

AGREEMENT BETWEEN THE COUNTY OF SAN MATEO AND BENEFITS COORDINATORS CORPORATION

This Agreement is entered into this 1st day of October 2020, by and between the County of San Mateo, a political subdivision of the state of California, hereinafter called "County," and Self-Insured Services Company doing business as Benefit Coordinators Corporation, hereinafter called "Contractor."

* * *

Whereas, pursuant to Section 31000 of the California Government Code, County may contract with independent contractors for the furnishing of such services to or for County or any Department thereof; and

Whereas, it is necessary and desirable that Contractor be retained for the purpose of continuing annual hosted services, software licensing and platform enhancements.

Now, therefore, it is agreed by the parties to this Agreement as follows:

1. Exhibits and Attachments

The following exhibits and attachments are attached to this Agreement and incorporated into this Agreement by this reference:

- Exhibit A— Preamble and Recitals Services
- Exhibit B— Consolidated Invoicing and Remittance
- Exhibit C— BenXcel®
- Exhibit D— Flexible Spending Administration
- Exhibit E - COBRA Administration
- Exhibit F - Retiree Billing Administration
- Exhibit G - Reimbursement Account Administration
- Exhibit H - Health Savings Account Administration
- Exhibit I - Schedule of Fees
- Attachment H—HIPAA Business Associate Requirements
- Attachment IP – Intellectual Property

2. Services to be performed by Contractor

In consideration of the payments set forth in this Agreement and in Exhibit I, Contractor shall perform services for County in accordance with the terms, conditions, and specifications set forth in this Agreement and in Exhibit B through H.

3. Payments

In consideration of the services provided by Contractor in accordance with all terms, conditions, and specifications set forth in this Agreement and in Exhibit B through H, County shall make payment to Contractor based on the rates and in the manner specified in Exhibit I. County reserves the right to withhold payment if County determines that the quantity or quality of the work performed is unacceptable. In no event shall County's total fiscal obligation under this Agreement exceed nine hundred seventy-five thousand dollars (\$975,000.00) with a one-time option to extend the agreement for two years in an amount not to exceed \$300,000 per year. In the event that the County makes any advance payments,

Contractor agrees to refund any amounts in excess of the amount owed by the County at the time of contract termination or expiration. Contractor is not entitled to payment for work not performed as required by this agreement.

4. Term

Subject to compliance with all terms and conditions, the term of this Agreement shall be from October 1, 2020, through December 31, 2023.

5. Termination

This Agreement may be terminated by Contractor or by the Human Resources Director or his/her designee at any time without a requirement of good cause upon thirty (30) days' advance written notice to the other party. Subject to availability of funding, Contractor shall be entitled to receive payment for work/services provided prior to termination of the Agreement. Such payment shall be that prorated portion of the full payment determined by comparing the work/services actually completed to the work/services required by the Agreement.

County may terminate this Agreement or a portion of the services referenced in the Attachments and Exhibits based upon the unavailability of Federal, State, or County funds by providing written notice to Contractor as soon as is reasonably possible after County learns of said unavailability of outside funding.

County may terminate this Agreement for cause. In order to terminate for cause, County must first give Contractor notice of the alleged breach. Contractor shall have five business days after receipt of such notice to respond and a total of ten calendar days after receipt of such notice to cure the alleged breach. If Contractor fails to cure the breach within this period, County may immediately terminate this Agreement without further action. The option available in this paragraph is separate from the ability to terminate without cause with appropriate notice described above. In the event that County provides notice of an alleged breach pursuant to this section, County may, in extreme circumstances, immediately suspend performance of services and payment under this Agreement pending the resolution of the process described in this paragraph. County has sole discretion to determine what constitutes an extreme circumstance for purposes of this paragraph, and County shall use reasonable judgment in making that determination.

6. Contract Materials

At the end of this Agreement, or in the event of termination, all finished or unfinished documents, data, studies, maps, photographs, reports, and other written materials (collectively referred to as "contract materials") prepared by Contractor under this Agreement shall become the property of County and shall be promptly delivered to County. Upon termination, Contractor may make and retain a copy of such contract materials if permitted by law.

7. Relationship of Parties

Contractor agrees and understands that the work/services performed under this Agreement are performed as an independent contractor and not as an employee of County and that neither Contractor nor its employees acquire any of the rights, privileges, powers, or advantages of County employees.

8. Hold Harmless

a. General Hold Harmless

Contractor shall indemnify and save harmless County and its officers, agents, employees, and servants from all claims, suits, or actions of every name, kind, and description resulting from this Agreement, the performance of any work or services required of Contractor under this Agreement, or payments made pursuant to this Agreement brought for, or on account of, any of the following:

- (A) injuries to or death of any person, including Contractor or its employees/officers/agents;
- (B) damage to any property of any kind whatsoever and to whomsoever belonging; or
- (C) any sanctions, penalties, or claims of damages resulting from Contractor's failure to comply, if applicable, with the requirements set forth in the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and all Federal regulations promulgated thereunder, as amended.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

b. Intellectual Property Indemnification

Contractor hereby certifies that it owns, controls, and/or licenses and retains all right, title, and/or interest in and to any intellectual property it uses in relation to this Agreement, including the design, look, feel, features, source code, content, and/or other technology relating to any part of the services it provides under this Agreement and including all related patents, inventions, trademarks, and copyrights, all applications therefor, and all trade names, service marks, know how, and trade secrets (collectively referred to as "IP Rights") except as otherwise noted by this Agreement.

Contractor warrants that the services it provides under this Agreement do not infringe, violate, trespass, or constitute the unauthorized use or misappropriation of any IP Rights of any third party. Contractor shall defend, indemnify, and hold harmless County from and against all liabilities, costs, damages, losses, and expenses (including reasonable attorney fees) arising out of or related to any claim by a third party that the services provided under this Agreement infringe or violate any third-party's IP Rights provided any such right is enforceable in the United States. Contractor's duty to defend, indemnify, and hold harmless under this Section applies only provided that: (a) County notifies Contractor promptly in writing of any notice of any such third-party claim; (b) County cooperates with Contractor, at Contractor's expense, in all reasonable respects in connection with the investigation and defense of any such third-party claim; (c) Contractor retains sole control of the defense of any action on any such claim and all negotiations for its settlement or compromise (provided Contractor shall not have the right to settle any criminal action, suit, or proceeding without County's prior written consent, not to be unreasonably withheld, and provided further that any settlement permitted under this Section shall not impose any financial or other obligation on County, impair any right of County, or contain any stipulation, admission, or acknowledgement of wrongdoing on the part of County without County's prior written consent, not to be unreasonably withheld); and (d) should services under this Agreement become, or in Contractor's opinion be likely to become, the subject of such a claim, or in the event such a third party claim or threatened claim causes County's reasonable use of the services under this Agreement to be seriously endangered or disrupted, Contractor shall, at Contractor's option and expense, either: (i) procure for County the right to continue using the services without infringement or (ii) replace or modify the services so that they become non-infringing but remain functionally equivalent.

Notwithstanding anything in this Section to the contrary, Contractor will have no obligation or liability to County under this Section to the extent any otherwise covered claim is based upon: (a) any aspects of the services under this Agreement which have been modified by or for County (other than modification performed by, or at the direction of, Contractor) in such a way as to cause the alleged infringement at

issue; and/or (b) any aspects of the services under this Agreement which have been used by County in a manner prohibited by this Agreement.

The duty of Contractor to indemnify and save harmless as set forth by this Section shall include the duty to defend as set forth in Section 2778 of the California Civil Code.

9. Assignability and Subcontracting

Contractor shall not assign this Agreement or any portion of it to a third party or subcontract with a third party to provide services required by Contractor under this Agreement without the prior written consent of County. Any such assignment or subcontract without County's prior written consent shall give County the right to automatically and immediately terminate this Agreement without penalty or advance notice.

10. Insurance

a. General Requirements

Contractor shall not commence work or be required to commence work under this Agreement unless and until all insurance required under this Section has been obtained and such insurance has been approved by County's Risk Management, and Contractor shall use diligence to obtain such insurance and to obtain such approval.

Workers' Compensation and Employer's Liability Insurance

Contractor shall have in effect during the entire term of this Agreement workers' compensation and employer's liability insurance providing full statutory coverage. In signing this Agreement, Contractor certifies, as required by Section 1861 of the California Labor Code, that (a) it is aware of the provisions of Section 3700 of the California Labor Code, which require every employer to be insured against liability for workers' compensation or to undertake self-insurance in accordance with the provisions of the Labor Code, and (b) it will comply with such provisions before commencing the performance of work under this Agreement.

b. Liability Insurance

Contractor shall take out and maintain during the term of this Agreement such bodily injury liability and property damage liability insurance as shall protect Contractor and all of its employees/officers/agents while performing work covered by this Agreement from any and all claims for damages for bodily injury, including accidental death, as well as any and all claims for property damage which may arise from Contractor's operations under this Agreement, whether such operations be by Contractor, any subcontractor, anyone directly or indirectly employed by either of them, or an agent of either of them. Such insurance shall be combined single limit bodily injury and property damage for each occurrence and shall not be less than the amounts specified below:

- (a) Comprehensive General Liability... \$1,000,000
- (b) Motor Vehicle Liability Insurance... \$1,000,000

In the event of the breach of any provision of this Section, or in the event any notice is received which indicates any required insurance coverage will be diminished or canceled, County, at its option, may,

notwithstanding any other provision of this Agreement to the contrary, immediately declare a material breach of this Agreement and suspend all further work and payment pursuant to this Agreement.

11. Compliance With Laws

All services to be performed by Contractor pursuant to this Agreement shall be performed in accordance with all applicable Federal, State, County, and municipal laws, ordinances, and regulations, including but not limited to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Federal Regulations promulgated thereunder, as amended (if applicable), the Business Associate requirements set forth in Attachment H (if attached), the Americans with Disabilities Act of 1990, as amended, and Section 504 of the Rehabilitation Act of 1973, which prohibits discrimination on the basis of disability in programs and activities receiving any Federal or County financial assistance. Such services shall also be performed in accordance with all applicable ordinances and regulations, including but not limited to appropriate licensure, certification regulations, provisions pertaining to confidentiality of records, and applicable quality assurance regulations. In the event of a conflict between the terms of this Agreement and any applicable State, Federal, County, or municipal law or regulation, the requirements of the applicable law or regulation will take precedence over the requirements set forth in this Agreement.

