms and endorsements approved for use in the State of New Hampshire by the N.H. Department of Insurance, and issued by insurers licensed in the State of New Hampshire.

14.3 The Contractor shall furnish to the Contracting Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. Contractor shall also furnish to the Contracting Officer identified in block 1.9, or his or her successor, certificate(s) of insurance for all renewal(s) of insurance required under this Agreement no later than thirty (30) days prior to the expiration date of each of the insurance policies. The certificate(s) of insurance and any renewals thereof shall be attached and are incorporated herein by reference. Each certificate(s) of insurance shall contain a clause requiring the insurer to provide the Contracting Officer identified in block 1.9, or his or her successor, no less than thirty (30) days prior written notice of cancellation or modification of the policy.

15. WORKERS' COMPENSATION.

15.1 By signing this agreement, the Contractor agrees, certifies and warrants that the Contractor is in compliance with or exempt from, the requirements of N.H. RSA chapter 281-A ("Workers' Compensation").

15.2 To the extent the Contractor is subject to the requirements of N.H. RSA chapter 281-A, Contractor shall maintain, and require any subcontractor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. Contractor shall furnish the Contracting Officer identified in block 1.9, or his or her successor, proof of Workers' Compensation in the manner described in N.H. RSA chapter 281-A and any applicable renewal(s) thereof, which shall be attached and are incorporated herein by reference. The State shall not be responsible for payment of any Workers' Compensation premiums or for any other claim or benefit for Contractor, or any subcontractor or employee of Contractor, which might arise under applicable State of New Hampshire Workers' Compensation laws in connection with the performance of the Services under this Agreement.

16. WAIVER OF BREACH. No failure by the State to enforce any provisions hereof after any Event of Default shall be deemed a waiver of its rights with regard to that Event of Default, or any subsequent Event of Default. No express failure to enforce any Event of Default shall be deemed a waiver of the right of the State to enforce each and all of the provisions hereof upon any further or other Event of Default on the part of the Contractor.

17. NOTICE. Any notice by a party hereto to the other party shall be deemed to have been duly delivered or given at the time of mailing by certified mail, postage prepaid, in a United States Post Office addressed to the parties at the addresses given in blocks 1.2 and 1.4, herein.

18. AMENDMENT. This Agreement may be amended, waived or discharged only by an

instrument in writing signed by the parties hereto and only after approval of such amendment, waiver or discharge by the Governor and Executive Council of the State of New Hampshire unless no such approval is required under the circumstances pursuant to State law, rule or policy.

19. CONSTRUCTION OF AGREEMENT AND TERMS.

This Agreement shall be construed in accordance with the laws of the State of New Hampshire, and is binding upon and inures to the benefit of the parties and their respective successors and assigns. The wording used in this Agreement is the wording chosen by the parties to express their mutual intent, and no rule of construction shall be applied against or in favor of any party.

20. THIRD PARTIES. The parties hereto do not intend to benefit any third parties and this Agreement shall not be construed to confer any such benefit.

21. HEADINGS. The headings throughout the Agreement are for reference purposes only, and the words contained therein shall in no way be held to explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of this Agreement.

22. SPECIAL PROVISIONS. Additional provisions set forth in the attached EXHIBIT C are incorporated herein by reference.

23. SEVERABILITY. In the event any of the provisions of this Agreement are held by a court of competent jurisdiction to be contrary to any state or federal law, the remaining provisions of this Agreement will remain in full force and effect.

24. ENTIRE AGREEMENT. This Agreement, which may be executed in a number of counterparts, each of which shall be deemed an original, constitutes the entire Agreement and understanding between the parties, and supersedes all prior Agreements and understandings relating hereto.

**EXHIBIT A
SCOPE OF SERVICES**

This Administrative Services Agreement (the Agreement) is made and entered into by and between the State of New Hampshire, Department of Administrative Services, Risk Management Unit (hereinafter State) and Application Software, Inc., dba ASIFlex (hereinafter Contractor).

Background

Contractor shall provide administrative services for the following benefit programs offered under an Internal Revenue Code § 125 Cafeteria Plan established by the State:

- Health Flexible Spending Arrangement (Health FSA)
- Dependent Care Flexible Spending Arrangement (Dependent Care FSA)

Contractor shall provide administrative services for the Health Reimbursement Arrangement (HRA) established under Revenue Ruling 2002-41 and Notice 2002-45 as described below.

Contractor shall provide administrative services for COBRA and HIPAA Portability Administration for the Health FSA as described below.

The Health FSA, Dependent Care FSA, HRA and plans to which COBRA and/or HIPAA applies will hereinafter be collectively referred to as the Program.

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

**Section 1
Effective Date and Term
*Applies to All Services***

1.1 Effective Date

This Agreement is effective upon Governor and Executive Council approval. The parties agree that the administrative services to be provided under this Agreement shall commence on January 1, 2020, or upon approval of Governor and Executive Council (whichever is later), while implementation activities and other activities described herein shall commence immediately upon Governor and Executive Council approval. Payments under this Agreement shall not commence prior to January 1, 2020.

1.2 Term

The term shall be the period commencing on the Effective Date and ending December 31, 2022, with the option to renew for up to two additional years, subject to the approval of the Governor and Executive Council.

Section 2
Scope of Understanding
Applies to All Services

2.1 Scope of Undertaking

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

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

2.1.3 Except as otherwise expressly set forth herein, nothing herein shall be deemed to constitute Contractor as a party to the Program or to confer upon Contractor any authority or control with respect to management of the Program, authority or responsibility in connection with administration of the Program, or responsibility for the terms or validity of the Program.

2.2 Non-Discretionary Duties

2.2.1 Except as otherwise expressly set forth herein, the services to be performed by Contractor 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 State.

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

2.3.1 Notwithstanding the foregoing, the State delegates to Contractor certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 5, Exhibit A, and to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of the State for the payment of Program benefits claims as set forth in Exhibit B.

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

Section 3
Program Eligibility
Applies to All Services

3.1 General Eligibility

3.1.1 Unless otherwise specified in the Benefit Booklet and/or Summary Plan Description (SPD) by the State or within this Agreement, Contractor shall apply its standard administrative practices and procedures and enrollment policies, which may be revised or modified from time to time, in connection to its performance of its responsibilities as outlined in this Agreement or as a direct result of changes to federal or state laws as they apply to the administration of FSAs and HRAs.

Section 4
The State's Responsibilities
Applies to All Services

4.1 General Fiduciary Duties

4.1.1 Except as otherwise specifically delegated to Contractor in this Agreement, the State has the final 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. The State gives Contractor the authority to act on behalf of the State in connection with the Program, but only as expressly stated in this Agreement or as mutually agreed in writing by the State and Contractor. The State is considered the Plan Administrator and Named Fiduciary of the Program benefits.

4.2 Funding

4.2.1 The State shall promptly fund an account maintained for the payment of Program benefits as described in Exhibit B.

4.3 Information to Contractor

4.3.1 Upon request, the State agrees to provide Contractor with information necessary for Contractor's performance of and duties and obligations under this Agreement, including information concerning the Program and the eligibility of individuals to participate in and receive Program benefits. Contractor shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the State or its agents. Such information shall be provided to Contractor in the time and in the manner agreed to by the State and Contractor. Contractor shall have no responsibility with regard to benefits paid in error due to the State's failure to timely update such information.

4.3.2 The State also agrees to provide Contractor with updated reports (as needed) summarizing eligibility data.

4.3.3 The State shall be responsible for ensuring the accuracy of its eligibility data.

4.3.4 Contractor incurs no liability to the State or any person who is participating in the Program (Participant) as a consequence of inaccurate eligibility data provided by the State. Additionally, Contractor is under no obligation to credit the State for any claims expenses or administrative fees incurred or paid to Contractor as a consequence of the State failing to review eligibility data for accuracy.

