



# State of New Hampshire

DEPARTMENT OF ADMINISTRATIVE SERVICES  
OFFICE OF THE COMMISSIONER  
25 Capitol Street – Room 120  
Concord, New Hampshire 03301

60 Jm

LINDA M. HODGDON  
Commissioner  
(603) 271-3201

JOSEPH B. BOUCHARD  
Assistant Commissioner  
(603) 271-3204

October 1, 2014

Her Excellency, Governor Margaret Wood Hassan  
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), Columbia, MO 65203 in the amount not to exceed \$635,000 to administer the Flexible Spending Accounts (FSA) and Health Reimbursement Arrangements (HRA) programs for state employees pursuant to RSA 21-I:44a and 44b 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, 2015 through December 31, 2017, with the option to renew for up to two additional years subject to the approval of the Governor and Executive Council. **Approximately 59% General Funds, 11% Federal Funds, 2% Enterprise Funds, 7% Highway Funds, 1% Turnpike Funds and 20% Other Funds**

Funding is available in SFY 2015 and is anticipated to become available in SFY 2016, SFY 2017 and SFY 2018 with the authority to adjust encumbrances between state fiscal years if necessary and justified through the Business Office, in the following accounts:

<b>FSA Administrative Costs</b>	<b><u>SFY2015</u></b>	<b><u>SFY2016</u></b>	<b><u>SFY2017</u></b>	<b><u>SFY2018</u></b>
10-14-14-141010-10460000 – DAS, FSA				
063-500539 FSA Admin Fees	\$42,333.33	\$84,666.67	\$84,666.67	\$42,333.33
<b>HRA Administrative Costs</b>	<b><u>SFY2015</u></b>	<b><u>SFY2016</u></b>	<b><u>SFY2017</u></b>	<b><u>SFY2018</u></b>
01-14-14-140560-66000000 - ACTIVES				
102-501572 HRA Admin Fees - Actives	\$60,960.00	\$121,920.00	\$121,920.00	\$60,960.00
01-14-14-140560-66600000 - TROOPERS				
102-501572 HRA Admin Fees – Troopers	\$ 2,540.00	\$ 5,080.00	\$ 5,080.00	\$ 2,540.00
<b>HRA FISCAL YEAR TOTALS</b>	<b>\$63,500.00</b>	<b>\$127,000.00</b>	<b>\$127,000.00</b>	<b>\$63,500.00</b>
<b>FSA and HRA Fiscal Year Totals</b>	<b>\$105,833.33</b>	<b>\$211,666.67</b>	<b>\$211,666.67</b>	<b>\$105,833.33</b>
<b>Grand Total</b>	<b>\$635,000.00</b>			

## **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 Assistance Program) 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 Employee Benefit Management, Inc. expires on December 31, 2014.

DAS issued a Request for Proposal (RFP) for Flexible Spending Account and Health Reimbursement Arrangement Administrative Services on June 16, 2014. Public notice was provided through the New Hampshire Union Leader, and the proposal was posted on the Bureau of Purchase and Property website. On July 9, 2014, proposals were received from the following: Discovery Benefits, TASC, IntegraFlex, WageWorks, Combined Services, LLC, and Application Software, Inc. (d.b.a. ASIFlex). All six proposals were evaluated.

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, 2015 to December 31, 2017. 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: Catherine Keane (Director, DAS, RMU), Matthew Newland (Manager of Employee Relations, DAS, Division of Personnel (DOP)), Robin Berube (Accounting and Financial Analyst, DAS, RMU), Joyce Pitman (Vendor Manager, DAS, RMU), and Robert Stowell (Administrator, DAS, Bureau of Purchase & Property).

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 percent 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 six 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 and surpassed the next lowest bidder's financial score by 42.2 percentage points. In accordance with the sliding scale applied to financial scores, ASIFlex was the only bidder that received a financial score due to the wide variance between its lowest cost proposal and the competing cost proposals, all of which exceeded the 25 percent threshold as stated above.

ASIFlex currently has over 400 clients nationwide, in 27 states. ASIFlex is a prominent FSA and HRA administrative service provider in the public sector including municipal, county and state governments. Some of the states ASIFlex services include California, Missouri, Colorado, Iowa, Oregon, Delaware and Vermont. References spoke highly of ASIFlex's strong commitment to customer service. ASIFlex has a proven track record of going the extra mile to meet customer expectations and utilizing cutting edge, user-friendly technology making the customer experience simple and easy to understand.