Contractor will timely and accurately complete, sign, and submit all necessary documentation of compliance.

12. Non-Discrimination and Other Requirements

a. General Non-discrimination

No person shall be denied any services provided pursuant to this Agreement (except as limited by the scope of services) on the grounds of race, color, national origin, ancestry, age, disability (physical or mental), sex, sexual orientation, gender identity, marital or domestic partner status, religion, political beliefs or affiliation, familial or parental status (including pregnancy), medical condition (cancer-related), military service, or genetic information.

b. Equal Employment Opportunity

Contractor shall ensure equal employment opportunity based on objective standards of recruitment, classification, selection, promotion, compensation, performance evaluation, and management relations for all employees under this Agreement. Contractor's equal employment policies shall be made available to County upon request.

c. Section 504 of the Rehabilitation Act of 1973

Contractor shall comply with Section 504 of the Rehabilitation Act of 1973, as amended, which provides that no otherwise qualified individual with a disability shall, solely by reason of a disability, be excluded from the participation in, be denied the benefits of, or be subjected to discrimination in the performance of any services this Agreement. This Section applies only to contractors who are providing services to members of the public under this Agreement.

d. Compliance with County's Equal Benefits Ordinance

Contractor shall comply with all laws relating to the provision of benefits to its employees and their spouses or domestic partners, including, but not limited to, such laws prohibiting discrimination in the

provision of such benefits on the basis that the spouse or domestic partner of the Contractor's employee is of the same or opposite sex as the employee.

e. Discrimination Against Individuals with Disabilities

The nondiscrimination requirements of 41 C.F.R. 60-741.5(a) are incorporated into this Agreement as if fully set forth here, and Contractor and any subcontractor shall abide by the requirements of 41 C.F.R. 60-741.5(a). This regulation prohibits discrimination against qualified individuals on the basis of disability and requires affirmative action by covered prime contractors and subcontractors to employ and advance in employment qualified individuals with disabilities.

f. History of Discrimination

Contractor certifies that no finding of discrimination has been issued in the past 365 days against Contractor by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other investigative entity. If any finding(s) of discrimination have been issued against Contractor within the past 365 days by the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or other investigative entity, Contractor shall provide County with a written explanation of the outcome(s) or remedy for the discrimination prior to execution of this Agreement. Failure to comply with this Section shall constitute a material breach of this Agreement and subjects the Agreement to immediate termination at the sole option of the County.

g. Reporting; Violation of Non-discrimination Provisions

Contractor shall report to the County Manager the filing in any court or with any administrative agency of any complaint or allegation of discrimination on any of the bases prohibited by this Section of the Agreement or the Section titled "Compliance with Laws". Such duty shall include reporting of the filing of any and all charges with the Equal Employment Opportunity Commission, the California Department of Fair Employment and Housing, or any other entity charged with the investigation or adjudication of allegations covered by this subsection within 30 days of such filing, provided that within such 30 days such entity has not notified Contractor that such charges are dismissed or otherwise unfounded. Such notification shall include a general description of the circumstances involved and a general description of the kind of discrimination alleged (for example, gender-, sexual orientation-, religion-, or race-based discrimination).

Violation of the non-discrimination provisions of this Agreement shall be considered a breach of this Agreement and subject the Contractor to penalties, to be determined by the County Manager, including but not limited to the following:

- i. termination of this Agreement;
- ii. disqualification of the Contractor from being considered for or being awarded a County contract for a period of up to 3 years;
- iii. liquidated damages of \$2,500 per violation; and/or
- iv. imposition of other appropriate contractual and civil remedies and sanctions, as determined by the County Manager.

To effectuate the provisions of this Section, the County Manager shall have the authority to offset all or any portion of the amount described in this Section against amounts due to Contractor under this Agreement or any other agreement between Contractor and County.

h. Compliance with Living Wage Ordinance

As required by Chapter 2.88 of the San Mateo County Ordinance Code, Contractor certifies all contractor(s) and subcontractor(s) obligated under this contract shall fully comply with the provisions of the County of San Mateo Living Wage Ordinance, including, but not limited to, paying all Covered Employees the current Living Wage and providing notice to all Covered Employees and Subcontractors as required under the Ordinance.

13. Compliance with County Employee Jury Service Ordinance

Contractor shall comply with Chapter 2.85 of the County's Ordinance Code, which states that Contractor shall have and adhere to a written policy providing that its employees, to the extent they are full-time employees and live in San Mateo County, shall receive from the Contractor, on an annual basis, no fewer than five days of regular pay for jury service in San Mateo County, with jury pay being provided only for each day of actual jury service. The policy may provide that such employees deposit any fees received for such jury service with Contractor or that the Contractor may deduct from an employee's regular pay the fees received for jury service in San Mateo County. By signing this Agreement, Contractor certifies that it has and adheres to a policy consistent with Chapter 2.85. For purposes of this Section, if Contractor has no employees in San Mateo County, it is sufficient for Contractor to provide the following written statement to County: "For purposes of San Mateo County's jury service ordinance, Contractor certifies that it has no full-time employees who live in San Mateo County. To the extent that it hires any such employees during the term of its Agreement with San Mateo County, Contractor shall adopt a policy that complies with Chapter 2.85 of the County's Ordinance Code." The requirements of Chapter 2.85 do not apply if this Agreement's total value listed in the Section titled "Payments", is less than one-hundred thousand dollars (\$100,000), but Contractor acknowledges that Chapter 2.85's requirements will apply if this Agreement is amended such that its total value meets or exceeds that threshold amount.

14. Retention of Records; Right to Monitor and Audit

(a) Contractor shall maintain all required records relating to services provided under this Agreement for three (3) years after County makes final payment and all other pending matters are closed, and Contractor shall be subject to the examination and/or audit by County, a Federal grantor agency, and the State of California.

(b) Contractor shall comply with all program and fiscal reporting requirements set forth by applicable Federal, State, and local agencies and as required by County.

(c) Contractor agrees upon reasonable notice to provide to County, to any Federal or State department having monitoring or review authority, to County's authorized representative, and/or to any of their respective audit agencies access to and the right to examine all records and documents necessary to determine compliance with relevant Federal, State, and local statutes, rules, and regulations, to determine compliance with this Agreement, and to evaluate the quality, appropriateness, and timeliness of services performed.

15. Merger Clause; Amendments

This Agreement, including the Exhibits and Attachments attached to this Agreement and incorporated by reference, constitutes the sole Agreement of the parties to this Agreement and correctly states the rights, duties, and obligations of each party as of this document's date. In the event that any term, condition, provision, requirement, or specification set forth in the body of this Agreement conflicts with or is inconsistent with any term, condition, provision, requirement, or specification in any Exhibit and/or Attachment to this Agreement, the provisions of the body of the Agreement shall prevail. Any prior agreement, promises, negotiations, or representations between the parties not expressly stated in this

document are not binding. All subsequent modifications or amendments shall be in writing and signed by the parties.

16. Controlling Law; Venue

The validity of this Agreement and of its terms, the rights and duties of the parties under this Agreement, the interpretation of this Agreement, the performance of this Agreement, and any other dispute of any nature arising out of this Agreement shall be governed by the laws of the State of California without regard to its choice of law or conflict of law rules. Any dispute arising out of this Agreement shall be venued either in the San Mateo County Superior Court or in the United States District Court for the Northern District of California.

17. Notices

Any notice, request, demand, or other communication required or permitted under this Agreement shall be deemed to be properly given when both: (1) transmitted via facsimile to the telephone number listed below or transmitted via email to the email address listed below; and (2) sent to the physical address listed below by either being deposited in the United States mail, postage prepaid, or deposited for overnight delivery, charges prepaid, with an established overnight courier that provides a tracking number showing confirmation of receipt.

In the case of County, to:

Name/Title: Rocio Kiryczun, Human Resources Director
Address: 455 County Center, 5th Floor, Redwood City, CA 94063
Telephone: (650) 363-4132
Email: rkiryczun@smcgov.org

In the case of Contractor, to:

Name/Title: Bonnie DeLuca/Manager, Compliance and Communications
Address: Two Robinson Plaza, Suite 200, Pittsburgh, PA 15205
Email: bdeluca@benxcel.com

18. Electronic Signature

Both County and Contractor wish to permit this Agreement and future documents relating to this Agreement to be digitally signed in accordance with California law and County's Electronic Signature Administrative Memo. Any party to this Agreement may revoke such agreement to permit electronic signatures at any time in relation to all future documents by providing notice pursuant to this Agreement.

19. Payment of Permits/Licenses

Contractor bears responsibility to obtain any license, permit, or approval required from any agency for work/services to be performed under this Agreement at Contractor's own expense prior to commencement of said work/services. Failure to do so will result in forfeit of any right to compensation under this Agreement.

* * *

In witness of and in agreement with this Agreement's terms, the parties, by their duly authorized representatives, affix their respective signatures:

For Contractor: Self Insured Services Company doing business as Benefit Coordinators Corporation


Contractor Signature

8/18/20
Date

MICHAEL LAWTON, SUP
Contractor Name (please print)

COUNTY OF SAN MATEO

By:
President, Board of Supervisors, San Mateo County

Date:

ATTEST:

By:
Clerk of Said Board

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

SERVICE EXHIBITS

This Exhibits are effective 10/01/2020, and continues in force until amended.

- EXHIBIT A** - Preamble and Recitals
- EXHIBIT B** - Consolidated Invoicing and Remittance
- EXHIBIT C** - BenXcel®
- EXHIBIT D** - Flexible Spending Administration
- EXHIBIT E** - COBRA Administration
- EXHIBIT F** - Retiree Billing Administration
- EXHIBIT G** - Reimbursement Account Administration
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- EXHIBIT I** - Schedule of Fees
- ATTACHMENT H**- HIPPA Business Associate Requirements
- ATTACHMENT IP** – Intellectual Property

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT
PREAMBLE AND RECITALS - EXHIBIT A**

Name of Employer San Mateo County

Business Address 455 County Center

5th Floor

Redwood City, CA 94063

Employer's tax identification number (EIN): 94-6000532.