4.4 Plan Documents

4.4.1 As Plan Administrator, the State is responsible for the Program's compliance with all applicable federal and state laws and regulations and shall provide Contractor with all relevant documents governing the Program, including but not limited to, the Program documents and any Program amendments. When possible, the State will notify Contractor of any changes to the Program at least 30 days before the effective date of such changes.

4.4.2 Contractor shall provide draft plan documents and forms for review by the State with its legal counsel for creation of customized documentation for the Program to be approved and executed by the State, including

summary plan description, plan document, plan amendments, reimbursement forms and election forms. Documents shall be finalized and approved by the State before December 1 of each plan year as necessary. Contractor shall also provide compliance assistance and ongoing maintenance of these documents as required. Contractor will customize such documentation only to the extent to incorporate the State's responses to certain plan design questions submitted by Contractor. In addition, Contractor will provide draft document changes to reflect revisions in applicable legislation or regulations. Although Contractor has taken steps to ensure that its draft 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 State or the Program.

4.4.3 As Plan Sponsor, the State bears sole responsibility for determining the legal and tax status of the Program. Further, Contractor is not a law firm and has no authority to provide legal advice.

4.5 Liability for Claims

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

4.6 Financial and Medical Records

4.6.1. In order to permit Contractor to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, Contractor 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.

4.7 HIPAA Privacy

4.7.1 The State shall provide Contractor with the following documents, where required or applicable:

- Notice of Privacy Practices;
- Any subsequent changes to the Notice of Privacy Practices;
- Acknowledgement that the State amended the plan document as regulated by the Privacy Rule to permit disclosure of PHI to the State for plan administrative purposes;
- Acknowledgement that the State agrees to the conditions set forth in the plan amendment;
- Notice of any requests that communications be sent to a Participant or beneficiary by an alternative means or at an alternative location that the State agrees to under the Privacy Rule, to the extent that such request may affect Business Associate's use or disclosure of PHI.

4.7.2 The State shall not request Contractor to use or disclose PHI in any manner that would not be permissible under the Privacy or Security Rules if done by the State, except that Contractor may use or disclose PHI for purposes of data aggregation and the management and administrative activities of Contractor, as provided in Section 6, Exhibit A of this Agreement.

Section 5
Contractor's Responsibilities
Applies to All Services

5.1 Delegated Responsibilities and Administrative Services

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

5.1.2 Contractor shall apply plan provisions in a consistent, accurate manner.

5.1.3 Contractor shall implement plan rules adopted by the State within a reasonable and required timeframe. This shall include implementation of any changes to the Program that are collectively bargained over the term of the Agreement. The current collective bargaining agreements are effective July 1, 2018 through June 30, 2019. Per the bargaining agreements, benefit plan design changes are typically implemented on a calendar year basis.

5.1.4 Contractor shall process the State enrollment and payroll deduction data during open enrollment and as frequently as necessary to accommodate subsequent updates.

5.1.5 Contractor shall stay current on legal and regulatory changes affecting FSA and HRA plans and debit cards, and conduct internal audits of operations to assure compliance with policies and procedures.

5.1.6 Contractor shall assist the State in preparing preliminary, mid-year, and final nondiscrimination tests.

5.2 Services Not Included

5.2.1 The State's compliance with COBRA or compliance with HIPAA portability provisions for any Plan other than the Health FSA.

5.2.2 Determining whether the State's plan documents are in compliance with the Code or any other applicable state, federal, or local statutes or regulations.

5.2.3 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 Health or Dependent Care FSA.

5.2.4 Determination on any final level of appeal, which is at the State's discretion.

5.3 Subcontractors

5.3.1 Contractor utilizes the following subcontractors. Said subcontractors shall meet all applicable requirements described in this Agreement. Pursuant to provision 12 of the General Provisions of this Agreement, the State hereby gives written consent for Contractor to utilize the following subcontractors. The use of any other subcontractors or the use of these subcontractors for any other purpose not outlined below, shall require prior written approval by the State as outlined in provision 12. Contractor takes responsibility for the quality and timeliness of services provided by these subcontractors.

- WEX Health – WEX Health is responsible for the production and delivery of the debit cards for the Health FSA and HRA Participants. WEX Health also performs on-going record keeping of the card activity and transactions. Location: 82 Hopmeadow Street, Suite 220, Simsbury, CT 06089.
- Fredrick Enterprises, Inc., dba Midwest Mailing – Midwest Mailing will provide mailing, print and fulfillment services. Location: 6104 Brown Station Rd., Columbia, MO 65202.

5.4 Employee Data Access

5.4.1 Contractor shall maintain a mobile application and a website that allows Participants secure access to their account information. The website shall foster understanding in tax-favored benefit programs for benefit-eligible employees nationwide. The website shall include but not be limited to user-friendly features such as:

- Online account statements and claim information with a display of claims submitted and claims paid
- Account balance(s)
- Easy online claim filing
- Secure messaging center
- Easy sign up to innovative claim filing service
- Online confirmation of receipt of fax
- Link to ASIFlex Mobile App
- Link to FSA Store with thousands of over-the-counter health care products
- Helpful, educational videos
- Expense estimator and tax-savings calculator
- Detailed list of eligible expenses
- Claim, authorization and other forms
- Links to pertinent IRS forms and publications
- Debit card information including a list of compliant IIAS merchants
- Detailed Frequently Asked Questions section
- News and other regulatory updates
- FSA and HRA Program Descriptions

5.5 Account Management

5.5.1 Contractor shall track the HRA accounts for the Health Assessment Tool (HAT) program as well as the FSA accounts (Health and Dependent Care) for each Participant. Contractor shall accommodate the reimbursement order specified by the State. Contractor will provide reports to the State for the HRA accounts as well as the FSA accounts.

5.5.2 Contractor shall process claims with a claim incurred date during the agreement period, including investigating and reviewing such claims to determine the amount, if any, that is due and payable with respect thereto in accordance with the terms and conditions of the Benefit Booklet, Summary Plan Description and this Agreement.

5.5.3 Contractor shall make initial decisions with regard to manual Participant claims and disburse any benefit payments that it determines to be due within 3 business days of the day on which Contractor receives the claim. Benefit payments shall be made by check or Automated Clearing House (ACH) payable to each individual Participant as applicable.

5.5.4 In the event the aggregate year to date claims payments exceed the aggregate year to date Participant contributions, Contractor will contact the State to make available such excess amounts.

5.5.6 Contractor shall notify Participants with regard to any claims that are denied due to inadequate substantiation or data submission and provide an adequate time period for the Participant to resubmit the claim. Contractor shall follow the requirements of the State with regard to denial of claims.

5.5.7 Upon receiving instructions from the State with regard to a Participant's eligibility, change in status, or other event that permits an election change under IRS regulations, Contractor shall make the requested change in the Participant's election within one business day.

5.6 Claims Processing

5.6.1 Contractor shall conform to the following claim turnaround timeframes (number of business days from receipt) when processing claims:

Claim Type	Turnaround Time
Paper Claims	Three (3) Days
Electronic Claims (Debit Card)	Immediate
Electronic Claims (submitted via Fax, Online & Mobile App)	Three (3) Days

5.7 Service Delivery

5.7.1 Contractor agrees to provide customer service personnel by telephone during Contractor's normal business hours (8:00 am to 8:00 pm ET, Monday through Friday and from 10:00 am to 2:00 pm ET on Saturday, except for national holidays). Contractor also agrees to provide electronic administrative services 24 hours per day, 7 days per week. Contractor shall have a dedicated staff assigned to the State for account services and customer service.