The services provided by ASIFlex will have a direct bearing on how our employees access tax-free FSA dollars they have set aside to pay for their healthcare and dependent care expenses. ASIFlex will also manage the HRA accounts which hold wellness incentive dollars used to pay medical plan deductibles, copayments and other medical expenses. Accordingly, it is imperative that adequate time be provided to transition this FSA/HRA benefit plan to a new vendor. In addition to verifying benefit plan design and systems interfaces and integration, special attention is given to minimizing the amount of disruption for the approximate 10,000 people we serve.

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

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Linda M. Hodgdon", with a long horizontal flourish extending to the right.

Linda M. Hodgdon  
Commissioner

**Total Score**

Criteria	Allocated Points	Bidder					
		ASIFlex	Combined Services (CSLLC)	Discovery Benefits	IntegraFlex	TASC	WageWorks
Financial	50	50	0*	0*	0*	0*	0*
Technical Questionnaire: Experience, Financial Stability, Contractual, references and Compliance	5	4.84	4.11	4.52	4.11	4.60	4.84
Administration (including Debit Card) and Customer Service	15	14.83	13.64	13.47	13.98	13.13	14.49
Technology and Reporting	15	14.42	15.00	14.42	14.42	13.85	15.00
Implementation and Performance Guarantees	15	15.00	15.00	15.00	8.33	11.67	15.00
Technical Questionnaire Sub-Total	50	49.09	47.75	47.41	40.85	43.23	49.23
Total Score	100	99.09	47.75	47.41	40.85	43.23	49.33
Overall Rank		[1]	[3]	[4]	[6]	[5]	[2]

**Projected Analysis – Financial Comparison and Ranking – 1/1/2015 – 12/31/2017**

	ASIFlex	Combined Services (CSLLC)	Discovery Benefits	IntegraFlex	TASC	WageWorks
Total Projected Gross Cost	\$610,774	\$872,463	\$877,770	\$868,320	\$1,065,524	\$1,452,560
Change from Lowest Cost - \$	\$0	\$261,689	\$266,996	\$257,546	\$454,750	\$841,786
Change from Lowest Cost - %	0.0%	42.8%	43.7%	42.2%	74.5%	137.8%
Rank - Gross Cost	[1]	[3]	[4]	[2]	[5]	[6]

- The most financially competitive fee receives 100% of the allocable 50 points. Higher fee quotes are subject to a point reduction system (2 points reduction for every 1% increase from the lowest fee quote, up to 25%). Fees that exceed the lowest fee quote by 25% or more receive 0 points.

**RFP 1642-14 – FSA AND HRA ADMINISTRATION SERVICES**  
Evaluation Committee Members

**CATHERINE KEANE**

Current Position: Director of Risk and Benefits, Risk Management Unit, Department of Administrative Services

Background: Catherine (Cassie) is an attorney and serves as the Director of the Risk Management Unit. Cassie worked in the NH Department of Justice as Counsel to the Health Benefit program. Before that she worked at the NH Department of Health and Human Services for 14 years. She served as Director of the Division of Elderly and Adult Services for 5 years where she managed a \$300 million budget and worked to promote long term care system change. She also served as Assistant Director to the Office of Family Services, Assistant to the Director for the Division of Human Services and in other roles in her 14 years with state government.

**ROBERT STOWELL**

Current Position: Administrator IV, Bureau of Purchase & Property, Department of Administrative Services

Background: Robert has worked for the State of New Hampshire for 12 years and is presently the Administrator of the Bureau of Purchase and Property. Additionally, Bob has 30 years of contract experience in the private sector as the Director of Materials, Director of Logistics and Sales Administration. Bob has an MBA from Rivier College.

**MATTHEW NEWLAND**

Current Position: Manager of Employee Relations, Division of Personnel, Department of Administrative Services

Background: Matt has been in his current position for 2.5 years. He has an additional 14 years of Full/Part-Time State Service. In his current position as Manager of Employee Relations, he conducts negotiations with the unions, administers all collective bargaining agreements and represents the State in all grievance actions including the public employee labor relations board. Prior to working in this position, Matt was employed by BAE Systems (defense contractor) as a Principal Contract Negotiator for 13 years.

**ROBIN BERUBE**

Current Position: Accounting and Financial Analyst, Risk Management Unit, Department of Administrative Services

Background: Robin has been employed with the State for the past ten years and is presently the Accounting and Financial Analyst of Risk Management Unit. As the Accounting and Financial Analyst, Robin assists with the financial and accounting management of the health

and dental program. Previously, Robin worked as a Program Assistant for the Department of Safety at the Division of Motor Vehicles before receiving a promotion to the Division of Administration and Grants Management Unit within the Department of Safety. Robin assisted with the day to day accounting of the Division of Administration, primarily focusing on Homeland Security Grants awarded to Department of Safety. Robin holds a Master's of Science in Accounting and Finance from Southern New Hampshire University.