In consideration of the covenants and obligations hereinafter set forth to be well and faithfully performed by the respective parties hereto, Self Insured Services Company, doing business as, Benefit Coordinators Corporation (hereinafter referred to as the "Administrator") and Employer hereby agree as follows:

SECTION I - SERVICES TO BE PROVIDED TO EMPLOYER

- 1.1 In consideration of the fees to be paid to it, the Administrator hereby agrees to provide administrative services to Employer in connection with the agreements identified in the "Services Exhibit" attached to this Benefit Coordinators Corporation Plan Administration Agreement (the "Administration Agreement" or the "Agreement"), as more fully set forth in each agreement's respective Exhibit hereunder, and in accordance with the following terms and conditions.
- 1.2 Administrator shall perform the services under this Agreement (the "Services") in a professional and diligent manner and in accordance with industry standards. Administrator has obtained and will at all times maintain during the term of this Agreement, all applicable licenses, permits, approvals and certifications necessary to provide the Services. In performance of this Agreement, Administrator shall comply with all applicable Federal, State and local laws, statutes, ordinances, rules and regulations.

SECTION II - ADMINISTRATION FEES

- 2.1 Employer shall pay fees to the Administrator as set forth in the Schedule of Fees Exhibit of this Agreement. The "start up" fees for the purpose of establishing the services in connection with Employer shall be due and payable upon execution of this Agreement and shall not be refundable under any circumstances. The Administrator's fees will be subject to revision at the contract renewal and any change in fees will be communicated to Employer thirty (30) days prior to the effective date of the change. Administrator reserves the right, with 30 days' notice, to modify fees if Employer's employee base is modified by a 20% or greater percentage.
- 2.2 Employer and the Administrator acknowledge that the Administrator's fees for the services rendered by the Administrator in connection with the welfare benefit plans covered by this Administration Agreement (collectively the "Plans") will be paid by Employer, except as indicated in Schedule of Fees Exhibit.
- 2.3 Employer specifically acknowledges that the Administrator will have the right to immediately terminate services under this Agreement in the event that Employer fails to comply with the terms of the Agreement in any

material respect, including, but not limited to, any failure by Employer or its agents to pay any fee of the Administrator when due. In the event of any such termination, the Administrator will notify Employer prior to the effective date of termination. As an alternative to termination of services, the Administrator, in its sole discretion, may offer Employer the opportunity to continue service by paying all past due amounts along with a reinstatement fee.

- 2.4 Employer shall reimburse the Administrator for any expenses incurred for the printing and postage of any material produced specifically for Employer and sent via U. S. mail to the participants that is outside the scope of services listed on the Schedule of Fees.
- 2.5 Employer shall reimburse the Administrator for any charges incurred due to insufficient funds, returned check fees or the like incurred through Employer's funding of its payment of fees due the Administrator or claims payments.

SECTION III - LIABILITY & INDEMNITY

- 3.1 The Administrator does not insure nor underwrite the liability of Employer under the Plans. Employer retains the ultimate financial and fiduciary responsibility for claims made under the Plans, and for all expenses incident to the Plans, except as specifically assumed by the Administrator in this Agreement.
- 3.2 Employer agrees to indemnify the Administrator, its successors and assigns, and hold it unharmed against any and all loss, damage and expense, including attorneys' fees (collectively, a "Loss"), occasioned by claims, demands or lawsuits brought against the Administrator to recover benefits under the Plans except to the extent such Loss resulted from the fraud, negligence or willful misconduct of the Administrator. This section shall not be construed to prevent Employer from pursuing a breach of contract action against the Administrator for any failure of the Administrator to properly perform its duties under this Agreement.
- 3.3 The right to be defended, indemnified and held unharmed, hereunder shall extend to the Administrator's employees, their estates, executors, administrator, guardians, conservators and heirs and shall apply after the employee ceases employment with the Administrator with respect to acts or omissions during employment.
- 3.4 Employer agrees to indemnify the Administrator for any charges or fees incurred or arising due to Employer's lack of timely reporting of eligibility changes or terminations. This indemnification will extend to any liability relating to the performance, or failure to perform, of any agent performing any of Employer's duties under this Agreement, including, but not limited to, any failure in the delivery of timely and accurate enrollment or eligibility data by any agent with which Employer has contracted to provide such data.
- 3.5 The Administrator agrees to indemnify Employer, its successors and assigns, and hold it unharmed against any and all loss, damage and expense, including attorneys' fees, occasioned by claims, demands or lawsuits brought against Employer relating to the performance of, or failure to perform, the responsibilities placed on the Administrator by this Administration Agreement.
- 3.6 **LIMITATION OF LIABILITY. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS OUTLINED IN SECTION III ABOVE, EACH PARTY'S AGGREGATE, CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT SHOULD BE LIMITED TO DIRECT DAMAGES AND CAPPED AT THE AMOUNT EQUAL TO FEES ACTUALLY RECEIVED BY ADMINISTRATOR FROM EMPLOYER UNDER THE ORDER FORM WHICH THE EVENT CAUSING LIABILITY ARISES. These limitations and exclusions apply to all claims or causes of action on whatever basis and under whatever theory brought and irrespective of whether the Party has advised or has been advised of the possibility of such claim. All claims and causes of action brought by Employer hereunder shall be brought within ninety (90) calendar days of the termination or expiration hereof or within six (6) months of the date the harm is actually discovered, whichever occurs first. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY**

INDIRECT, INCIDENTAL, CONSEQUENTIAL, RELIANCE OR PUNITIVE DAMAGES OR LOST OR IMPUTED PROFITS OR LOST DATA.

SECTION IV - TERMINATION & REVISION

- 4.1 The terms in this Administration Agreement shall be from the effective date hereof until such time as this Administration Agreement may be modified or terminated by the parties hereto. If either party desires to modify or terminate this Administration Agreement, it shall notify the other party in writing delivered at least 30 days prior to the effective date of such modification or termination or, in the event of a proposed modification due to a change in the local, state, or federal law, as soon as feasibly possible thereafter. In the case of a proposed termination, the effective date will be no sooner than the end of the coverage month following 30 days from the date of delivery of the notice.
- 4.2 In the case of a proposed termination by Employer, the Administrator must return a timeline of actual disengagement of services, not to be more than an additional 90 days. If Employer does not agree and requires an earlier timeline than the one proposed, Employer assumes responsibility and liability for any outstanding and new errors, discrepancies and unresolved issues even if the issue resulted from a period during which Administrator was the Administrator. If no refusal is delivered to Administrator within 10 days, the proposed termination timeline shall be deemed to have been accepted. If Employer requires additional time to access the system, a signed amendment is required prior to the termination date. Access will be granted at a fee of \$500 per month. If Employer does not timely respond with aforementioned amendment and/or payment prior to the termination date, Employer understands that system access will be revoked and data will be purged as of the effective date of termination with no ability to reactivate.
- 4.3 All obligations of the Administrator related to the relevant rights of the employees and their dependents to payment of benefits from the Plan will be terminated and extinguished on the effective date of termination given in the notice of this Administration Agreement, except as provided in Section 4.5 and 4.6 below.
- 4.4 Either party may terminate this Agreement upon: (i) the occurrence of a material breach by the other party, which material breach has not been cured within 30 days after written notice; (ii) termination or suspension by the other party of its business; (iii) the other party becoming subject to any bankruptcy or insolvency proceeding under the laws of any jurisdiction; (iv) the other party is unable to pay its debts as they become due, becomes insolvent or becomes subject to direct control by a trustee, receiver or similar authority; or (v) the other party goes into liquidation, voluntarily or otherwise. This Agreement may be terminated by any federal, state, municipal, local, territorial, or other governmental department, regulatory authority, judicial or administrative body, whether domestic, foreign or international with jurisdiction over the parties ("Regulator"), or by the parties at the direction of any Regulator.
- 4.5 Except for terminations as provided in 4.4 above, upon execution of a Run Out Agreement, the Administrator will continue to process claims and/or qualifying events incurred prior to the termination date for a period not to exceed ninety (90) days from the termination date, at the standard monthly fee.
- 4.6 In the event of termination, the Administrator agrees to cooperate fully with Employer and to assist Employer in working out all details necessary in the assumption of the Services by a new provider. In order to assist in the transition, Employer or a new provider shall have full access to all records, files, including computer files (i.e., magnetic tape, disc, etc.), facilities and premises necessary for performance of the Services. Upon termination, all fees due the Administrator will be payable immediately.
- 4.7 In the event of termination by Employer within the first 12 month contract term, prior to the first Effective Date renewal, payment for the full term shall become immediately due and payable to Administrator.

- 4.8 All notices hereunder shall be in writing and either delivered personally or mailed via certified mail, return receipt requested. Notices to Employer shall be delivered or mailed to the address first written above. Notices to the Administrator shall be delivered or mailed to Benefit Coordinators Corporation, at Two Robinson Plaza, Suite 200, Pittsburgh, PA 15205-1324. From time to time, either party may designate a different address in a written notice to the other party.

SECTION V - ASSIGNMENT

- 5.1 Employer may not assign its rights or obligations under this Administration Agreement, whether by operation of law or otherwise, without the prior express written consent of Administrator. Any attempted assignment or any change of control or sale of a majority of the equity or assets of Employer will automatically terminate this Administration Agreement and all sums due hereunder shall be immediately due and payable. Administrator may assign this Administration Agreement without Employer's prior consent and all of Administrator's rights, title and interest herein shall inure to the benefit of such assignee, its successors and assigns.

SECTION VI - FORCE MAJEURE

- 6.1 No party shall be liable or responsible for delays or errors by reason of circumstances beyond its reasonable control, including, but not limited to, acts of civil or military authority, national emergencies, labor difficulties, fire, mechanical breakdown, hurricane, flood or catastrophe, Acts of God, insurrection, war, riots or failure of communication or power supply.

SECTION VII - CONFIDENTIAL INFORMATION

- 7.1 The parties hereto will maintain the confidentiality of all medical, prescription, and other patient-identifiable health information relating to claims administered under this Administration Agreement in accordance with applicable laws and regulations, including the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), as may be amended from time to time. The parties acknowledge that the Administrator will have access to Patient Information in order to provide services and/or perform the obligations undertaken herein and that Patient Information may be obtained from and/or distributed to Employer and/or any other third party in connection with services provided herein, including any and all disclosures made by the Administrator, such as, but not limited to, those made to a new vendor upon transition of services following termination of this Administration Agreement.
- 7.2 Employer acknowledges that certain management reports, reporting packages, utilization data, and/or claims information may contain Patient Information. Employer further acknowledges that (i) its request to the Administrator to disclose Patient Information to any third party (e.g. broker, healthcare consultant, etc.) constitutes Employer's direction and authorization to disclose such information to the third party; and (ii) the Administrator will disclose such information pursuant to Employer's direction until such time as the Administrator receives written notice from Employer to cease further disclosures. Employer acknowledges the requirements and obligations under HIPAA regarding the disclosure of Patient Information to third parties on its behalf. Accordingly, if and when required, Employer agrees to enter into "Business Associate" contracts (as such term is defined in Title 45, Section 160.103 of the Code of Federal Regulations) with such parties as well as any other agreements required by state, federal law or regulation.