5.7.2 Contractor shall provide seminars, direct outreach and other educational activities to promote the Program. Contractor shall provide support for annual open enrollments, and attend meetings as requested by the State. This can include print material, educational webinars, recorded presentations or on-site meetings such as annual open enrollment.

5.7.3 Contractor shall provide employee and Participant communications such as newsletters or similar informational materials, web-access to interactive information and tax savings calculators (e.g., links to claims history information maintained online by the current health benefit vendors for verifying out of pocket expenses, and calculating payroll contributions to the programs being offered), a secure mobile app to access account information and submit claims and receipts, announcement posters, new hire letters and informational packets, and other communications that the State deems necessary as mutually agreed with Contractor.

5.7.4 Please note that the annual open enrollment period runs typically for two and one half weeks, to commence in November for a January 1 effective date. Contractor shall be ready and able to support the Open Enrollment process in November of each year.

5.8 Benefits Payment

5.8.1 Contractor agrees to, on behalf of the State, operate under the express terms of this Agreement and the Program. Contractor makes the initial determination if persons covered by the Program (as included in the eligibility files) are entitled to benefits under the Program and shall pay Program benefits in its usual and customary manner, to Participants as set forth in this Section 5, Exhibit A.

5.8.2 Contractor shall make available (by electronic medium and paper copy) enrollment and reimbursement forms and instructions for filing Participant claims.

5.8.3 Contractor shall provide at least the following claim submission options: mobile applications, debit card, direct provider pays, online claim filing, insurance interface, fax and postal mail.

5.8.4 Contractor assumes the responsibility for ensuring that all payable transactions are reimbursable according to Plan rules and IRS code 213(d).

5.8.5 Health FSA claims services incurred during the grace period are applied to the previous year first with any remaining claim applied to the current year. Should the State elect to allow for the Health FSA funds to roll over, claim payments are first drawn from funds allowed to roll over from the previous year then from the current year.

5.8.6 Health Reimbursement Arrangement (HRA) account(s) roll over will be determined by the State in accordance with collective bargaining agreements as specified in Section 5.1.3, Exhibit A.

5.9 Debit Cards

5.9.1 Contractor shall provide a set of two (2) debit cards to each Participant and manage all debit card transactions. Each Participant will call a toll-free number in order to activate the card. Initial debit cards shall be provided to existing Participants prior to January 1, 2020.

5.9.2 Contractor shall mail any necessary debit cards to each Participant within ten (10) business days of receipt of the State's enrollment data. FSA enrollments are initiated by an enrollment file Contractor receives from the State. HRA enrollments are initiated by a file Contractor receives from the State's medical benefits administrator. Participants may request a debit card be provided to their dependent spouse and/or child(ren) provided that they are at least eighteen (18) years of age.

5.9.3 If a Participant substantiates a debit card transaction with a manual submission, then the Contractor will automatically establish all future transactions of the same amount with the same merchant as auto-substantiated. The Participant does not need to initiate this process.

5.9.4 At the point-of-sale, the Contractor debit card will confirm the merchant is an eligible merchant according to the merchant category code (MCC) coded into Contractor's credit card processing system and/or the individual merchant identification number.

5.9.5 If a purchase is attempted at a vendor that has an allowable MCC, and the Participant has available funds, the transaction will be approved.

5.9.6 If a Participant attempts a purchase at a merchant that does not have an acceptable MCC and does not

meet the Inventory Information Approval System (IIAS), the purchase will be declined and the Participant will have to provide an alternate form of payment for all approved transactions. Contractor will then attempt to retroactively match the purchase amount with known co-pay amounts for FSA Participants. In order to adjudicate the known co-pay amounts, the State will provide Contractor with a data file that details the known co-pay amounts.

5.9.7 If a Participant purchases an item that does not match a known co-pay or is not an auto-adjudicated purchase, Contractor will send the Participant notification that substantiating documentation must be submitted to Contractor within six weeks or as otherwise agreed by Contractor and the State.

5.9.8 While IRS Revenue Ruling 2006-69 created a safe harbor for dependent care expenditures purchased with the FSA debit card, the process for substantiating these purchases is currently cumbersome and confusing for Participants. Therefore, it is agreed that Participants will not be provided the use of an FSA debit card for dependent care expenses. However, if the process for substantiating purchases eases, parties can discuss the feasibility of adding this feature.

5.9.9 Contractor shall provide one card combining both Health FSA and HRA accounts unless directed otherwise by the State. Order of payment shall be directed by the State.

5.9.10 Contractor's debit card system shall be available except in the case of scheduled system downtime (which Contractor shall strive to minimize) or systems downtime attributed to telecommunications failure or other circumstances beyond Contractor's control. Contractor shall provide at least a 30-day advance notice to plan Participants of debit card blackout periods including information on alternative means of claim adjudication.

5.10 Reporting

5.10.1 Contractor agrees to make available to the State each month via electronic medium (unless otherwise agreed by the parties) a report showing the payment history and status of Participant claims and the amounts and transactions of Participant accounts during the preceding month. Management reports shall also be available on-demand 24/7 through Contractor's employer portal.

5.10.2 Contractor shall meet the following minimum reporting requirements. Reports should include the following:

- Weekly/monthly/quarterly/annual reconciliation, customer service and activity reports showing counts by employee group, type of benefit, and other pertinent information;
- Monthly activity reports showing the types of transactions processed broken down by category;
- Participant level data including deposits, expenditures and account balances;
- Full financial accounting and banking reconciliation reports including forfeitures;
- Annual presentation and report to include a summary of the State activity, and recommendations for improvement;
- Ad-hoc reporting (regular reports listed above but provided at any frequency in which needed) at no additional charge, which shall be provided within no later than within 5 days of receipt of request;
- Email daily activity notice - This notice will notify the State of the amounts issued that day for each flexible spending account. The notice is sent one day in advance of the effective date of the debits from the State's account and can be sent to any individual (or individuals) designated by the State.

5.10.3 For those Program benefits subject to HIPAA, the State must provide certification that the plan

document requires the State to comply with applicable Privacy and Security Rules under HIPAA before Contractor will make available the reports provided for in this Section to the State.

5.10.4 Contractor 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. Contractor shall prepare and mail to Participants, year-end reports of the contributions made by and the benefits paid to or on behalf of Participants. Contractor shall also prepare and mail such reports upon request by Participant.

5.10.5 Contractor will process regular deposit reports provided from the State to capture new Participants, terminated Participants, change in status, and to post regular payroll contributions.

5.11 Claims Appeals

5.11.1 Contractor shall handle the intake, review, determination and notification of determination to Participants for the first level of appeal. Contractor will handle the intake of second level appeals and forward to the State for review, final determination and notification.

5.12 Implementation

5.12.1 *If applicable*, Contractor shall provide a detailed implementation plan to the State, subject to the State's approval, within one week after Governor and Executive Council approval or as otherwise agreed by the parties. The implementation plan shall include but not be limited to the following:

- Development of interface between Contractor and State system
- Development of a Comprehensive Communication plan
- Successful test of system configuration to accommodate State plan rules, account set-up and claims adjudication parameters
- Support of the State's November 2019 open enrollment process for the 2020 Plan Year
- Deliver to plan Participants of FSA and HRA program benefit information prior to the November 2019 open enrollment and debit cards prior to 1/1/2020
- Access to the Contractor's online system by close of open enrollment for benefit program staff
- Access to Contractor's online system and customer service by the November 2019 open enrollment for eligible plan Participants
- Establish process for data and reporting access by the State
- Establish banking procedures to obtain claim funding from State before releasing benefit payments
- Begin administering claims on January 1, 2020
- Establish order of payments and cutoff dates

5.12.2 *If applicable*, the project plan shall be updated thereafter as the State and Contractor mutually agree. Implementation activities shall be conducted in close collaboration and with the approval of the State.