## **JOYCE PITMAN**

Current Position: Vendor Contract Manager, Risk Management Unit, Department of Administrative Services

Background: Joyce started her State service in the Risk Management Unit in March 2013. In her role as Vendor Contract Manager, she manages the State's Pharmacy Benefit Management contract, the FSA and HRA Administration contract, Voluntary Benefits Administration Services contract, and the Advice to Pay for Short Term Disability Benefits contract. She comes to us with a Bachelors of Science degree in Health Management and Policy and an MBA in Business Administration and Human Resources Management. Previously, Joyce worked as the Benefits Manager at Concord Hospital and has over 15 years of experience, to include managing health and pharmacy benefits, Health Reimbursement Arrangements (HRAs) and Section 125 Plans (FSAs) and employee benefits education, communications, and customer service.

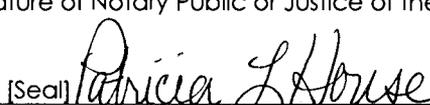
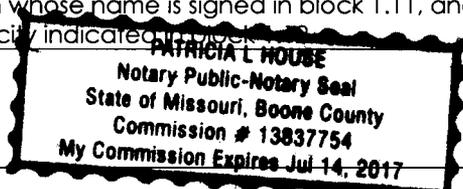
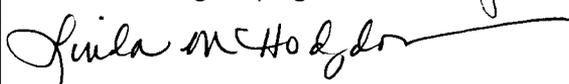
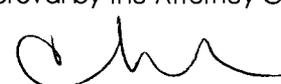
Subject: **Flexible Spending Account (FSA) and Health Reimbursement Arrangement (HRA) Administration Services – DEPARTMENT OF ADMINISTRATIVE SERVICES**

AGREEMENT

The State of New Hampshire and Application Software, Inc. (ASIFlex) hereby mutually agree as follows:

**GENERAL PROVISIONS**

**1. IDENTIFICATION.**

1.1 State Agency Name State of New Hampshire Administrative Services / Risk Management Unit		1.2 State Agency Address State House Annex, 25 Capitol Street Concord, NH 03301	
1.3 Vendor Name <b>Application Software, Inc. dba ASIFlex</b>		1.4 Vendor Address 201 W Broadway, Suite 4C Columbia, MO 65203	
1.5 Vendor Phone Number 573-442-3035	1.6 Account Number	1.7 Completion Date December 31, 2017	1.8 Price Limitation <b>\$635,000</b>
1.9 Contract(s)ing Officer for State Agency Catherine A. Keane, Risk Management Unit		1.10 State Agency Telephone Number (603) 271-2059	
1.11 Vendor Signature 		1.12 Name and Title of Vendor Signatory John M. Riddick, President	
1.13 Acknowledgement: State of <u>Missouri</u> , County of <u>Boone</u> On <u>September 24th 2014</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.			
1.13.1 Signature of Notary Public or Justice of the Peace  [Seal] <i>Patricia L House</i>			
1.13.2 Name and Title of Notary or Justice of the Peace <i>Patricia L House Notary</i>			
1.14 State Agency Signature 		1.15 Name and Title of State Agency Signatory Linda M. Hodgdon, Commissioner Department of Administrative Services	
1.16 Approval by the N.H. Department of Administration, Division of Personnel (if applicable) By: _____, Director On: _____			
1.17 Approval by the Attorney General (Form, Substance and Execution) By:  On: <u>10/2/14</u>			
1.18 Approval by the Governor and Executive Council By: _____ On: _____			

**2. EMPLOYMENT OF VENDOR/SERVICES TO BE PERFORMED.** The State of New Hampshire, acting through the agency identified in block 1.1 ("State"), engages Vendor identified in block 1.3 ("Vendor") to perform, and the Vendor 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, this Agreement, and all obligations of the parties hereunder, shall not become effective until the date the Governor and Executive Council approve this Agreement ("Effective Date").  
3.2 If the Vendor commences the Services prior to the Effective Date, all Services performed by the Vendor prior to the Effective Date shall be performed at the sole risk of the Vendor, and in the event that this Agreement does not become effective, the State shall have no liability to the Vendor, including without limitation, any obligation to pay the Vendor for any costs incurred or Services performed. The Vendor shall 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 Vendor 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(S) PRICE/PRICE LIMITATION/ PAYMENT.**