SECTION VIII - MISCELLANEOUS PROVISIONS

- 8.1 Benefits under the Plans covered by this Agreement are provided solely from Employer's general assets and insurance purchased by Employer (if any). If the Plans provide for employee contributions through payroll withholding, Employer represents to the Administrator that it will comply in all material respects with the requirements of all applicable laws, including those related to trust, reporting and disclosure requirements under the Employee Retirement Income Security Act of 1974 ("ERISA") if applicable.
- 8.2 This Administration Agreement shall be governed by, and construed and enforced in accordance with, the substantive laws of the Commonwealth of Pennsylvania, without regard to its principles of choice of laws. Each party hereby irrevocably consents to exclusive personal jurisdiction and venue in the federal courts for the

Western District of Pennsylvania located in Pittsburgh, Pennsylvania or, if federal jurisdiction does not exist, in the Pennsylvania state courts located in Allegheny County, Pennsylvania, with respect to any actions, claims or proceedings arising out of or in connection with this Administration Agreement, and agrees not to commence or prosecute such action, claim or proceeding other than in the aforementioned courts.

- 8.3 This is the entire agreement between the parties. There are no representations, understandings, or agreements between the parties on the subject matter of this agreement other than as set forth in this Administration Agreement.
- 8.4 If any provision of this Administration Agreement or the application of any such provision shall be held by a court of competent jurisdiction to be contrary to law, the remaining provisions of this Administration Agreement shall continue in full force and effect.
- 8.5 The failure of Administrator to enforce or insist upon compliance with any of the terms or conditions of this Agreement, the waiver of any term or condition of this Agreement, or the granting of an extension of time for performance, shall not constitute the permanent waiver of any term or condition of this Agreement and this Agreement and each of its provisions shall remain at all times in full force and effect.
- 8.6 The Plan "Administrator" (as defined in Section 3(16)a of the Employee Retirement Income Security Act of 1974 ("ERISA") and "Named Fiduciary" (ERISA Section 402(a)(2)) of the Plan is Employer.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

CONSOLIDATED INVOICING -EXHIBIT B

Consolidated Invoicing and Remittance Services Agreement

Employer hereby appoints the Administrator to provide consolidated invoicing and remittance services (the “Services”) under Employer’s employee welfare benefit plan(s) identified below. The Administrator agrees to provide the Services, effective October 1, 2020, under the following terms and conditions of this Agreement:

SECTION I - PLAN INFORMATION

1.1 Plan Name(s) San Mateo County.

SECTION II – THE ADMINISTRATOR’S RESPONSIBILITIES

- 2.1 Maintain eligibility for the insurance products under the Plan in accordance with carrier policies
- 2.2 Invoice Employer for the premium due under the various insurance products in accordance with the rates provided by the carriers
- 2.3 Provide the carriers with eligibility files, as may be necessary, and resolve any eligibility errors that might arise from the carriers applying the eligibility files to their respective systems
- 2.4 Receive premiums from Employer and remit them to the various carriers

SECTION III - EMPLOYER’S RESPONSIBILITIES

- 3.1 Provide employee eligibility information and documentation to the Administrator on a timely basis
- 3.2 Review monthly invoices for errors and/or omissions, and promptly (and in no event later than 60 days) notify the Administrator of any such errors or omissions
- 3.3 Remit premiums to the Administrator on a timely basis
- 3.4 Provide timely notification of all Plan, rate and insurance carrier changes to the Administrator

SECTION IV - INCORPORATION BY REFERENCE

4.1 The terms and provisions of the Administration Agreement are made a part hereof and incorporated herein by reference.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

BENXCEL- EXHIBIT C
BenXcel Usage Agreement

By using the BenXcel online benefits administration system provided by Administrator, Employer agrees to be bound by the following terms and conditions of this BenXcel Usage Agreement:

SECTION I - GENERAL INFORMATION

- 1.1 The BenXcel online benefits administration system is a fully integrated web enrollment and HR administration tool, which empowers HR departments to manage all benefit administrative tasks online and in real-time.

SECTION II – THE ADMINISTRATOR’S RESPONSIBILITIES

In consideration of the fees to be paid to it, Administrator shall provide the following services:

- 2.1 Administrator shall provide Employer and its employees with access, via the internet, to the BenXcel online benefits administration system, in connection with the performance of services by Administrator on behalf of Employer pursuant to the administration agreements set forth on the Services Exhibit in this Administration Agreement.
- 2.2 Administrator shall provide demonstrations of the BenXcel online benefits administration system for the benefit of Employer and its employees, and training for administrative personnel and support services for the ongoing utilization of the system.
- 2.3 Administrator shall make the BenXcel online benefits administration system available on a best efforts basis. This includes having backups of data, multiple and in most cases redundant connections to the internet, and readily available technical expertise. Administrator reserves the right to schedule periodic maintenance for the BenXcel system, including repairs, upgrades and reconfigurations. During such maintenance periods, Employer and its employees may be unable to access or use the BenXcel system.
- 2.4 The services provided by Administrator and the BenXcel online benefits administration system are expected to change from time to time. Administrator reserves the right to change any service offered or the features of any service offered or its system without notice, including changes to access and use procedures and system hardware and software.
- 2.5 Administrator has taken reasonable actions to ensure that personal information with respect to Employer and/or its employees are disclosed only to those designated by Employer. However, Employer acknowledges that the internet is an open system and Administrator cannot and does not warrant or guarantee that third parties will not intercept personal information.
- 2.6 Administrator has taken reasonable actions to ensure that the BenXcel online benefits administration system satisfies the requirements of the Health Insurance Portability and Accountability Act of 1996, including but not limited to the regulations with respect to privacy and security of health information.

SECTION III – EMPLOYER’S RESPONSIBILITIES

Employer shall:

- 3.1 Be responsible for any and all expenses and charges associated with accessing the internet and connecting to the website containing the BenXcel online benefits administration system, any service fees associated with such access and connection, and for providing all equipment necessary for Employer and/or its employees to make such connection, including, without limitation, computer and modem.

- 3.2 Employer shall be responsible for authorizing and revoking security access to its employees and/or representatives in accordance with Administrator's security procedures. Employer shall be solely responsible for maintaining the confidentiality of accounts and passwords and for restricting access to computers of employees and/or representatives to whom Employer grants security access under the BenXcel online benefits administration system.
- 3.3 Employer shall be solely responsible for any and all activities which occur under accounts and passwords of employees and/or representatives to whom Employer grants security access. Employer agrees to notify Administrator immediately if Employer has any reason to believe that the security of an account has been compromised.
- 3.4 Employer shall be solely responsible for implementing appropriate safeguards and procedures in order to satisfy Employer's responsibilities under the Health Insurance Portability and Accountability Act of 1996, including but not limited to the regulations with respect to administrative requirements. Employer certifies that any and all access to protected health information by employees and/or representatives to whom Employer grants security access is solely and exclusively for purposes of treatment, payment or healthcare operations, and that such access to protected health information is both permitted and satisfies the minimum necessary standard under the Health Insurance Portability and Accountability Act of 1996.

SECTION IV - INTELLECTUAL PROPERTY

- 4.1 All content included on the BenXcel site, such as text, graphics, logos, button icons, images, audio clips, information, data, photographs, graphs, videos, typefaces, graphics, music, sounds, and other material and software (the Materials) is the property of Administrator or its content suppliers and is protected by copyrights, trademarks, trade secrets, or other proprietary rights, and these rights are valid and protected in all forms, media, and technologies existing now or hereinafter developed. All such content is copyrighted as a collective work under the US copyright laws (17 U.S.C. § 101, et. seq.) and international treaty provisions, and Administrator owns a copyright in the selection, coordination, arrangement, and displayed enhancement of such content. All software used on this site is the property of Administrator or its software suppliers and is protected by US and international copyright laws. Employer may not modify, remove, delete, augment, add to, publish, transmit, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the content on the site, in whole or in part. Any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, republication, display, or performance of the content on this site, except as specifically permitted below, is strictly prohibited. BenXcel is a trademark of Administrator. All other marks, names, and logos mentioned on the BenXcel site are the property of their respective owners. Employer's use of the Administrator's trademarks is strictly prohibited.

SECTION V - INCORPORATION BY REFERENCE

- 5.1 The terms and provisions of the Administration Agreement are made a part hereof and incorporated herein by reference.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

FLEX EXHIBIT D

Flexible Spending Administration Agreement

Employer hereby appoints the Administrator as flexible spending administrator (“Flexible Spending Administrator”), under Employer’s employee welfare benefit plan identified below (the “Plan”), and Administrator agrees to act as Flexible Spending Administrator for the Plan under the following terms and conditions:

SECTION I - PLAN INFORMATION

- 1.1 Plan Name: San Mateo County.
- 1.2 The Plan Year shall be each twelve consecutive month period commencing on January 1st and ending on December 31st.

SECTION II - FINANCING OF PLAN BENEFITS

- 2.1 Benefits under the Plan are provided solely from salary reduction agreements between the participant and Employer under which the participants elect to reduce their compensation or to forgo increases in compensation and to have such amounts contributed, as Employee contributions, by Employer on their behalf.
- 2.2 In disbursing money to pay requests for reimbursement or expenses under the Plan, the Flexible Spending Administrator shall act as Employer’s agent. The Flexible Spending Administrator shall maintain a bank account solely for the payment of requests for reimbursement under this Plan and plans maintained by other employers. Employer’s deposits to such bank account shall remain a part of Employer’s general assets, subject to the claims of its creditors and subject to return to Employer on demand, until Flexible Spending Administrator shall have disbursed checks drawn on such account in payment of requests for reimbursement under the Plan.
- 2.3 The Flexible Spending Administrator shall inform Employer from time to time of the deposits required to pay requests for reimbursement under the Plan from such account and shall at all times be accountable to Employer for the amounts Employer deposits in such account. However, the Flexible Spending Administrator shall have no duty to pay benefits under the Plan out of its own assets or otherwise, except from amounts Employer deposits in the account.