5.13 Claims Run Out

5.13.1 At a minimum, within five (5) business days from the termination of this Agreement or by a date otherwise mutually agreed upon, Contractor shall provide all necessary data required to transition all account administration within this Agreement to the State, or its designee, to ensure continuity of coverage for the services outlined in this Agreement.

5.14 COBRA

5.14.1 Contractor shall provide COBRA services in regards to the Health Care FSA and shall retain the 2% administrative fee associated with such services. Such services include:

- Distribute the initial COBRA notice and election notice.
- Process election forms submitted by qualified beneficiaries.
- Distribute notices for annual enrollment for qualified beneficiaries.
- Distribute notice of ineligibility upon a determination of ineligibility.
- Process premiums paid by qualified beneficiaries.
- Provide notice if change in premium payment.
- Send notice of termination where applicable.
- Respond to inquiries by providers.
- Provide certificates of creditable coverage.
- Provide notice of insufficient premium payment where applicable.

5.14.2 Contractor shall provide its standard reporting package for exchanging information.

5.15 Forfeited Funds

5.15.1 Any unclaimed benefit payments (e.g. uncashed benefit checks) are deemed forfeited, and the State shall use such funds in any manner it deems appropriate.

5.16 Additional Documents

5.16.1 Contractor shall provide the State sample documents and marketing materials for review and approval by the State prior to any distribution to Participants or posting.

5.16.2 Contractor shall provide sample administrative forms for review and approval by the State needed for Contractor to perform its duties under this Agreement.

5.16.3 Contractor shall provide the State with the information in its custody for use in the preparation of all returns and reports that are required by the Internal Revenue Service, the Department of Labor and any other federal or state agency. Contractor shall assist in the preparation of such returns and reports whenever called upon to do so by the State.

5.17 Communication

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

5.18 Recordkeeping

5.18.1 Contractor agrees to maintain for the duration of this Agreement (and subsequent periods in compliance with applicable local, state and federal requirements) all transactions under the Agreement (to include eligibility, enrollment and claims data) and the usual and customary books, records and documents

Contractor has prepared or received possession in the performance of its duties hereunder. These books, Records, and documents, including electronic records, are the property of the State, and the State has the right of continuing access to them during normal business hours at Contractor's offices with reasonable prior notice. If this Agreement terminates, Contractor may deliver, or at the State's request, will deliver all such books, records, and documents to the State, subject to Contractor's right to retain copies of any records it deems necessary and appropriate.

5.19 Standard of Care; Erroneous Payments

5.19.1 Contractor shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If Contractor makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, Contractor shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. Should the State or Contractor determine that Contractor has overpaid a claim, or provided a benefit to an ineligible person for any of the Programs, due to any negligent or intentionally wrongful act, error or omission of Contractor or its employees, agents or subcontractors relative to its obligations under this Agreement, Contractor shall be responsible for paying the amount of the improper payment or overpayment to the State.

Section 6 **Compliance with Privacy and Security Rules Under HIPAA** *Applies to All Services, except Dependent Care FSA*

6.1 Compliance with Privacy and Security Rules Under HIPAA

6.1.1 Contemporaneously with this Agreement, the State and Contractor 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 7 **General Provisions** *Applies to All Services*

7.1 Audits

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

7.2 Dispute Resolution

7.2.1 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' appropriate representatives meet in person within 30 days of written notice of dispute issued by either party.

7.3 Notices and Communications

7.3.1 Notices. All notices provided for herein shall be sent by first class United States mail, with postage prepaid, addressed to the other party at their respective addresses set forth in the General Provisions of this Agreement or such other addresses as either party may designate in writing to the other from time to time for such purposes.

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

7.4 Termination of Agreement

7.4.1 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 the State or Contractor 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 the State and Contractor regarding payment of benefits after the Program is terminated.

7.5 Survival of Certain Provisions.

7.5.1 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 survive its termination.

7.6 Complete Agreement: Governing Law

7.6.1 This Agreement (including any appendices) 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 New Hampshire.

GLOSSARY

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

- Agreement means this Administrative Services Agreement, including any appendices hereto.
- COBRA means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended.
- Code means the Internal Revenue Code of 1986, as amended.
- Dependent Care FSA 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 4.3.4.
- Plan means the Health FSA, Dependent Care FSA or HRA, as applicable.
- Plan Administrator means the administrator as defined in ERISA §3(16)(A).
- Program has the meaning given in the recitals.
- Protected Health Information or PHI has the meaning assigned to such term under HIPAA.

**Exhibit B
CONTRACT PRICE AND PAYMENT TERMS**

**Section 1
General Provisions**

1.1 Definitions

Capitalized terms used in this Exhibit but not defined have the meanings given in Exhibit A of this Agreement

1.2 Cafeteria Plan

The State 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.

**Section 2
Administrative Fees**

2.1 Service Charges

As set forth in Section 5, Exhibit B below, the applicable service charges shall be as follows:

Service	Monthly Fee Year 1	Monthly Fee Year 2	Monthly Fee Year 3
1. FSA Administration: Health Care Dependent Care	\$2.35 per participant per month \$2.35 per participant per month One fee of \$2.35 if enrolled in both accounts.	Same Same	Same Same
2. HAT HRA Administration	\$1.00 per participant per month	Same	Same
FSA COBRA Administration (if additional beyond 2%)	Included (Contractor retains administrative fee)	Same	Same
4. Debit Cards:	Initial Card: \$0.00 Addl. Card: \$0.00 Dupl. Card: \$0.00	Same	Same

Service	Monthly Fee Year 1	Monthly Fee Year 2	Monthly Fee Year 3
5. Other Administrative Fees: Open Enrollment Support	Attendance at annual open enrollment event included.	Same	Same
Enrollment Kits	PDF and some print material provided for on-site fair; election confirmation letter mailed to participants included.	Same	Same
Communication Materials	PDF and some print material provide for on-site fair; full educational website included.	Same	Same
6. Other Fees 800 Number (Specify shared or dedicated)	Shared number included.	Same	Same
Postage	Included for claim processing and correspondence, confirmation letters, account statements (does not include special mailings).	Same	Same
Printing of Forms	Claim and administrative forms provided online; some print material provided for on-site fair included.	Same	Same
Other (Specify)	N/A		
7. Optional Service Wellness Program Reimbursements	\$.15 per eligible employee per month	Same	Same

Table 2 – First Year Set-Up Fees, if Any

Service	Set-Up Fees (Year 1 Only)
1. Initial Set-up Charge	\$0.00
2. Development of Communication Materials	\$0.00
3. Print/Mail Costs	Print/mail costs for special requests not related to claims processing.
Total Set-up Fees	Estimated \$0.00.

