

**ADMINISTRATIVE SERVICES AGREEMENT**  
**(County – Chimienti & Associates Insurance Services)**

THIS ADMINISTRATIVE SERVICES AGREEMENT is made on the first day of January 1, 2016 by and between the County of Tulare, a political subdivision of the State of California (hereinafter “County”), and Chimienti & Associates Insurance Services (tax payer id #77-0485821), a California Corporation whose principal place of doing business is 3400 W. Mineral King Ave., Suite B, Visalia, CA 93291 (hereinafter “Provider”).

**WITNESSETH:**

**WHEREAS**, the Board of Supervisors of the County has established a cafeteria FLEX PLAN and a flexible spending FLEX PLAN under Internal Revenue Code (hereinafter “IRC”) section 125 generally know as TULARE COUNTY FLEX PLAN for its Eligible Employees as defined therein, TULARE COUNTY FLEX PLAN includes Medical Expense Reimbursement Account FLEX PLANS under IRC Section 105 (“MERA”), Dependent Care Assistance Programs under IRC section 129 (“DCAP”), and Accident and Health FLEX PLAN Premium Programs under IRC section 106 (“AHPPP”); and

**WHEREAS**, for the convenience of this Agreement, all of the above described FLEX PLANs are sometimes collectively referred to herein as the “FLEX PLAN” or “TULARE COUNTY FLEX PLAN”; and

**WHEREAS**, the COUNTY desires Provider to perform certain specialized administrative services and offer County’s Eligible Employees certain policies of accident and health insurance through the TULARE COUNTY FLEX PLAN and AHPPP with respect to such FLEX PLAN; and

**WHEREAS**, Government Code Section 31000 authorizes the Board of Supervisors to contract for special services with persons qualified, experienced and competent to perform the special services required herein; and

**WHEREAS**, the Provider claims to have such qualifications, experience and competence to perform the special services required herein, and the TULARE COUNTY FLEX PLAN Advisory Committee has determined that Provider possesses such special skills; and

**WHEREAS**, the Provider agrees to provide such services in accord with the terms and conditions more particularly described herein below;

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the County and Provider hereby agree as follows:

**1. TERM**

Except as otherwise provided herein, this agreement is effective as of the date first written above and shall terminate on December 31, 2016, with all the 2016 FLEX PLAN year flexible spending account claims and required reports being processed by Provider at the end of the corresponding grace period (March 31, 2017). The County shall have the option to renew the Agreement, with the concurrence of the Provider, for an additional two year term, with successive terms thereafter of one year each, on the same terms, covenants and conditions; provided, however, the option may not be exercised sooner than six (6) months before the end of any current term.

**2. TERMINATION**

Notwithstanding the foregoing, County reserves the right in its sole discretion to terminate this Agreement in the event insufficient funds are appropriated or budgeted for this Agreement in any

fiscal year or if the FLEX PLAN is terminated or substantially modified. Provider will be given thirty (30) days written notice in the event such an action is required by the County.

Notwithstanding any other provision in this Agreement, either party may terminate this Agreement, with or without cause, at any time following ninety (90) days advance written notice to the other party.

### **3. AFTER TERMINATION OF THIS AGREEMENT**

The County may, within three years, request in writing that Provider send the County any existing administration files associated with the FLEX PLAN which Provider holds either in hard copy form or stores electronically.

### **4. SERVICES PROVIDED BY PROVIDER**

4.1 Provider will perform the following consulting services:

4.1.1 Assist the County in the maintenance and revision of FLEX PLAN documents to assure compliance with current law. County is solely responsible for the finalization and execution of said FLEX PLAN documents.

4.1.2 Consult with key personnel in the appropriate departments to effect implementation of the FLEX PLAN options with the County's payroll system with the express goal of minimizing the County's administration of the program; and

4.1.3 Advise the County regarding all applicable laws and regulations.

4.1.4 Provide Voluntary Supplemental Benefits, including but not limited to; Hospital Supplement Plan, Short-Term Disability, Critical Illness, Cancer Plan, Accident Plan, Universal Life Insurance, Term Life Insurance, and Legal Plan.