SECTION III - FLEXIBLE SPENDING ADMINISTRATOR’S RESPONSIBILITIES

In consideration of the fees to be paid to it, Flexible Spending Administrator shall provide the following services:

- 3.1 The Flexible Spending Administrator shall assist Employer in the administration of the Plan as Employer may request from time to time, including:
 - (a) Aiding Employer in the preparation of plan documents, including Employer’s Flexible Spending plan document and summary plan description.
 - (b) Advising Employer with respect to benefit and plan revisions.
 - (c) Furnishing administrative forms necessary for processing of requests for reimbursement including request for reimbursement forms, check stock, and explanation of benefit forms.
 - (d) Arranging for the printing of debit cards to be issued to employees.
 - (e) Providing access to the debit card system for reporting of transactions, usage, and required funding of claims reported through the use of the debit card system.

- (f) Adjudicating and paying valid claims not processed through the debit card system.
 - (g) Suspending and/or revoking debit card system privileges for inappropriate, fraudulent or questionable use.
- 3.2 In accordance with policies, interpretations, rules, practices and procedures adopted by Employer or the Plan Administrator, the Flexible Spending Administrator shall:
- (a) Receive and adjudicate all requests for reimbursements in accordance with the benefit levels and provisions of the Plan
 - (b) Periodically audit requests for reimbursements made through the debit card system in accordance with the benefit levels and provisions of the Plan.
 - (c) Assist Employer in enrolling all eligible employees who desire to participate in the Plan.
 - (d) Make payments, with Employer funds provided pursuant to Section II, in the amount due with respect to request for reimbursements that qualify under the Plan.
- 3.3 To the extent of information available to it and within the scope of its professional ability, the Flexible Spending Administrator shall assist Employer in the preparation of any report, returns, or similar paper required by any political subdivision, state, or the Federal Government pertaining to the operation or management of the Plan.
- 3.4 The Flexible Spending Administrator shall render monthly reports to Employer, which shall include the following:
- (a) A monthly accounting of payments made, with sufficient detail to provide for the audit and control of funds used.
 - (b) A statement of the fees payable to the Flexible Spending Administrator.
 - (c) Any other costs incurred by the Flexible Spending Administrator on behalf of the Plan.
- Failure of Employer to object to any report within 30 days of the date of mailing shall constitute Employer's approval of the Flexible Spending Administrator's actions as regarding any and all request for reimbursement data, transactions, fees, invoices and/or costs described therein.
- 3.5 During the continuation of this agreement, the Flexible Spending Administrator shall indemnify Employer and hold it unharmed against any loss, damage, and expenses with any dishonest, fraudulent or criminal acts of Flexible Spending Administrator's employees, acting alone or in collusion with others. The Flexible Spending Administrator shall maintain blanket fidelity bond coverage for such losses with a limit of not less than \$500,000.

SECTION IV – EMPLOYER'S RESPONSIBILITIES

Employer shall:

- 4.1 Furnish the Flexible Spending Administrator with a complete copy of the Plan.
- 4.2 Determine the request for reimbursement and administration procedures and practices to be followed by the Flexible Spending Administrator which are not self-evident from the Plan.
- 4.3 Assist in the initial and on-going enrollment of the employees in the Plan.

- 4.4 Provide directly or through the Plan all materials and documents, including summaries for employees, forms or supplies as may be necessary or convenient for the operation of the Plan or to satisfy the requirements of governing law.
- 4.5 Provide timely and accurate information to enable Flexible Spending Administrator to fulfill its obligations under this Agreement.
- 4.6 Recover and fund overpayments made due to abuse of the debit card system, including, but not limited to, purchases of non-covered items or services through payroll deductions from the employee.

SECTION V - MAKING PAYMENT OF REQUESTS FOR REIMBURSEMENT UNDER THE PLAN

- 5.1 The Flexible Spending Administrator shall receive any request for reimbursement for benefits made in the appropriate manner, and after due investigation and verification of the statements contained in the request, determine the eligibility of the claimant for reimbursement. If the facts stated in such request or determined by investigation entitle the claimant to receive reimbursement from the Plan, the request will be processed. If Flexible Spending Administrator finds that the claimant is not entitled to reimbursement under the Plan, the Flexible Spending Administrator shall deny the request for reimbursement.
- 5.2 The Flexible Spending Administrator's determination and any determination by Employer on review shall be in accordance with the claims procedures set forth in the Plan, which procedures will be compliant with ERISA and all Department of Labor regulations governing claims procedures in employee benefit plans, as they may be amended from time to time. The Flexible Spending Administrator will not be obligated to follow any claims procedures that do not comply with ERISA or Department of Labor regulations, or any claims procedures which require the Flexible Spending Administrator to deviate from procedures customary in the administration of flexible benefit plans such as the Plan.
- 5.3 In processing claims under this Agreement, the Flexible Spending Administrator is acting only as an agent of Employer. The Flexible Spending Administrator shall at all times be considered an independent contractor who provides only the claims administration services outlined in this Agreement, for the fees indicated. The provisions of this Agreement shall not be construed to make the Flexible Spending Administrator a "Trustee," "Administrator" or "Fiduciary" of the Plan, as such terms are defined or used in ERISA or the regulations thereunder, and no such relationship is intended to be created by the parties to this Agreement.
- 5.4 Employer reserves the right and retains the sole responsibility to make all final decisions under the Plan except as governed by law. If the Flexible Spending Administrator has denied a claim in whole or in part as being ineligible for payment under the terms or benefit limits of that Plan, and Employer directs that the denied claim be paid, the Flexible Spending Administrator will pay the claim pursuant to Employer's decision and direction. The Flexible Spending Administrator bears no responsibility where Employer's decision to reverse the Flexible Spending Administrator's initial and/or final denial conflicts with ERISA or Department of Labor regulations.

SECTION VI - INCORPORATION BY REFERENCE

- 6.1 The terms and provisions of the Administration Agreement are made a part hereof and incorporated herein by reference.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

COBRA EXHIBIT E
COBRA Administration Agreement

Employer hereby appoints the Administrator as COBRA Administrator, under Employer's employee welfare benefit plan identified below. The Administrator agrees to act as COBRA Administrator for Employer and to provide the following administrative services to aid Employer in complying with the continuation of coverage provisions of the Consolidated Omnibus Budget Reconciliation Act (hereinafter referred to as "COBRA"), effective 10/01/2020, under the following terms and conditions of this Agreement:

SECTION I - PLAN INFORMATION

1.1 Plan Name(s): San Mateo County.

SECTION II – THE ADMINISTRATOR'S RESPONSIBILITIES

- 2.1 Initial Notice of COBRA rights to active employees (if elected below). This service is available to Employer only if the Administrator is providing active healthcare billing.
- 2.2 Notifications to qualified beneficiaries, including:
- (a) COBRA Continuation Election Form
 - (b) Notification of late COBRA election
 - (c) Notification of late or incorrect initial check
 - (d) Notification to COBRA participants of the Administrator as new administrator
 - (e) Carrier Rate change notification
 - (f) Notice of Conversion Rights including general notice of California Bill No. 1401 where applicable.
 - (g) Notification at end of maximum coverage period
 - (h) Cancellation due to non-payment or late payment of premium
- 2.3 Monthly Premium Billing of COBRA participants, sent directly to participants.
- 2.4 Monthly reports posted to BenXcel:
- (a) COBRA Participant Notification Report
 - (b) COBRA Participant Report
- 2.5 Monthly collection of active COBRA Participant premiums (via lockbox)
- 2.6 Monthly premium remittance to Employer (if Employer is responsible for remittance to carrier) or to carrier (if the Administrator is responsible for remittance to carrier) for Employer's portion of monthly COBRA premium. (Carrier notification and remittance responsibilities are as set forth in the "Carrier Notification and Remittance" section on the last page of this Agreement.)
- 2.7 If the Administrator confronts a question of interpretation of the requirements of COBRA that is not answered by the COBRA provisions of the plan, the Administrator will promptly so inform Employer and abide by Employer's determination as to the requirements of COBRA.

2.8 Nothing in this Agreement shall be construed to require the Administrator to provide COBRA administration services with respect to any employee benefit plans (e.g., flexible spending accounts, health reimbursement accounts, health savings accounts, etc.) maintained by Employer other than the Plan identified in Section I above. Notwithstanding the foregoing, the Administrator will be responsible for COBRA administration services with regard to such other plans if such other plans are provided to Employer by the Administrator and the Administrator specifically agrees to be responsible for COBRA administration with regard to such other plans.

SECTION III – EMPLOYER’S RESPONSIBILITIES

3.1 Employer will promptly forward to the Administrator copies of all notices of qualified beneficiaries under ERISA section 606(3) that a Qualified Event described in ERISA section 603(3) or 603(5) has occurred within thirty (30) days of the Qualifying Event.

3.2 Qualifying Event notices sent to the Administrator from Employer will include:

- (a) the date and type of Qualifying Event (including identification of any absence due to service in the uniformed services of the United States);
- (b) the names of all qualified beneficiaries;
- (c) the last addresses known to the sponsor of all qualified beneficiaries;
- (d) the Social Security numbers or participant identification numbers of all qualified beneficiaries; and
- (e) the date when coverage will cease absent an election of continuation coverage under COBRA.

3.3 Employer shall notify COBRA participants of plan changes and provide participants with any other materials regarding the plan, such as benefit booklets, identification cards, and claim forms, from time to time as changes require.

3.4 Except as specifically provided in the “Carrier Notification and Remittance” section of this Agreement, Employer shall notify and remit premiums to all applicable insurance carriers, in accordance with the carriers’ billing policies. In order to facilitate Employer’s performance of these duties, the Administrator will notify Employer when a qualified beneficiary has elected COBRA continuation coverage or terminated COBRA continuation coverage. The Administrator will notify carriers and remit premiums only as specifically provided in the “Carrier Notification and Remittance” section on the last page of this Agreement. (The Administrator will provide such notification and remittance services only if the Administrator is providing billing administration services with respect to Employer’s active employees.) For those insurance carriers which the Administrator directly notifies and/or remits, Employer, as the Plan Administrator, is ultimately responsible for complying with all carrier eligibility and payment provisions.