5.1 The contract(s) 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(s) price shall be the only and the complete reimbursement to the Vendor for all expenses, of whatever nature incurred by the Vendor in the performance hereof, and shall be the only and the complete compensation to the Vendor for the Services. The State shall have no liability to the Vendor other than the contract(s) price.  
5.3 The State reserves the right to offset from any amounts otherwise payable to the Vendor 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 VENDOR WITH LAWS AND REGULATIONS/ EQUAL EMPLOYMENT OPPORTUNITY.**

6.1 In connection with the performance of the Services, the Vendor shall comply with all statutes, laws, regulations, and orders of federal, state, county or municipal authorities which impose any obligation or duty upon the Vendor, including, but not limited to, civil rights and equal opportunity laws. In addition, the Vendor shall comply with all applicable copyright laws.  
6.2 During the term of this Agreement, the Vendor 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 Vendor 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 Vendor further agrees to permit the State or United States access to any of the Vendor'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 Vendor shall at its own expense provide all personnel necessary to perform the Services. The Vendor 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 Vendor shall not hire, and shall not permit any sub-Vendor 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 Contract(s)ing 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 Contract(s)ing 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 Vendor 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 Vendor 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 Vendor notice of termination;

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

8.2.3 set off against any other obligations the State may owe to the Vendor 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 Vendor shall deliver to the Contract(s)ing 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(s) 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. VENDOR'S RELATION TO THE STATE.** In the performance of this Agreement the Vendor is in all respects an independent Vendor, and is neither an agent nor an employee of the State. Neither the Vendor 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/SUBCONTRACT(S).** The Vendor shall not assign, or otherwise transfer any interest in this Agreement without the prior written consent of the N.H. Department of Administrative Services. None of the Services shall be subcontract(s)ed by the Vendor without the prior written consent of the State.

**13. INDEMNIFICATION.** The Vendor 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 Vendor. 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 Vendor shall, at its sole expense, obtain and maintain in force, and shall require any sub-Vendor 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 \$250,000 per claim and \$2,000,000 per occurrence; and

14.1.2 fire and extended coverage insurance 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

*[Handwritten Signature]*  
9/24/14

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 Vendor shall furnish to the Contract(s)ing Officer identified in block 1.9, or his or her successor, a certificate(s) of insurance for all insurance required under this Agreement. The Vendor shall also furnish to the Contract(s)ing 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 fifteen (15) 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 endeavor to provide the Contract(s)ing Officer identified in block 1.9, or his or her successor, no less than ten (10) days prior written notice of cancellation or modification of the policy.

**15. WORKERS' COMPENSATION.**

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

15.2 To the extent the Vendor is subject to the requirements of N.H. RSA chapter 281-A, the Vendor shall maintain, and require any sub-Vendor or assignee to secure and maintain, payment of Workers' Compensation in connection with activities which the person proposes to undertake pursuant to this Agreement. The Vendor shall furnish the Contract(s)ing 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 the Vendor, or any sub-Vendor or employee of the Vendor, 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 Vendor.

**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.

**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 ASI).

**Background**

- ASI 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 Assistance Program (DCAP)
- ASI shall provide administrative services for the Health Reimbursement Arrangement (HRA) established under Revenue Ruling 2002-41 and Notice 2002-45 as described below.
- ASI shall provide administrative services for COBRA and HIPAA Portability Administration for the Health FSA as described below.

*The Health FSA, DCAP, HRA and plans to which the COBRA and/or HIPAA portability administration 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 ASI agree as follows:

**Section 1  
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, 2015 while implementation activities shall commence immediately upon Governor and Executive Council approval. Payments under this Agreement shall not commence prior to January 1, 2015.

**1.2** Term

The term shall be the period commencing on the Effective Date and ending December 31, 2017, 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. ASI is and shall remain an independent contractor with respect to the services being performed hereunder and shall not for any purpose be deemed an employee of the State. ASI 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** ASI does not assume any responsibility for the general policy design of the Program, the adequacy of its funding, or any act or omission or breach of duty by the State. ASI shall not in any way be deemed an insurer, underwriter, or guarantor with respect to any benefits payable under the Program. ASI generally provides reimbursement services only and does not assume any financial risk or obligation with respect to claims for benefits payable by the State under the Program.

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

**2.2 Non-Discretionary Duties**

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

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

**2.3.1** Notwithstanding the foregoing, the State delegates to ASI certain functions which might be deemed to be of a fiduciary nature, including authority to determine claims for benefits as set forth in Section 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 ASI is fiduciary of the Program only to the limited extent necessary to perform such limited fiduciary duties as expressly delegated under this Agreement. ASI shall not be deemed a fiduciary in connection with any other duty or responsibility in the administration of the Program.