Table 3 – Fees and Services

<p>List of services included in fees</p> <p>Following is an overview of services, excluding the optional services:</p> <ul style="list-style-type: none"> - Health Care and Dependent Care Flexible Spending Accounts - Health Reimbursement Arrangements - Rapid claim processing within one to three business days - Payment by check or direct deposit to bank account - Cost of claim correspondence included (claim letters, confirmation letters, account statements) - Account statements available 24/7 online and via mobile app - Account statement included with each reimbursement - Live help, superior service with quick and easy access to customer service representatives - Extended service hours 8 a.m. – 8 p.m. ET weekdays; 10 a.m. – 2 pm. ET on Saturday (Excludes Holidays) - Email and Text Alerts of account activity - ASIFlex Mobile Application to file claims and access account statements - ASIFlex Card for health accounts - Online claim filing, carrier interfaces, faxed or mailed claims - Full-service educational website for plan participants - Participant portal - Employer portal with regularly posted management reports, on-demand reporting, secure email and file transfer, access to participant account information - Compliance assistance with Plan Documents/summary descriptions, non-discrimination testing, regulatory updates, etc. - Attendance at annual open enrollment benefit fair - PDF of Employee communication material, online video library, assistance with WebEx or on-site meetings; some print material provided for on-site benefit fair - Easy and optional online enrollment services - Enrollment Confirmation Letter sent to enrollees at open enrollment; and to mid-year enrollees
<p>Any special fees, charges or expenses of any kind not included in fees</p> <p>In the event the State requests special mailings for open enrollment or other employee communications, print and mail costs would be passed through to the State.</p>
<p>List of services not included in fees, along with associated fees:</p> <p>Print/mail costs for special mailings.</p>

**Section 3
Performance Guarantees**

3.1 Performance Guarantees

3.1.1 Customer Service: Call Answer Time. Average speed of answer by a live customer service representative will be 15 seconds or less during regular business hours. Penalty for non-conformance is 1% of the applicable

administrative fees in the month that the violation occurs.

3.1.2 Claims Processing: Claims Turnaround. 98% of claims received to be processed and paid within 3 business days of receipt. Penalty for nonconformance is 1% of the applicable administrative fees in the month that the violation occurs.

3.1.3 Claims Processing: Claims Accuracy. Claims to be processed at a minimum 98% accuracy rate. Penalty for non-conformance is 1% of the applicable administrative fees in the month that the violation occurs.

3.2 Performance Reporting

3.2.1 Contractor will provide reports that show actual performance and service levels. Results for the Performance Guarantees shall be measured and scored monthly and reported and reconciled by Contractor within thirty (30) calendar days following the end of each calendar quarter beginning on 5/1/2020 for the three (3) months passed since the start of the Agreement.

Section 4 Funding Responsibility and Payment of Benefits Applies to All Services

4.1 Funding of Benefits

4.1.1 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 the State, and the State 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. Such funding shall be provided to Contractor in any way the State deems appropriate.

4.2 Payment of Benefits

4.2.1 In the event the State is the sole owner of the bank account, the State authorizes Contractor to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of the State for the payment of Program benefits. Each banking day, or at such other interval as mutually agreed upon, Contractor will notify the State of the amount needed to pay approved benefit claims and the State shall pay or transfer into the bank account the amount needed for the payment of Program benefits. The State shall enter into such agreements and provide instructions to its bank as are necessary to implement this Section.

4.2.2 Contractor shall have 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. The parties shall make changes to payment of benefits as required by the State banking requirements.

4.3 Custodial Account

4.3.1 In the event Contractor operates a custodial account for the State, the State agrees that:

- Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits

plans (or any entity performing services for the State or the Program) nor any of its predecessors, successors, or assigns have represented, or will represent to any Participant or beneficiary of the Program, that a separate account, fund, or trust is being held on behalf of the Program that may be used to provide or secure benefits under the plan; and

- The State 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 State.

4.3.2 The State understands and agrees that any account maintained by Contractor for the purpose of holding funds from the State or covered individual to pay benefit claims and/or Program premiums will be a custodial account maintained by Contractor on behalf of its employer clients, and that any amounts attributable to the State will be accounted for separately in a notational sub-account that is fully protected by the Federal Deposit Insurance Corporation and is subject to the State's general creditors. Contractor will have no rights with respect to such funds maintained in the State's custodial account except as set forth herein and all funds in such account shall be used only as set forth herein.

4.3.3 The parties shall agree on a method for Contractor to bill the State for claims payments.

4.4.4 Contractor shall report to the State on account balances and reconciliations as required.

Section 5
Service Charges
Applies to All Services

5.1 Billing of Service Charges

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

5.2 Payment of Service Charges

5.2.1 Contractor shall submit monthly invoices for service charges to the State in two separate invoices. The invoices shall be sent as follows:

- The FSA service charge invoices shall be sent to the State (c/o the Risk Management Unit) on the last day of each month setting forth the applicable monthly fee for the services provided. Each invoice shall reference the contract, provide detailed information, and be in a format as approved by the State.
- The HRA service charge invoices shall be sent to the State (c/o the Risk Management Unit) on the last day of each month setting forth the applicable monthly fee for the services provided. Each invoice shall reference the contract, provide detailed information, and be in a format as approved by the State.

5.2.3 Contractor will determine all service charges under this Section. The State shall make payment to Contractor within 30 calendar days of receipt of notice of the amount due.

**EXHIBIT C
SPECIAL PROVISIONS**

This Exhibit is intentionally left blank as there are no additional provisions for incorporation.

APPENDICES

JMA
6/17/19

Appendix A

BUSINESS ASSOCIATE AGREEMENT

The Contractor identified in Section 1.3 of the General Provisions of the Agreement agrees to comply with the Health Insurance Portability and Accountability Act, Public Law 104-191 and with the Standards for Privacy and Security of Individually Identifiable Health Information, 45 CFR Parts 160 and 164 and those parts of the HITECH Act applicable to business associates. As defined herein, "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the party to this Agreement, shall mean Application Software, Inc. dba ASIFlex. "Covered Entity" shall generally have the same meaning as the term "covered entity" at 45 CFR 160.103, and in reference to the party to this Agreement shall mean the State of New Hampshire Department of Administrative Services Employee and Retiree Health Benefit Program. "HIPAA Rules" shall mean the Privacy, Security, Breach Notification, and Enforcement Rules at 45 CFR Part 160 and Part 164.

1. Definitions.

- a. The following terms used in this Agreement shall have the same meaning as those terms in the HIPAA Rules: Breach, Data Aggregation, Designated Record Set, Disclosure, Health Care Operations, Individual, Minimum Necessary, Notice of Privacy Practices, Protected Health Information, Required by Law, Secretary, Security Incident, Subcontractor, Unsecured Protected Health Information, and Use.
- b. All terms not otherwise defined herein shall have the same meaning as those set forth in the HIPAA Rules.

2. Use and Disclosure of Protected Health Information (PHI)

- a. Business Associate shall not use, disclose, maintain or transmit PHI except as reasonably necessary to provide the services set forth in this Agreement or as required by law.
- b. Business Associate agrees to make uses, disclosures, and requests for PHI consistent with Covered Entity's minimum necessary policies and procedures.
- c. Business Associate may not use or disclose protected health information in a manner that would violate Subpart E of 45 CFR Part 164 if done by Covered Entity, except for the specific uses and disclosures set forth below.
- d. 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 Business Associate. To the extent Business Associate discloses PHI to a third party, Business Associate must obtain, prior to making any such disclosure, (a) reasonable assurances from the third party that such PHI will be held confidentially and used or further disclosed only as required by law or for the purpose for which it was disclosed to the third party; and (b) an agreement from such third party to notify Business Associate of any breaches of the confidentiality of the PHI, to the extent it has obtained knowledge of such breach.
- e. Business Associate may provide data aggregation services relating to the health care operations of Covered Entity.
- f. Business Associate is authorized to use PHI to de-identify the information in accordance with 45 CFR 164.514(a)-(c). Business Associate shall de-identify the PHI in a manner agreed upon by Business Associate and Covered Entity. Uses and disclosures of the de-identified information shall be limited to those consistent with the provisions of this Agreement.