3.5 Unless otherwise noted on the Schedule of Fees Exhibit attached hereto, Employer will notify active participants of their general COBRA rights, by means of the Initial Notice of COBRA Rights referred to in section 606(a)(1) of ERISA.

CARRIER NOTIFICATION AND REMITTANCE

Employer will be responsible for notification and remittance to all insurer carriers, with the following exceptions:

<u>Carrier</u>	<u>Plan</u>	<u>Party Responsible for Notification</u>	<u>Party Responsible for Remittance</u>
Kaiser COBRA Medical	HMO & HDHP	BCC	BCC
Kaiser Medical	HMO (RET) & HDHP (RET)	BCC	BCC
Blue Shield COBRA Medical	HMO, HDHP, TRIO	BCC	BCC

Blue Shield Medical	HMO (RET), HDHP (RET), OOS (RET), TRIO (RET)	BCC	BCC
Operating Engineers COBRA Medical	BlueShield w Den/Vis Kaiser w Den/Vis	BCC	BCC
Operating Engineers Medical	BlueShield (RET), Kaiser (RET)	BCC	BCC
United Healthcare/Secure Horizons Medical	Medical HMO (RET)	BCC	BCC
CIGNA COBRA Dental	CORE	BCC	BCC
CIGNA Dental	CORE (RET)	BCC	BCC
Delta COBRA Dental	DHMO	BCC	BCC
Delta Dental	DHMO	BCC	BCC
VSP COBRA Vision	Self-funded base, Self-funded Buy up	BCC	BCC
VSP Vision	Self-funded (RET), Voluntary (RET)	BCC	BCC
BCC	FSA	BCC	BCC

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

RETIREE BILLING EXHIBIT F

Retiree Billing and Remittance Services Agreement

Employer hereby appoints the Administrator to provide retiree billing and remittance services (the “Services”) under Employer’s employee welfare benefit plan(s) identified below. The Administrator agrees to provide the Services, effective 10/1/2020, under the following terms and conditions of this Agreement:

SECTION I - PLAN INFORMATION

1.1 Plan Name(s) San Mateo County.

SECTION II – THE ADMINISTRATOR’S RESPONSIBILITIES

- 2.1 Maintain eligibility for the various insurance products under the Plan in accordance with the carrier policies.
- 2.2 Update coverage amounts when approval notification has been received from a carrier when applicable.
- 2.3 Invoice individual retirees for premiums relating to any coverages for which the retirees are required to pay.
- 2.4 Remit retiree premiums back to Employer, when active employee premiums for products are not being invoiced by the Administrator or to the carrier but when the Administrator is invoicing Employer for the active employee premiums for the products.

SECTION III - EMPLOYER’S RESPONSIBILITIES

- 3.1 Provide employee eligibility information and documentation to the Administrator on a timely basis.
- 3.2 Review monthly invoices for errors and/or omissions, and promptly (and in no event later than 60 days) notify the Administrator of any such errors or omissions.
- 3.3 Remit fees to the Administrator on a timely basis.
- 3.4 Provide timely notification of all Plan, rate and insurance carrier changes to the Administrator.

SECTION IV - INCORPORATION BY REFERENCE

- 4.1 The terms and provisions of the Administration Agreement are made a part hereof and incorporated herein by reference.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

REIMBURSEMENT ACCOUNT ADMINISTRATION EXHIBIT G
Reimbursement Account Administration Agreement

Employer hereby appoints Benefit Coordinators Corporation as reimbursement account administrator (“Reimbursement Account Administrator”), under Employer’s employee welfare benefit plan identified below (the “Plan”), and Benefit Coordinators Corporation agrees to act as Reimbursement Account Administrator for the Plan, effective 10/01/2020 under the following terms and conditions (“Agreement”):

SECTION I PLAN INFORMATION

- 1.1 Plan Name San Mateo County.
- 1.2 The Plan Year shall be the twelve consecutive month period commencing on January 1st and ending on December 31st.

SECTION II FINANCING OF PLAN BENEFITS

- 2.1 Benefits under the Plan are provided solely from salary reduction agreements between the participant and Employer under which the participants elect to reduce their compensation or to forgo increases in compensation and to have such amounts contributed, as Employee contributions, by Employer on their behalf.
- 2.2 In disbursing money to pay claims or expenses under the Plan, the Reimbursement Account Administrator shall act as Employer’s agent. The Reimbursement Account Administrator shall maintain a bank account for the payment of claims under this Plan and employee welfare benefit plans maintained by other employers. Employer’s deposits to such bank account shall remain a part of Employer’s general assets, subject to the claims of its creditors and subject to return to Employer on demand, until Reimbursement Account Administrator shall have disbursed checks drawn on such account in payment of claims under the Plan or premiums on insurance policies to cover claims under the Plan.
- 2.3 The Reimbursement Account Administrator shall inform Employer from time to time of the deposits required to pay benefits under the Plan from such account and shall at all times be accountable to Employer for the amounts Employer deposits in such account. However, the Reimbursement Account Administrator shall have no duty to pay benefits under the Plan out of its own assets or otherwise, except from amounts Employer deposits in the account.

SECTION III EMPLOYER’S RESPONSIBILITIES

Employer shall:

- 3.1 Furnish the Reimbursement Account Administrator with a complete copy of the Plan.
- 3.2 Determine the claims and administration procedures and practices to be followed by Reimbursement Account, which are not self-evident from the Plan.
- 3.3 As of the effective date of the Plan, provide the Reimbursement Account Administrator with a complete list of all employees who are eligible for benefits under the Plan. Thereafter, Employer shall notify the Reimbursement Account Administrator on a daily basis of any and all changes in participation including but not limited to, additions, terminations, changes in classification or status, etc.

- 3.4 Assist in the initial and on-going enrollment of the employees in the Plan, cooperate with the Reimbursement Account Administrator with regard to proper settlement of claims, and refer any inquiries pertaining to the Plan to the Reimbursement Account Administrator.
- 3.5 Provide directly or through the Plan all materials and documents, including summaries for employees, forms or supplies as may be necessary or convenient for the operation of the Plan or to satisfy the requirements of governing law.
- 3.6 Provide timely and accurate information to enable Reimbursement Account Administrator to fulfill its obligations under this Agreement.

SECTION IV REIMBURSEMENT ACCOUNT ADMINISTRATOR'S RESPONSIBILITIES

In consideration of the fees to be paid to it, the Reimbursement Account Administrator shall provide the following services:

- 4.1 The Reimbursement Account Administrator shall assist Employer in the administration of the Plan as Employer may request from time to time, including:
 - (a) Aiding Employer in the preparation of plan documents, including Employer's employee welfare benefit plan document and summary plan description.
 - (b) Advising Employer with respect to benefit and plan revisions.
 - (c) Furnishing administrative forms necessary for processing of claims including claim forms, check stock, and explanation of benefit forms.
- 4.2 In accordance with policies, interpretations, rules, practices and procedures adopted by Employer or the Plan Administrator, the Reimbursement Account Administrator shall:
 - (a) Assist in the enrollment all eligible employees (as defined in the Plan) in the Plan.
 - (b) Receive and adjudicate all claims for benefits under the Plan in accordance with the benefit levels and provisions of the Plan, including the administration of guidelines on "reasonable and customary" charges and coordination of benefits.
 - (c) Make payments, with Employer funds provided pursuant to Section II, in the amount due with respect to claims that qualify under the Plan.
- 4.3 The Reimbursement Account Administrator shall honor any assignment of benefits of a person eligible for benefits under the plan to any person or institution, which is a proper and qualified assignee under the terms of the Plan.
- 4.4 To the extent of information available to it and within the scope of its professional ability, the Reimbursement Account Administrator shall assist Employer in the preparation of any report, returns, or similar paper required by any political subdivision, state, or the Federal Government pertaining to the operation or management of the Plan.
- 4.5 The Reimbursement Account Administrator shall render monthly reports to Employer which shall include the following:
 - (a) A monthly accounting of payments made, with sufficient detail to provide for the audit and control of funds used.
 - (b) A statement of the fees payable to the Reimbursement Account Administrator.
 - (c) Any other costs incurred by Reimbursement Account Administrator on behalf of the Plan.

Failure of Employer to object to any report within 30 days of the date of mailing shall constitute Employer's approval of the Reimbursement Account Administrator's actions as regarding any and all claims data, transactions, fees, invoices and/or costs described therein.

- 4.6 During the continuation of this Agreement, the Reimbursement Account Administrator shall indemnify Employer and hold it unharmed against any loss, damage, and expenses with any dishonest, fraudulent or criminal acts of the Reimbursement Account Administrator's employees, acting alone or in collusion with others. The Reimbursement Account Administrator shall maintain blanket fidelity bond coverage for such losses with a limit of not less than \$500,000.

SECTION V - MAKING PAYMENT OF REQUESTS FOR REIMBURSEMENT UNDER THE PLAN

- 5.1 The Reimbursement Account Administrator shall receive any request for reimbursement for benefits made in the appropriate manner, and after due investigation and verification of the statements contained in the request, determine the eligibility of the claimant for reimbursement. If the facts stated in such request or determined by investigation entitle the claimant to receive reimbursement from the Plan, the request will be processed. If Reimbursement Account Administrator finds that the claimant is not entitled to reimbursement under the Plan, the Reimbursement Account Administrator shall deny the request for reimbursement.
- 5.2 The Reimbursement Account Administrator's determination and any determination by Employer on review shall be in accordance with the claims procedures set forth in the Plan, which procedures will be compliant with ERISA and all Department of Labor regulations governing claims procedures in employee benefit plans, as they may be amended from time to time. The Reimbursement Account Administrator will not be obligated to follow any claims procedures that do not comply with ERISA or Department of Labor regulations, or any claims procedures which require the Reimbursement Account Administrator to deviate from procedures customary in the administration of reimbursement accounts such as the Plan.
- 5.3 In processing claims under this Agreement, the Reimbursement Account Administrator is acting only as an agent of Employer. The Reimbursement Account Administrator shall at all times be considered an independent contractor who provides only the claims administration services outlined in this Agreement, for the fees indicated. The provisions of this Agreement shall not be construed to make the Reimbursement Account Administrator a "Trustee," "Administrator" or "Fiduciary" of the Plan, as such terms are defined or used in ERISA or the regulations thereunder, and no such relationship is intended to be created by the parties to this Agreement.
- 5.4 Employer reserves the right and retains the sole responsibility to make all final decisions under the Plan except as governed by law. If the Reimbursement Account Administrator has denied a claim in whole or in part as being ineligible for payment under the terms or benefit limits of that Plan, and Employer directs that the denied claim be paid, the Reimbursement Account Administrator will pay the claim pursuant to Employer's decision and direction. The Reimbursement Account Administrator bears no responsibility where Employer's decision to reverse the Reimbursement Account Administrator's initial and/or final denial conflicts with ERISA or Department of Labor regulations.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

HEALTH SAVINGS ACCOUNT ADMINISTRATION EXHIBIT H
Health Savings Account Administration Agreement

Employer hereby appoints Benefit Coordinators Corporation as health savings account administrator (“HSA Administrator”), under Employer’s employee welfare benefit plan identified below (the “Plan”), and Benefit Coordinators Corporation agrees to act as HSA Administrator for the Plan, effective 1/1/2021, under the following terms and conditions (“Agreement”):

SECTION I - PLAN INFORMATION

- 1.1 Plan Name San Mateo County.
- 1.2 The Plan Year shall be the twelve consecutive month period commencing on January 1st and ending on December 31st.