**Section 3  
Program Eligibility**

**3.1 General Eligibility**

Unless otherwise specified in the Benefit Booklet and/or Summary Plan Description (SPD) by the State or within this Agreement, ASI 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**

Except as otherwise specifically delegated to ASI in this Agreement, the State has the sole authority and responsibility for the Program and its operation, including the authority and responsibility for administering, construing and interpreting the provisions of the Program and making all determinations thereunder. The State gives ASI 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 ASI. The State is considered the Plan Administrator and Named Fiduciary of the Program benefits.

**4.2 Funding**

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

**4.3 Information to ASI**

**4.3.1** Upon request, the State agrees to provide ASI with information necessary for ASI's performance of duties and obligations under this Agreement, including information concerning the Program and the

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eligibility of individuals to participate in and receive Program benefits. ASI shall be entitled to rely, without investigation or inquiry, upon any written or oral information or communication of the State or its agents. Such information shall be provided to ASI in the time and in the manner agreed to by the State and ASI. ASI 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 ASI 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** ASI 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, ASI is under no obligation to credit the State for any claims expenses or administrative fees incurred or paid to ASI as a consequence of the State failing to review eligibility data for accuracy.

#### **4.4 Plan Documents**

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

**4.4.2** ASI 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. ASI shall also provide compliance assistance and ongoing maintenance of these documents as required. ASI will customize such documentation only to the extent to incorporate the State's responses to certain plan design questions submitted by ASI. In addition, ASI will provide draft document changes to reflect revisions in applicable legislation or regulations. Although ASI 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** The State bears sole responsibility for determining the legal and tax status of the Program. Further, ASI is not a law firm and has no authority to provide legal advice.

#### **4.5 Liability for Claims**

The State is responsible for payment of claims made pursuant to, and the benefits to be provided by, the Program. ASI does not insure or underwrite the liability of the State under the Program. Except for expenses specifically assumed by ASI 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 ASI to perform their obligations under this Agreement, personal financial records or medical records may be requested. If required by law or regulation, ASI 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.

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## 4.7 HIPAA Privacy

4.7.1 The State shall provide ASI 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;

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

### **Section 5 ASI's Responsibilities Applies to All Services**

## 5.1 Delegated Responsibilities and Administrative Services

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

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

5.1.3 ASI 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, 2013 through June 30, 2015. Per the bargaining agreements, benefit plan design changes are typically implemented on a calendar year basis. The current collective bargaining agreements are in effect through the end of 2015. January 1, 2016 benefit plans shall reflect the collective bargaining agreements effective July 1, 2015 through June 30, 2017.

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

5.1.5 ASI 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 ASI 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.

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** The State's discretion for the determination on any final level of appeal.

### **5.3** Subcontractors

ASI 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 ASI 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. ASI takes responsibility for the quality and timeliness of services provided by these subcontractors.

- Evolution1 – The will provide the debit card solution. Evolution1 will be responsible for the production and delivery of debit cards to health care FSA participants, and will also perform on-going record-keeping of 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.
- Caroline & Company Staffing Services – Caroline & Company provides applicant screening/testing and matches quality, prospective employees with employers. Location: 311 S. Providence Rd., Columbia, MO 65203.

### **5.4** Employee Data Access

ASI 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
- Easy online claim filing
- Secure messaging center
- Easy sign up to innovative claim filing service, FlexMinder
- Online confirmation of receipt of fax
- 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
- Regulatory updates
- Account balance

### **5.5** Account Management

**5.5.1** ASI shall track the various incentive and reward amounts. ASI will track two HRA accounts; one for the HAT program and one for the Health Rewards (HRW) program. The FSA accounts (Health and Dependent Care) will be tracked for each Participant as well. ASI shall accommodate the reimbursement order specified by the State. ASI will provide reports to the State for both HRA accounts as well as the FSA accounts.

**5.5.2** ASI shall process claims with a claim incurred date during the agreement period, including investigating and reviewing such claims to determine the amount, if any, is due and payable with respect

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thereto in accordance with the terms and conditions of the Benefit Booklet, Summary Plan Description and this Agreement.

**5.5.3** ASI 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 ASI 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 participants contributions, ASI will contact the State to make available such excess amounts.

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

**5.5.6** 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. ASI shall make the requested change in the Participant's election within one business day.

## **5.6** Claims Processing

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

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

## **5.7** Service Delivery

**5.7.1** ASI agrees to provide customer service personnel by telephone during ASI'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). ASI also agrees to provide electronic administrative services 24 hours per day, 7 days per week. ASI shall have a dedicated staff assigned to the State for account services and customer service.

**5.7.2** ASI shall provide seminars and other educational activities to promote the Program. ASI 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** ASI 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.