- g. Business Associate shall not, unless such disclosure is reasonably necessary to provide services outlined in the Agreement, disclose any PHI in response to a request for disclosure on the basis it is required by law without first notifying Covered Entity. In the event Covered Entity objects to the disclosure it shall seek the appropriate relief and the Business Associate shall refrain from disclosing the PHI until Covered Entity has exhausted all remedies.
- h. Covered Entity may from time to time agree, pursuant to 45 CFR 164.522, to be bound by additional restrictions over and above those uses, disclosures and security safeguards of PHI outlined in the HIPAA Rules. Covered Entity shall notify Business Associate, in writing, of any such agreements. Business Associate agrees to be bound by any such additional restrictions.

3. Obligations and Activities of Business Associate:

- a. Business Associate shall use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to electronic protected health information, to prevent use or disclosure of protected health information other than as provided for by the Agreement.
- b. Business Associate shall report to the designated Privacy Officer of Covered Entity, in writing, any use or disclosure of PHI in violation of the Agreement, including any security incident involving PHI, ePHI, or Unsecured PHI as required by 45 CFR 164.410.
- c. Business Associate shall report a breach or a potential breach to Covered Entity upon discovery of any such incident. Business Associate will handle breach notifications to individuals, the United States Department of Health and Human Services Office for Civil Rights, and, where applicable, the media. Should it be necessary to notify the media of any such breach, Business Associate will ensure that Covered Entity will receive notice of the breach prior to such incident being reported to the media.
- d. Business Associate shall, in accordance with 45 CFR 164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure, as evidenced in writing, that any subcontractors that create, receive, maintain or transmit PHI on behalf of Business Associate agree to the same restrictions, conditions and requirements that apply to Business Associate with respect to such information, including the duty to return or destroy PHI. Covered Entity shall be considered a direct third party beneficiary of Business Associate's corresponding business associate agreements with any of its contracted business associates, who will be receiving PHI pursuant to this Agreement, with rights of enforcement and indemnification from such business associates.
- e. To the extent Business Associate is to carry out one or more of Covered Entity's obligations under Subpart E of 45 CFR Part 164, Business Associate shall comply with the requirements of Subpart E that apply to Covered Entity in the performance of such obligation(s).
- f. Business Associate shall make available all of its internal practices, policies and procedures, books and records to the Secretary for the purpose of determining Covered Entity's compliance with the HIPAA Rules.
- g. Within five (5) business days of receiving a written request from Covered Entity, Business Associate shall make available to the Covered Entity during normal business hours at its offices all records, books, agreements, policies and procedures relating to the use and disclosure of PHI for the purpose of enabling Covered Entity to determine Business Associate's compliance with the terms of the Agreement.
- h. Individual Rights and PHI Access
 - i. Business Associate shall respond to an individual's request for access to his or her PHI as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the individual or the individual's personal representative. Business Associate

DMN
Date: 1/21/19

shall respond to the request with regard to PHI that Business Associate and/or its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.

ii. In addition, Business Associate shall assist Covered Entity in responding to requests made to Covered Entity by individuals to invoke a right of access under the HIPAA Privacy Regulation by performing the following functions:

1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate shall make available to Covered Entity, or at Covered Entity's direction to the individual (or the individual's personal representative), any PHI about the individual created or received for or from Covered Entity in Business Associate's custody or control (and/or the custody or control of its subcontractors), for inspection and obtaining copies so that Covered Entity may meet its access obligations under 45 CFR 164.524, and, where applicable, the HITECH Act. Business Associate shall make such information available in an electronic format where required by the HITECH Act.

i. Amendment

i. Business Associate shall respond to an individual's request to amend his or her PHI as part of Business Associate's normal customer service functions, if the request is communicated to Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.

ii. In addition, Business Associate shall assist Covered Entity in responding to requests made to Covered Entity to invoke a right to amend under the HIPAA Privacy Regulation by performing the following functions:

1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate shall amend any portion of the PHI created or received for or from Covered Entity in Business Associate's custody or control (and/or the custody or control of its subcontractors), so that Covered Entity may meet its amendment obligations under 45 CFR 164.526.

j. Disclosure Accounting

i. Business Associate shall respond to an individual's request for an accounting of disclosures of his or her PHI as part of Business Associate's normal customer service function, if the request is communicated to the Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to a request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.

ii. In addition, Business Associate shall assist Covered Entity in responding to requests made to Covered Entity by individuals or their personal representatives to invoke a right to an accounting of disclosures under the HIPAA Privacy Regulation by performing the following functions so that Covered Entity may meet its disclosure accounting obligation under 45 CFR 164.528:

iii. Disclosure Tracking

1. Business Associate shall record each disclosure that Business Associate makes of individuals' PHI, which is not excepted from disclosure accounting under Section II.C.2.b.
2. The information about each disclosure that Business Associate must record ("Disclosure Information") is (a) the disclosure date, (b) the name and (if known) address of the person or entity to whom Business Associate made the disclosure, (c) a brief description of the PHI disclosed, and (d) a brief statement of the purpose of the disclosure or a copy of any written request for disclosure under 45 Code of Federal Regulations §164.502(a)(2)(ii) or §164.512. Disclosure Information also includes any information required to be provided by the HITECH Act.
3. For repetitive disclosures of individuals' PHI that Business Associate makes for a single purpose to the same person or entity (including to Covered Entity or Employer), Business Associate may record (a) the Disclosure Information for the first of these repetitive disclosures, (b) the frequency, periodicity or number of these repetitive disclosures, and (c) the date of the last of these repetitive disclosures.

iv. Exceptions from Disclosure Tracking

1. Business Associate shall not be required to record Disclosure Information or otherwise account for disclosures of individuals' PHI (a) for Treatment, Payment or Health Care Operations, (except where required by the HITECH Act, as of the effective dates of such requirements) (b) to the individual who is the subject of the PHI, to that individual's personal representative, or to another person or entity authorized by the individual (c) to persons involved in that individual's health care or payment for health care as provided by 45 Code of Federal Regulations § 164.510, (d) for notification for disaster relief purposes as provided by 45 Code of Federal Regulations § 164.510, (e) for national security or intelligence purposes, (f) to law enforcement officials or correctional institutions regarding inmates, (g) that are incident to a use or disclosure that is permitted by this Agreement or the ASO Agreement, (h) as part of a limited data set in accordance with 45 CFR 164.514(e), or (i) that occurred prior to Covered Entity's compliance date.

v. Disclosure Tracking Time Periods

1. Unless otherwise provided by the HITECH Act and/or any accompanying regulations, Business Associate shall have available for Covered Entity the Disclosure Information required by Section 3.j.iii.2 above for the six (6) years immediately preceding the date of Covered Entity's request for the Disclosure Information.

k. Provision of Disclosure Accounting

1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate will make available to Covered Entity, or at Covered Entity's direction to the individual (or the individual's personal representative), the Disclosure Information regarding the individual, so Covered Entity may meet its disclosure accounting obligations under 45 CFR 164.528 and the HITECH Act.