SECTION II - FINANCING OF PLAN BENEFITS

- 2.1 Benefits under the Plan are provided from salary reduction agreements between the participant and Employer under which the participants elect to reduce their compensation or to forgo increases in compensation and to have such amounts contributed, as Employee contributions, by Employer on their behalf. Benefits under the Plan may also be provided by Employer at their discretion.
- 2.2 In disbursing money to pay claims or expenses under the Plan, the HSA Administrator shall act as Employer’s agent. The HSA Administrator shall assist in the process of creating a custodial account for participants for the payment of claims under this Plan.

SECTION III - EMPLOYER’S RESPONSIBILITIES

Employer shall:

- 3.1 Furnish the HSA Administrator with a complete copy of the Plan.
- 3.2 As of the effective date of the Plan, provide the HSA Administrator with a complete list of all employees who are eligible for benefits under the Plan. Thereafter, Employer shall notify the HSA Administrator on a daily basis of any and all changes in participation including but not limited to, additions, terminations, changes in classification or status, etc.
- 3.3 Assist in the initial and on-going enrollment of the employees in the Plan and refer any inquiries pertaining to the Plan to the HSA Administrator.
- 3.4 Provide directly or through the Plan all materials and documents, including summaries for employees, forms or supplies as may be necessary or convenient for the operation of the Plan or to satisfy the requirements of governing law.
- 3.5 Provide timely and accurate information to enable HSA Administrator to fulfill its obligations under this Agreement.

SECTION IV - HSA ADMINISTRATOR’S RESPONSIBILITIES

In consideration of the fees to be paid to it, the HSA Administrator shall provide the following services:

- 4.1 The HSA Administrator shall assist Employer in the administration of the Plan as Employer may request from time to time, including:
- (a) Advising Employer with respect to benefit and plan revisions.
 - (b) Furnishing administrative forms necessary for general processing of the Plan.
- 4.2 In accordance with policies, interpretations, rules, practices and procedures adopted by Employer or the Plan Administrator, the HSA Administrator shall:
- (a) Assist in the enrollment of all eligible employees (as defined in the Plan) in the Plan.
 - (b) Assist in the response of all inquiries from Plan participants regarding Plan provisions.
 - (c) Arrange for the printing of debit cards to be issued to employees.
 - (d) Provide access to the debit card system for reporting of transactions, usage, and required funding of claims reported through the use of the debit card system.
- 4.3 The HSA Administrator shall provide Employer with access, via the internet, to the debit card system. However, Employer shall be responsible for any and all expenses and charges associated with accessing the internet and connecting to the website containing the debit card system, any service fees associated with such access and connection, and for providing all equipment necessary for Employer and/or its employees to make such connection, including, without limitation, computer and modem.
- Failure of Employer to object to any transaction effectuated through the debit card system within 30 days of its posting to the system shall result in Employer being unable to obtain chargeback or similar relief through the debit card processor for such reimbursement or transaction.
- 4.4 The HSA Administrator shall render monthly reports to Employer which shall include the following:
- (a) An offering of online reports that provide monthly accounting of payments made, with sufficient detail to provide for the audit and control of funds used.
 - (b) A statement of the fees payable to the HSA Administrator.
 - (c) Any other costs incurred by HSA Administrator on behalf of the Plan.
- Failure of Employer to object to any report within 60 days of the date of mailing shall constitute the Employer's approval of the HSA Administrator's actions that are evident upon a reasonable review of such statement regarding any and all transactions, fees, invoices and/or costs described therein.
- 4.5 During the continuation of this Agreement, the HSA Administrator shall indemnify Employer and hold it unharmed against any loss, damage, and expenses with any dishonest, fraudulent or criminal acts of the HSA Administrator's employees, acting alone or in collusion with others. The HSA Administrator shall maintain blanket fidelity bond coverage for such losses with a limit of not less than \$500,000.

**BENEFIT COORDINATORS CORPORATION
ADMINISTRATION AGREEMENT**

SCHEDULE OF FEES EXHIBIT I

Schedule of fees through 12/31/2020

Flexible Spending Account Administration:

IMPLEMENTATION \$0
MONTHLY ADMINISTRATION W/ DEBIT CARD - PPPM \$4.00*
STANDARD CALL CENTER \$0
ANNUAL RENEWAL FEE \$0
ESTIMATED MONTHLY ADMINISTRATION \$10,232
ESTIMATED ANNUAL ADMINISTRATION \$122,784
ESTIMATED EXPANDED CALL CENTER BUNDLED WITH COBRA EXPANDED \$0 CALL CENTER

COBRA Administration:

IMPLEMENTATION/TAKEOVER FEE \$2,500
MONTHLY ADMINISTRATION - PHCEPM \$0.27
STANDARD CALL CENTER \$0
ESTIMATED MONTHLY ADMINISTRATION \$1,539
ESTIMATED ANNUAL ADMINISTRATION \$20,968
LATE PAYMENT NOTICE FEE - PHCEPM \$0.03
COBRA ELECTION FORM SENT CERTIFIED MAIL WITH RETURN RECEIPT \$6 - PER NOTICE
COBRA INITIAL NOTICE - PER NOTICE \$4
ESTIMATED EXPANDED CALL CENTER FEE - PER MONTH \$100

Retiree Billing and Administration:

IMPLEMENTATION \$5,000
MONTHLY ADMINISTRATION - PRPM \$4.95
STANDARD CALL CENTER \$0
ESTIMATED MONTHLY ADMINISTRATION \$9,940
ESTIMATED ANNUAL ADMINISTRATION \$124,275

Other Fees and Services:

CERTIFIED MAIL W/ RETURN RECEIPT \$ 6.00 Per Notice
OPEN ENROLLMENT MAILING \$ 8.00 Per Packet
EMPLOYEE COMMUNICATIONS No charge for publications provided electronically
MEETINGS, HEALTH FAIRS No charge for webinars. On-site meetings may incur time/travel charge. Fee will be quoted when a meeting is requested.
WIRE TRANSFER FEE: \$25.00 per wire ACH TRANSFER FEE: Free
REINSTATEMENT FEE: Determined by Administrator at time of reinstatement

*Schedule of Fees as of 1/1/2021**

Flexible Spending Account Administration:

Initial, non-refundable Setup Fee due upon

execution of this Agreement:	\$ <u>0</u>
Monthly Administration Fee:	\$ <u>2.60</u> per Participating Employee
Minimum Monthly Fee:	\$ <u>125.00</u>

COBRA Administration:

Initial, non-refundable Setup Fee due upon execution of this Agreement:	\$ <u>0</u>
Monthly Administration Fee (with Initial Notices):	\$ <u>0.35</u> PEPM
Minimum Monthly Fee:	\$ <u>125.00</u>

Retiree Reimbursement Administration:

Monthly Administration Fee (with Initial Notices):	\$ <u>3.25</u> PEPM
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Retiree Administration:

Monthly Administration Fee (with Initial Notices):	\$ <u>6.75</u> PEPM
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Health Spending Account Administration:

Initial, non-refundable Setup Fee due upon execution of this Agreement:	\$N/A
Monthly Administration Fee:	\$ <u>2.00</u> per Participating Employee
Minimum Monthly Fee:	\$ <u>125.00</u>
Annual Renewal Fee:	\$ <u>N/A</u>

Other Fees and Services:

OPEN ENROLLMENT MAILING – FULFILLMENT AND DISTRIBUTION (all materials must be developed and provided by the client or broker; packets limited to 20 pages, one-sided, and black and white print)	\$ 8.00 Per Packet
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Meetings, Health Fairs	No charge for webinars. On-site meetings may incur time/travel charge. Fee will be quoted when a meeting is requested.
Additional Services and Materials	Fees quoted upon request
Wire Transfer Fee:	\$25.00 per wire
Development hours exceeding standard development time (as quoted per project)	\$125/hour
ACH Transfer Fee:	No Charge
Non-Sufficient Funds Fee:	\$25.00 per rejected check/transaction
Reinstatement Fee:	Determined by Administrator at time of reinstatement

**Rates are guaranteed for 5 years beginning 1/1/2021-12/31/2025*

Attachment H

Health Insurance Portability and Accountability Act (HIPAA) Business Associate Requirements

DEFINITIONS

Terms used, but not otherwise defined, in this Schedule shall have the same meaning as those terms are defined in 45 Code of Federal Regulations (CFR) sections 160.103, 164.304, and 164.501. All regulatory references in this Schedule are to Title 45 of the Code of Federal Regulations unless otherwise specified.