## **5.8** Benefits Payment

**5.8.1** ASI agrees to, on behalf of the State, operate under the express terms of this Agreement and the Program. ASI 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** ASI shall make available (by electronic medium and paper copy) enrollment and reimbursement forms and instructions for filing Participant claims.

**5.8.3** ASI shall provide at least the following claim submission options: mobile applications, debit card, FlexMinder Service, Direct Provider Pay, online claim filing, insurance interface, fax and postal mail.

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

**5.9** Health FSA claims for 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.

**5.10** 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.

**5.11** Debit Cards

**5.11.1** ASI 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, 2015.

**5.11.2** ASI shall mail 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 ASI receives from the State. HRA enrollments are initiated by a file ASI receives from the State's medical benefits administrator. Participants may request a debit card be provided to their dependent spouse and/or child(ren) providing they are at least eighteen (18) years of age.

**5.11.3** If a participant substantiates a debit card transaction with a manual submission, then the ASI 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.

**5.11.4** At the point-of-sale, the ASI debit card will confirm the merchant is an eligible merchant according to the merchant category code (MCC) coded into the vendor's credit card processing system and/or the individual merchant identification number. If a purchase is attempted at a vendor that has an allowable MCC, and the participant has available funds, the transaction will be approved. 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, ASI 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 ASI with a data file that details the known co-pay amounts. If a participant purchases an item that does not match a known co-pay or is not an auto-adjudicated purchase, ASI will send the participant notification that substantiating documentation must be submitted to ASI within roughly six weeks or as otherwise agreed by the parties.

**5.11.5** 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. Instead of adding additional costs to the administration and consternation amongst participants, ASI has chosen to focus on reimbursement via next-day claim processing and payment, with no additional monthly costs to dependent care participants. If the process for substantiating purchases eases, parties can discuss the feasibility of adding this feature.

**5.11.6** ASI shall provide one card with both Health FSA and HRA accounts unless directed otherwise by the State. Order of payment shall be directed by the State.

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**5.11.7** ASI's debit card system shall be available except in the case of scheduled system downtime (which ASI shall strive to minimize) or systems downtime attributed to telecommunications failure or other circumstances beyond ASI's control. ASI 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.

## **5.12 Reporting**

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

**5.12.2** ASI 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 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.

**5.12.3** 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 ASI will make available the reports provided for in this Section to the State.

**5.12.4** ASI agrees to also make available to Participants each month via electronic medium a report showing their individual payment history and status of claims and the amounts and transactions in their individual accounts during the preceding month. ASI shall prepare and mail to Participants year end reports of the contributions made by and the benefits paid to or on behalf of Participants. ASI shall also prepare and mail such reports upon request by Participant.

**5.12.5** ASI will process regular deposit reports provided from the State to capture new participants, terminated participants, change in status, and to post regular payroll contributions.

## **5.13 Claims Appeals**

**5.13.1** ASI shall handle the intake, review, determination and notification of determination to participants for all appeal types.

## **5.14 Implementation**

**5.14.1** ASI shall process 2014 health care FSA claims submitted during the 2015 grace period extension, 2014 Health Rewards (HRW) carry over balances in 2015, and all 2014 run out claims.

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**5.14.2** ASI 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:

- Import of existing enrollment and account balance data from State, predecessor FSA/HRA administrator, if applicable, and medical benefit administrator
- Development of interface between vendor 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 2014 open enrollment process for the 2015 Plan Year
- Deliver to plan participants of FSA and HRA program benefit information prior to the November 2014 open enrolment and debit cards prior to 1/1/2015
- Access to the vendor's online system by close of open enrollment for benefit program staff
- Access to vendor's online system and customer service by the November 2014 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, 2015
- Establish order of payments and cutoff dates

**5.14.3** The project plan shall be updated thereafter as the State and bidder mutually agree. Implementation activities shall be conducted in close collaboration and with the approval of the State.

#### **5.15** Claims Run In

ASI shall accept a file or files from the incumbent administrator that identify account balances as of December 31, 2014, or a date mutually agreed to, for the administration of claims run out from calendar year 2014 for HRA claims. In addition, ASI shall accept a file or files from the incumbent administrator that identify account balances as of December 31, 2014, or a date mutually agreed to, for the administration of claims run out from calendar year 2014 for Health FSA claims incurred both during calendar year 2013 and 2014 that are being reimbursed against FSA and for Dependent Care FSA claims incurred in calendar year 2014 that have not been reimbursed to the Participant(s) as of the agreed to date.

#### **5.16** Claims Run Out

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

#### **5.17** COBRA

**5.17.1** ASI shall provide COBRA services in regards to the Health Care FSA and shall retain the 2% administrative fee associated with such. 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.