I. Confidential Communications

- i. Business Associate shall respond to an individual's request for a confidential communication as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the individual or the individual's personal representative. Business Associate shall respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation. If an individual's request, made to Business Associate, extends beyond information held by Business Associate or Business Associate's subcontractors, Business Associate shall refer individual to Covered Entity. Business Associate assumes no obligation to coordinate any request for a confidential communication of PHI maintained by other business associates of Covered Entity.**
- ii. In addition, Business Associate shall assist Covered Entity in responding to requests to it by individuals (or their personal representatives) to invoke a right of confidential communication under the HIPAA Privacy Regulation by performing the following functions:**
 - 1. Upon receipt of written notice (including fax and email) from Covered Entity, Business Associate will begin to send all communications of PHI directed to the individual to the identified alternate address so that Covered Entity may meet its access obligations under 45 CFR 164.524.**

m. Restrictions

- i. Business Associate shall respond to an individual's request for a restriction as part of Business Associate's normal customer service function, if the request is communicated to Business Associate directly by the individual (or the individual's personal representative). Business Associate shall respond to the request with respect to the PHI Business Associate and its subcontractors maintain in a manner and time frame consistent with requirements specified in the HIPAA Privacy Regulation.**
- ii. In addition, Business Associate shall promptly, upon receipt of notice from Covered Entity, restrict the use or disclosure of individuals' PHI, provided the Business Associate has agreed to such a restriction. Covered Entity agrees that it will not commit Business Associate to any restriction on the use or disclosure of individuals' PHI for treatment, payment or health care operations without Business Associate's prior written approval.**

4. Obligations of Covered Entity

- a. Covered Entity shall notify Business Associate of any changes or limitation(s) in its Notice of Privacy Practices provided to individuals in accordance with 45 CFR § 164.520, to the extent that such change or limitation may affect Business Associate's use or disclosure of PHI.**
- b. Covered Entity shall promptly notify Business Associate of any changes in, or revocation of permission provided to Covered Entity by individuals to use or disclose his or her PHI to the extent that such changes may affect Business Associate's use or disclosure of PHI.**
- c. Covered entity shall promptly notify Business Associate of any restrictions on the use or disclosure of**

PHI that Covered Entity has agreed to in accordance with 45 CFR § 164.522, to the extent that such restriction may affect Business Associate's use or disclosure of PHI.

5. Term and Termination

- a. The term of this Agreement shall be effective as of the Effective Date described in Section 1.1 in Exhibit A above and shall terminate on December 31, 2022 as described in Section 1.2 above or on the date Covered Entity terminates for cause as authorized in paragraph (b) of this Section, whichever is sooner.
- b. In addition to standard provision #10 of this Agreement the Covered Entity may immediately terminate the Agreement upon Covered Entity's knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Appendix C. The Covered Entity may either immediately terminate the Agreement or provide an opportunity for Business Associate to cure the alleged breach within a timeframe specified by Covered Entity. If Covered Entity determines that neither termination nor cure is feasible, Covered Entity shall report the violation to the Secretary.
- c. Upon termination of this Agreement for any reason, Business Associate, with respect to PHI received from Covered Entity, or created, maintained or received by Business Associate on behalf of Covered Entity, shall:
 - i. Retain only that PHI which is necessary for Business Associate to continue its proper management and administration or to carry out its legal responsibilities;
 - ii. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the remaining PHI that Business Associate still maintains in any form;
 - iii. Continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to electronic PHI to prevent use or disclosure of the PHI, other than as provided for in this Section, for as long as Business Associate retains the PHI;
 - iv. Not use or disclose the PHI retained by Business Associate other than for the purposes for which such PHI was retained and subject to the same conditions set out in this Agreement which applied prior to termination; and
 - v. Return to Covered Entity (or, if agreed to by Covered Entity, destroy) the PHI retained by Business Associate when it is no longer needed by Business Associate for its proper management and administration or to carry out its legal responsibilities.
- d. The obligations of Business Associate under this Section shall survive the termination of this Agreement.

6. Miscellaneous

- a. **Definitions and Regulatory References.** All terms used, but not otherwise defined herein, shall have the same meaning as those terms in the HIPAA Rules as in effect or as amended.
- b. **Amendment.** Covered Entity and Business Associate agree to take such action as is necessary to amend the Agreement, from time to time as is necessary for compliance with the requirements of

[Handwritten Signature]
[Handwritten Date: 1/12/19]

the HIPAA Rules and any other applicable law.

- c. Data Ownership. The Business Associate acknowledges that it has no ownership rights with respect to the PHI provided by or created on behalf of Covered Entity.
- d. Interpretation. The parties agree that any ambiguity in the Agreement shall be interpreted to permit compliance with the HIPAA Rules.
- e. Segregation. If any term or condition of this Appendix A or the application thereof to any person(s) or circumstance is held invalid, such invalidity shall not affect other terms or conditions which can be given effect without the invalid term or condition; to this end the terms and conditions of this Appendix A are declared severable.
- f. Survival. Provisions in this Appendix A regarding the use and disclosure of PHI, and the return or destruction of PHI, shall survive the termination of this Agreement.

IN WITNESS WHEREOF, the parties hereto have duly executed this Appendix A.

The State of New Hampshire Employee and Retiree Health Benefit Program

Charles Arlinghaus

Signature of Authorized Representative

Charles Arlinghaus

Name of Authorized Representative

Commissioner

Title of Authorized Representative

8-20-19

Date

APPLICATION SOFTWARE, INC.
Contractor

John M. Riddick

Signature of Authorized Representative

JOHN M. RIDDICK

Name of Authorized Representative

President

Title of Authorized Representative

6/13/2019

Date

State of New Hampshire

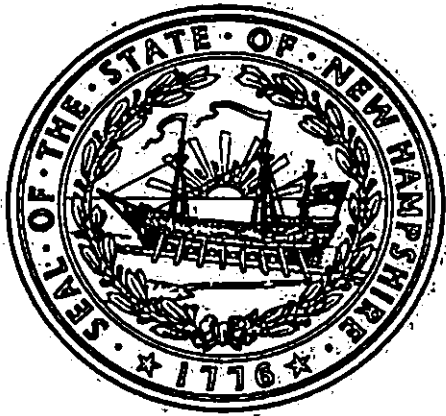
Department of State

CERTIFICATE

I, William M. Gardner, Secretary of State of the State of New Hampshire, do hereby certify that APPLICATION SOFTWARE, INC. is a Missouri Profit Corporation registered to transact business in New Hampshire on November 18, 2005. I further certify that all fees and documents required by the Secretary of State's office have been received and is in good standing as far as this office is concerned.

Business ID: 547573

Certificate Number: 0004488711



IN TESTIMONY WHEREOF,

I hereto set my hand and cause to be affixed
the Seal of the State of New Hampshire,
this 4th day of April A.D. 2019.

A handwritten signature in black ink, appearing to read "William M. Gardner".

William M. Gardner
Secretary of State

A special meeting of the Board of Directors of Application Software, Inc. was called to order at 5:30 P.M. Central Daylight Time June 1, 2019 by its Secretary, John M. Riddick. The purpose of the meeting was to grant the company's president the authority to enter into a contract with the State of New Hampshire.

Mr. Riddick moved and the Board adopted a resolution authorizing John M. Riddick, corporate president to enter into any contract involving the company.

All members of the board were present which includes: Michael Berry, John M. Riddick, and John A. Wright.

The meeting was adjourned at 5:45 P. M. Central Daylight Time June 1, 2019.

Respectfully Submitted



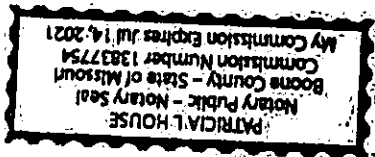
John M. Riddick

Secretary



Patricia L. House

Notary
State of Missouri, County of Boone



Blacker, Margaret

From: John Wright <john@rollinscap.com>
Sent: Tuesday, July 16, 2019 5:25 PM
To: Blacker, Margaret
Cc: John Riddick
Subject: ASI Board Authorization - Confirmation

EXTERNAL: Do not open attachments or click on links unless you recognize and trust the sender.