- a. **Business Associate.** "Business Associate" shall generally have the same meaning as the term "business associate" at 45 CFR 160.103, and in reference to the parties to this agreement shall mean Contractor.
- b. **Covered Entity.** "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 County.
- c. **HIPAA Rules.** "HIPAA rules" shall mean the Privacy, Security, Breach Notification and Enforcement Rules at 45 CFR part 160 and part 164, as amended and supplemented by Subtitle D of the Health Information Technology for Economic and Clinical Health Act provisions of the American Recovery and Reinvestment Act of 2009.
- d. **Designated Record Set.** "Designated Record Set" shall have the same meaning as the term "designated record set" in Section 164.501.
- e. **Electronic Protected Health Information.** "Electronic Protected Health Information" (EPHI) means individually identifiable health information that is transmitted or maintained in electronic media; it is limited to the information created, received, maintained or transmitted by Business Associate from or on behalf of Covered Entity.
- f. **Individual.** "Individual" shall have the same meaning as the term "individual" in Section 164.501 and shall include a person who qualifies as a personal representative in accordance with Section 164.502(g).
- g. **Privacy Rule.** "Privacy Rule" shall mean the Standards for Privacy of Individually Identifiable Health Information at 45 CFR Part 160 and Part 164, Subparts A and E.
- h. **Protected Health Information.** "Protected Health Information" (PHI) shall have the same meaning as the term "protected health information" in Section 164.503 and is limited to the information created or received by Business Associate from or on behalf of County.
- i. **Required By Law.** "Required by law" shall have the same meaning as the term "required by law" in Section 164.501.
- j. **Secretary.** "Secretary" shall mean the Secretary of the United States Department of Health and Human Services or his or her designee.
- k. **Breach.** The acquisition, access, use, or disclosure of PHI in violation of the Privacy Rule that compromises the security or privacy of the PHI and subject to the exclusions set forth in Section 164.402. Unless an exception applies, an impermissible use or disclosure of PHI *is presumed* to be a breach, unless it can be demonstrated there is a low

probability that the PHI has been compromised based upon, at minimum, a four-part risk assessment:

1. Nature and extent of PHI included, identifiers and likelihood of re-identification;
 2. Identity of the unauthorized person or to whom impermissible disclosure was made;
 3. Whether PHI was actually viewed or only the opportunity to do so existed;
 4. The extent to which the risk has been mitigated.
- l. **Security Rule.** "Security Rule" shall mean the Security Standards for the Protection of Electronic Protected Health Information at 45 CFR Part 160 and Part 164, Subparts A and C.
- m. **Unsecured PHI.** "Unsecured PHI" is protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in relevant HHS guidance.
- n. **Security Incident.** "Security Incident" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with systems operations in an information system. "Security Incident" includes all incidents that constitute breaches of unsecured protected health information.

OBLIGATIONS AND ACTIVITES OF CONTRACTOR AS BUSINESS ASSOCIATE

- a. Business Associate agrees to not use or further disclose Protected Health Information other than as permitted or required by the Agreement or as required by law.
- b. Business Associate agrees to use appropriate safeguards to comply with Subpart C of 45 CFR part 164 with respect to EPHI and PHI, and to prevent the use or disclosure of the Protected Health Information other than as provided for by this Agreement.
- c. Business Associate agrees to make uses and disclosures requests for Protected Health Information consistent with minimum necessary policy and procedures.
- d. Business Associate may not use or disclose protected health information in a manner that would violate subpart E of 45 CFR part 164.504 if used or disclosed by Covered Entity.
- e. Business Associate agrees to mitigate, to the extent practicable, any harmful effect that is known to Business Associate of a use or disclosure of Protected Health Information by Business Associate in violation of the requirements of this Agreement.
- f. Business Associate agrees to report to County any use or disclosure of Protected Health Information not authorized by this Agreement.
- g. Business Associate agrees to ensure that any agent, including a subcontractor, to whom it provides Protected Health Information received from, or created or received by Business Associate on behalf of County, agrees to adhere to the same restrictions and conditions that apply through this Agreement to Business Associate with respect to such information.
- h. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to provide access, at the request of County, and in the time and manner designated by County, to Protected Health Information in a Designated Record Set, to County or, as directed by County, to an Individual in order to meet the requirements under Section 164.524.

- i. If Business Associate has Protected Health Information in a Designated Record Set, Business Associate agrees to make any amendment(s) to Protected Health Information in a Designated Record Set that the County directs or agrees to make pursuant to Section 164.526 at the request of County or an Individual, and in the time and manner designed by County.
- j. Business Associate agrees to make internal practices, books, and records relating to the use and disclosure of Protected Health Information received from, or created or received by Business Associate on behalf of County, available to the County at the request of County or the Secretary, in a time and manner designated by the County or the Secretary, for purposes of the Secretary determining County's compliance with the Privacy Rule.
- k. Business Associate agrees to document such disclosures of Protected Health Information and information related to such disclosures as would be required for County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- l. Business Associate agrees to provide to County or an Individual in the time and manner designated by County, information collected in accordance with Section (k) of this Schedule, in order to permit County to respond to a request by an Individual for an accounting of disclosures of Protected Health Information in accordance with Section 164.528.
- m. Business Associate shall implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of EPHI that Business Associate creates, receives, maintains, or transmits on behalf of County.
- n. Business Associate shall conform to generally accepted system security principles and the requirements of the final HIPAA rule pertaining to the security of health information.
- o. Business Associate shall ensure that any agent to whom it provides EPHI, including a subcontractor, agrees to implement reasonable and appropriate safeguards to protect such EPHI.
- p. Business Associate shall report to County any Security Incident within three (3) business days of becoming aware of such incident. Business Associate shall also facilitate breach notification(s) to the appropriate governing body (i.e. HHS, OCR, etc.) as required by law. As appropriate and after consulting with County, Business Associate shall also notify affected individuals and the media of a qualifying breach.
- q. Business Associate understands that it is directly liable under the HIPAA rules and subject to civil and, in some cases, criminal penalties for making uses and disclosures of Protected Health Information that are not authorized by this Attachment, the underlying contract as or required by law.

PERMITTED USES AND DISCLOSURES BY CONTRACTOR AS BUSINESS ASSOCIATE

Except as otherwise limited in this Schedule, Business Associate may use or disclose Protected Health Information to perform functions, activities, or services for, or on behalf of, County as specified in the Agreement; provided that such use or disclosure would not violate the Privacy Rule if done by County.

OBLIGATIONS OF COUNTY

- a. County shall provide Business Associate with the notice of privacy practices that County produces in accordance with Section 164.520, as well as any changes to such notice.
- b. County shall provide Business Associate with any changes in, or revocation of, permission by Individual to use or disclose Protected Health Information, if such changes affect Business Associate's permitted or required uses and disclosures.
- c. County shall notify Business Associate of any restriction to the use or disclosure of Protected Health Information that County has agreed to in accordance with Section 164.522.

PERMISSIBLE REQUESTS BY COUNTY

County shall not request Business Associate to use or disclose Protected Health Information in any manner that would not be permissible under the Privacy Rule if so requested by County, unless the Business Associate will use or disclose Protected Health Information for, and if the Agreement provides for, data aggregation or management and administrative activities of Business Associate.

DUTIES UPON TERMINATION OF AGREEMENT

- a. Upon termination of the Agreement, for any reason, Business Associate shall return or destroy all Protected Health Information received from County, or created, maintained, or received by Business Associate on behalf of County, that Business Associate still maintains in any form. This provision shall apply to Protected Health Information that is in the possession of subcontractors or agents of Business Associate. Business Associate shall retain no copies of the Protected Health Information.
- b. In the event that Business Associate determines that returning or destroying Protected Health Information is infeasible, Business Associate shall provide to County notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the Parties that return or destruction of Protected Health Information is infeasible, Business Associate shall extend the protections of the Agreement to such Protected Health Information and limit further uses and disclosures of such Protected Health Information to those purposes that make the return or destruction infeasible, for so long as Business Associate maintains such Protection Health Information.

MISCELLANEOUS

- a. **Regulatory References.** A reference in this Schedule to a section in the HIPAA Privacy Rule means the section as in effect or as amended, and for which compliance is required.
- b. **Amendment.** The Parties agree to take such action as is necessary to amend this Schedule from time to time as is necessary for County to comply with the requirements of the Privacy Rule and the Health Insurance Portability and Accountability Act, Public Law 104-191.

- c. **Survival.** The respective rights and obligations of Business Associate under this Schedule shall survive the termination of the Agreement.
- d. **Interpretation.** Any ambiguity in this Schedule shall be resolved in favor of a meaning that permits County to comply with the Privacy Rule.
- e. **Reservation of Right to Monitor Activities.** County reserves the right to monitor the security policies and procedures of Business Associate.

Attachment IP

Intellectual Property Rights

1. The County of San Mateo ("County"), shall and does own all titles, rights and interests in all Work Products created by Contractor and its subcontractors (collectively "Vendors") for the County under this Agreement. Contractor may not sell, transfer, or permit the use of any Work Products without the express written consent of the County.
2. "Work Products" are defined as all materials, tangible or not, created in whatever medium pursuant to this Agreement, including without limitation publications, promotional or educational materials, reports, manuals, specifications, drawings and sketches, computer programs, software and databases, schematics, marks, logos, graphic designs, notes, matters and combinations thereof, and all forms of intellectual property.
3. Contractor shall not dispute or contest, directly or indirectly, the County's exclusive right and title to the Work Products nor the validity of the intellectual property embodied therein. Contractor hereby assigns, and if later required by the County, shall assign to the County all titles, rights and interests in all Work Products. Contractor shall cooperate and cause subcontractors to cooperate in perfecting County's titles, rights or interests in any Work Product, including prompt execution of documents as presented by the County.
4. To the extent any of the Work Products may be protected by U.S. Copyright laws, Parties agree that the County commissions Vendors to create the copyrightable Work Products, which are intended to be work-made-for-hire for the sole benefit of the County and the copyright of which is vested in the County.
5. In the event that the title, rights, and/or interests in any Work Products are deemed not to be "work-made-for-hire" or not owned by the County, Contractor hereby assigns and shall require all persons performing work pursuant to this Agreement, including its subcontractors, to assign to the County all titles, rights, interests, and/or copyrights in such Work Product. Should such assignment and/or transfer become necessary or if at any time the County requests cooperation of Contractor to perfect the County's titles, rights or interests in any Work Product, Contractor agrees to promptly execute and to obtain execution of any documents (including assignments) required to perfect the titles, rights, and interests of the County in the Work Products with no additional charges to the County beyond that identified in this Agreement or subsequent change orders. The County, however, shall pay all filing fees required for the assignment, transfer, recording, and/or application.
6. Contractor agrees that before commencement of any subcontract work it will incorporate this **ATTACHMENT IP** to contractually bind or otherwise oblige its subcontractors and personnel performing work under this Agreement such that the County's titles, rights, and interests in Work Products are preserved and protected as intended herein.