**5.17.2** ASI shall provide its standard reporting package for exchanging information.

**5.18 Forfeited Funds**

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.

**5.19 Additional Documents**

**5.19.1** ASI shall provide the State sample documents and marketing materials for review and approval by the State prior to any distribution to participants or posting.

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

**5.19.3** ASI 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. ASI shall assist in the preparation of such returns and reports whenever called upon to do so by the State.

**5.20 Communication**

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

**5.21 Recordkeeping**

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

**5.22 Standard of Care; Erroneous Payments**

**5.22.1** ASI shall use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If ASI makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, ASI shall make a diligent effort to recover any payment made to or on behalf of an ineligible person or any overpayment. Should the State or ASI determine that ASI 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 the Contractor or its

employees, agents or subcontractors) relative to its obligations under this Agreement, ASI 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 DCAP**

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

Contemporaneously with this Agreement, the State and ASI 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

The State is authorized to perform audits of the records of payment to all Participants and other data specifically related to ASI's performance under this Agreement upon reasonable prior written notice to ASI. 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. ASI agrees to provide reasonable assistance and information to the auditors. ASI also agrees to provide such additional information and reports as the State shall reasonably request.

**7.2** Dispute Resolution; Arbitration

In the event of a dispute by either party related to this Agreement, the parties agree to first attempt to resolve such dispute by having the parties' 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** Automatic. This Agreement automatically terminates on the earliest of the following:

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

**7.5** Survival of Certain Provisions.

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

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survive its termination.

**7.6 Complete Agreement; Governing Law**

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.

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## Glossary

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

**Agreement** means this ASI Administrative Services Agreement, 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.

**DCAP** 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 3.

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

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

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

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

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

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

**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:

<b>Standard Services Charges</b>	<b>Cost</b>
Health Care FSA PPM Service Charge	\$3.25*
Dependent Care FSA PPM Service Charge	\$3.25*
HRA Administration FSA PPM Service Charge	\$1.70**

<b>Additional Service Charges</b>	<b>Cost</b>
Initial Set-Up Fee	\$250.00 (Year One only)
Debit Cards	Initial Card set provided at no cost
Additional Debit Cards requested	\$5.00 each set billed to participant health care FSA
Duplicate Debit Cards requested	\$5.00 each set billed to participant health care FSA
Sample Documents and Forms	Included
Staff Training	Included
Online Enrollment	Included
Enrollment Kits and Communication Materials	Included
Postage	Included
Printing of Forms	Included
Onsite Open Enrollment Meetings	5 trips over the course of the Agreement included in Standard Service Charge. \$250/day plus travel expenses applies for each additional meeting.
Non Discrimination Testing	Included
COBRA services for Health FSA	Included; ASI will retain the 2% administrative fee

\* Please note that if an individual enrolls in both the Health Care and Dependent Care FSA, the monthly Per Participant Per Month (PPM) fee will be \$3.25.

\*\* Please note that if an individual enrolls in both the HAT and HRW HRA, the monthly Per Participant Per Month (PPPM) fee will be \$1.70.

### **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** Customer Service: Debit Card Delivery. 98% of debit cards will be mailed within ten (10) business days of receiving the inbound file, or other request (e.g. replacement). Penalty for non-conformance is 1% of the applicable administrative fees in the month that the violation occurs.

**3.1.3** 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.

**3.1.4** 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.

**3.1.5** Plan Administration: Benefit Design Changes. ASI shall successfully implement plan design changes as measured by Claims Accuracy. Penalty for nonconformance is 1% of the applicable administrative fees in the month that the violation occurs.

#### **3.2 Performance Reporting**

ASI 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 ASI within thirty (30) calendar days following the end of each calendar quarter beginning on 5/1/2015 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**

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 ASI in any way the State deems appropriate.

#### **4.2 Payment of Benefits**

In the event the State is the sole owner of the bank account, the State authorizes ASI to pay Program benefits by checks written (or other draft payment or debit) on a bank account established and maintained in the name of the State for the payment of Program benefits. Each banking day or at such other interval as mutually agreed upon, ASI 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. ASI has

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**

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

**4.3.1** Neither it nor any of its employees, directors, representatives, fiduciaries, or employee benefits plans (or any entity performing services for the State or such plans) 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

**4.3.2** 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.

**4.3.3** The State understands and agrees that any account maintained by ASI 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 ASI 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. ASI 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.