Hi Margaret,

John Riddick (cc'd) asked that I reach out to you to clarify that he still has authority, on behalf of ASI Inc., to enter into a services contract with the State of New Hampshire pursuant to our ASI Inc. Board Resolution dated June 1, 2019.

If you have any questions, please feel to email or call (573-239-9015) me directly at your convenience.

Warm Regards,
John Wright
Director, ASI Inc.



APPLSOF-01

LFRANKE

CERTIFICATE OF LIABILITY INSURANCE

 DATE (MM/DD/YYYY)
 1/18/2019

THIS CERTIFICATE IS ISSUED AS A MATTER OF INFORMATION ONLY AND CONFERS NO RIGHTS UPON THE CERTIFICATE HOLDER. THIS CERTIFICATE DOES NOT AFFIRMATIVELY OR NEGATIVELY AMEND, EXTEND OR ALTER THE COVERAGE AFFORDED BY THE POLICIES BELOW. THIS CERTIFICATE OF INSURANCE DOES NOT CONSTITUTE A CONTRACT BETWEEN THE ISSUING INSURER(S), AUTHORIZED REPRESENTATIVE OR PRODUCER, AND THE CERTIFICATE HOLDER.

IMPORTANT: If the certificate holder is an ADDITIONAL INSURED, the policy(ies) must have ADDITIONAL INSURED provisions or be endorsed. If SUBROGATION IS WAIVED, subject to the terms and conditions of the policy, certain policies may require an endorsement. A statement on this certificate does not confer rights to the certificate holder in lieu of such endorsement(s).

PRODUCER TIG Advisors-Col 200 East Southampton Drive Columbia, MO 65203	CONTACT NAME: Lisa M. Franke PHONE (A/C, No, Ext): (573) 875-4800 FAX (A/C, No): (573) 875-4514 E-MAIL ADDRESS: lfranke@tigadvisors.com												
INSURER(S) AFFORDING COVERAGE													
<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="width: 80%;">INSURER A: Cincinnati Insurance Company</td> <td style="width: 20%;">NAIC # 10677</td> </tr> <tr> <td>INSURER B: Travelers Property Casualty Company of America</td> <td>25674</td> </tr> <tr> <td>INSURER C: Federal Insurance Company</td> <td>20281</td> </tr> <tr> <td>INSURER D: Executive Risk Indemnity</td> <td>35181</td> </tr> <tr> <td>INSURER E:</td> <td></td> </tr> <tr> <td>INSURER F:</td> <td></td> </tr> </table>		INSURER A: Cincinnati Insurance Company	NAIC # 10677	INSURER B: Travelers Property Casualty Company of America	25674	INSURER C: Federal Insurance Company	20281	INSURER D: Executive Risk Indemnity	35181	INSURER E:		INSURER F:	
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INSURER D: Executive Risk Indemnity	35181												
INSURER E:													
INSURER F:													
INSURED Application Software, Inc. ASI Cobra, LLC PO Box 6044 Columbia, MO 65205													

COVERAGES**CERTIFICATE NUMBER:****REVISION NUMBER:**

THIS IS TO CERTIFY THAT THE POLICIES OF INSURANCE LISTED BELOW HAVE BEEN ISSUED TO THE INSURED NAMED ABOVE FOR THE POLICY PERIOD INDICATED. NOTWITHSTANDING ANY REQUIREMENT, TERM OR CONDITION OF ANY CONTRACT OR OTHER DOCUMENT WITH RESPECT TO WHICH THIS CERTIFICATE MAY BE ISSUED OR MAY PERTAIN, THE INSURANCE AFFORDED BY THE POLICIES DESCRIBED HEREIN IS SUBJECT TO ALL THE TERMS, EXCLUSIONS AND CONDITIONS OF SUCH POLICIES. LIMITS SHOWN MAY HAVE BEEN REDUCED BY PAID CLAIMS.

INSR	TYPE OF INSURANCE	ADDL	SUBR	POLICY NUMBER	POLICY EFF (MM/DD/YYYY)	POLICY EXP (MM/DD/YYYY)	LIMITS
A	<input checked="" type="checkbox"/> COMMERCIAL GENERAL LIABILITY <input type="checkbox"/> CLAIMS-MADE <input checked="" type="checkbox"/> OCCUR GEN'L AGGREGATE LIMIT APPLIES PER: <input type="checkbox"/> POLICY <input type="checkbox"/> PRO-JECT <input type="checkbox"/> LOC OTHER:			EPP 0134715	1/1/2019	1/1/2022	EACH OCCURRENCE \$ 1,000,000 DAMAGE TO RENTED PREMISES (Ea occurrence) \$ 500,000 MED EXP (Any one person) \$ 5,000 PERSONAL & ADV INJURY \$ 1,000,000 GENERAL AGGREGATE \$ 2,000,000 PRODUCTS - COMP/OP AGG \$ 2,000,000 \$
A	AUTOMOBILE LIABILITY <input type="checkbox"/> ANY AUTO OWNED AUTOS ONLY <input type="checkbox"/> SCHEDULED AUTOS <input checked="" type="checkbox"/> HIRED AUTOS ONLY <input checked="" type="checkbox"/> NON-OWNED AUTOS ONLY			EBA 0134715	1/1/2019	1/1/2020	COMBINED SINGLE LIMIT (Ea accident) \$ 1,000,000 BODILY INJURY (Per person) \$ BODILY INJURY (Per accident) \$ PROPERTY DAMAGE (Per accident) \$ \$
A	<input checked="" type="checkbox"/> UMBRELLA LIAB <input checked="" type="checkbox"/> OCCUR <input type="checkbox"/> EXCESS LIAB <input type="checkbox"/> CLAIMS-MADE DED RETENTION \$			EPP 0134715	1/1/2019	1/1/2022	EACH OCCURRENCE \$ 2,000,000 AGGREGATE \$ 2,000,000 \$
B	WORKERS COMPENSATION AND EMPLOYERS' LIABILITY ANY PROPRIETOR/PARTNER/EXECUTIVE OFFICER/MEMBER EXCLUDED? (Mandatory in NH) Y/N <input checked="" type="checkbox"/> N If yes, describe under DESCRIPTION OF OPERATIONS below		N/A	6JUB-1K62525-8-19	1/1/2019	1/1/2020	<input checked="" type="checkbox"/> PER STATUTE <input type="checkbox"/> OTH-ER E.L. EACH ACCIDENT \$ 1,000,000 E.L. DISEASE - EA EMPLOYEE \$ 1,000,000 E.L. DISEASE - POLICY LIMIT \$ 1,000,000
C	Cyber Liability			8225-9819	1/1/2019	1/1/2020	Occurrence/Aggregate \$ 5,000,000
D	Professional Liab			8224-7584	1/1/2019	1/1/2020	Occurrence/Aggregate \$ 5,000,000

DESCRIPTION OF OPERATIONS / LOCATIONS / VEHICLES (ACORD 101, Additional Remarks Schedule, may be attached if more space is required)
 Employee Dishonesty: \$1,000,000 Limit Policy #CCP0003982, Effective: 1/1/2019 to 1/1/2022, Insurer: Fidelity & Deposit Company of Maryland

CERTIFICATE HOLDER**CANCELLATION**

State of New Hampshire Dept. of Admin Services 25 Capitol Street, Rm 412 Concord, NH 03301	SHOULD ANY OF THE ABOVE DESCRIBED POLICIES BE CANCELLED BEFORE THE EXPIRATION DATE THEREOF, NOTICE WILL BE DELIVERED IN ACCORDANCE WITH THE POLICY PROVISIONS. AUTHORIZED REPRESENTATIVE
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