**4.3.4** The parties shall agree on a method for ASI to bill the State for claims payments.

**4.3.5** ASI 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**

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

#### **5.2 Payment of Service Charges**

**5.2.1** ASI 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 Division of Personnel) on the last day of each month setting forth the applicable monthly fee for the services provided. Each invoice shall reference the contract and 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 and provide detailed information and be in a format as approved by the State.

**5.2.2** ASI will determine all service charges under this Section. The State shall make payment to ASI 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.

Contractor's Initials *[Signature]*  
Date *7/24/17*

**APPENDICES**

Appendix A Business Associate Agreement

Contractor's Initials MM  
Date 9/24/14

## APPENDIX A

### STANDARD EXHIBIT I

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.

#### **BUSINESS ASSOCIATE AGREEMENT**

##### 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 otherwise permitted or required by law.
- b. Business Associate agrees to make uses and 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. Once de-identified, the information ceases to be PHI. 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, unless such notification is prohibited by law. 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. Trivial incidents that occur on a daily basis, such as scans, "pings," or unsuccessful attempts that do not penetrate computer networks or servers or result in interference with system operations will not be reported. 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 equivalent 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.

#### Individual Rights and PHI

##### h. 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 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:

Handwritten signature and date: 7/24/14

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.

vi. 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. In the event that the requirements with regard to Disclosure Accounting found at 45 CFR 164.528 are modified, it shall not be considered a violation of this Appendix A for Business Associate to comply with such modified regulation regardless of whether this Section 3.j. is amended.

k. 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.

l. 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.
- d. Covered Entity shall not request Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Rule if done by Covered Entity, except to the extent that such use or disclosure is for the purposes set forth above in Sections 2.d. and 2.e.

#### 5. Term and Termination

- a. The term of this Agreement shall be effective upon approval by Governor and Executive Council, and shall terminate on December 31, 2017 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 its knowledge of a breach by Business Associate of the Business Associate Agreement set forth herein as Appendix A. 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. Covered Entity understands that Business Associate's proper management and administration requires the retention of portions of the protected health information in records of actuarial determinations and for other archival purposes related to memorializing advice provided in compliance with its document retention and disaster recovery programs.
  - 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

  
9/24/14

- 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 the HIPAA Rules and any other applicable law. Any amendment shall be in a writing duly executed by both parties.
- 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, return or destruction of PHI, extensions of the protections of the Agreement in section 3d, and the defense and indemnification provision #13 of the standard contract P-37, shall survive the termination of the Agreement.

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

\_\_\_\_\_  
 The State of New Hampshire Employee  
 and Retiree Health Benefit Program

Linda M. Hodgdon  
 Signature of Authorized Representative

Linda M. Hodgdon  
 Name of Authorized Representative

Commissioner  
 Title of Authorized Representative

9/30/14  
 Date

\_\_\_\_\_  
 ASIFlex

[Signature]  
 Signature of Authorized Representative

John M. Riddick  
 Name of Authorized Representative

President  
 Title of Authorized Representative

9/24/14  
 Date

Contractor's Initials [Signature]  
 Date 9/24/14

# 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. a(n) Missouri corporation, is authorized to transact business in New Hampshire and qualified on November 18, 2005. I further certify that all fees and annual reports required by the Secretary of State's office have been received.



In TESTIMONY WHEREOF, I hereto set my hand and cause to be affixed the Seal of the State of New Hampshire, this 5<sup>th</sup> day of September, A.D. 2014

A handwritten signature in cursive script, appearing to read "Wm Gardner".

William M. Gardner  
Secretary of State

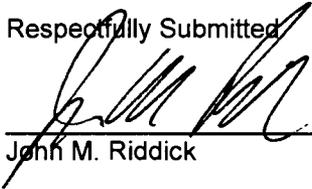
A special meeting of the Board of Directors of Application Software, Inc. was called to order at 11:32 A.M. Central Daylight Time September 24, 2014 by its Secretary, John M. Riddick. The purpose of the meeting was to grant the company's president the authority to enter into any and all contracts.

It is also noted by the Board that John M. Riddick is the Secretary and sole member of the Board of Directors of Application Software, Inc.

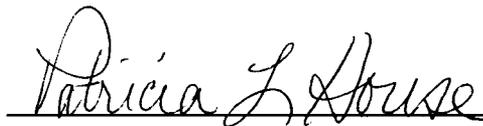
Mr. Riddick moved and the Board adopted a resolution authorizing John M. Riddick, corporate president to enter into any contract involving the company.

The meeting was adjourned at 11:33 A. M. Central Daylight Time September 24 2014.

Respectfully Submitted

  
\_\_\_\_\_  
John M. Riddick

Secretary

  
\_\_\_\_\_

Notary

State of Missouri, County of Boone