4.2 Provider will perform the following enrollment services during the applicable open enrollment period:

4.2.1 Conduct group meetings to provide Eligible Employees an overview of benefits and hypothetical tax saving examples under the FLEX PLAN and Voluntary Supplemental Benefits;

4.2.2 Enroll and counsel all Eligible Employees who choose to participate in the FLEX PLAN (including all newly eligible employees throughout the FLEX PLAN Year);

4.2.3 At an Eligible Employee's request or at the request of County staff, provide the Eligible Employee an individual review of benefits available under the FLEX PLAN;

4.2.4 Explain the procedure for filing claims for reimbursement of eligible expenses to employees electing to participate in the FLEX PLAN and provide claim form packets to Participants;

4.2.5 Insure proper completion of the Provider supplied Participant election forms as required by law;

4.2.6 Provide all enrollment materials at no cost to the County for the FLEX PLAN and Voluntary Supplemental Benefits;

4.2.7 Furnish upon the request of County staff or as identified elsewhere in this agreement, with any available enrollment information from Provider's records which the County may need.

- 4.3 Provider will provide the following general administrative services at no cost to the County:
  - 4.3.1 Provider will provide the County with necessary training to assist the County in using the Provider's services.
  - 4.3.2 Provider will furnish the County with any available information from the Provider's records which the County may need.
  - 4.3.3 Work with vendors to timely prepare and mail the W-2 form information to the County regarding which participants received taxable insurance benefits under the FLEX PLAN. Vendors will report timely to County the FICA employer matching amounts so that County can make timely deposits and accurately report such employer taxes. Vendors shall maintain the necessary records to answer any questions on taxable Voluntary Supplemental Benefits raised by the County, FLEX PLAN Participants, or Governmental Agencies for a period of not less than three (3) years after the filing of such reports;
  - 4.3.4 Provide all necessary information required by the Internal Revenue Service for preparation of the 5500 Form, as it pertains to the FLEX PLAN;
  - 4.3.5 Timely perform any and all discrimination testing on an annual basis if required by law, and provide the County with a report that demonstrates the proper testing has been conducted and the outcome; and
  - 4.3.6 Administer all applicable insurance benefits to Participants in Plans, and handle all claims and/or disputes with respect thereto;
  - 4.3.7 Perform other such services as may be agreed upon in writing by Provider and County; and
  - 4.3.8 Provider will attempt to resolve any issues raised by Participants. Any questionable reimbursement or enrollment requests will be referred to County after sending the Participant an explanation letter. Such referral will include Provider's advice regarding processing of the Participant request.
- 4.4 Provider will provide the additional flexible spending account administrative services listed in "Exhibit A", which is made a part of this Agreement.
- 4.5 Provider will provide the following additional services to the County:
  - 4.5.1 AdminDirect Benefits Management System:
    - Maintains eligible employee data
    - Tracks dependent data with relationship links to primary employee record
    - Stores County benefit plan rules, including eligibility restrictions, waiting periods, volume and age calculation frequencies.
    - Maintains benefit plan coverage and rate history
    - Provides benefit plan filtering to designated divisions and/or employee classes
    - Tracks benefits elected by employees and family members covered
    - Benefit plan rate and coverage calculation engine
    - Benefit accounting and billing system for Core based on eligibility
    - Benefit accounting and billing system for Voluntary Supplemental Benefits based on reconciliation to payroll, with reconciliation performed by Provider.
    - Payroll deduction tracking and payroll discrepancy reporting
    - Standard reporting system, including various census, discrepancy, enrollment, and audit reports.
    - Maintain history logs of changes made to member records, billing records, and coverage records.
  - 4.5.2 AdminDirect Electronic Data Interface (EDI) System:
    - Exports various eligibility file formats, including HIPAA 834
    - Export encryption using PGP
    - Export transfers available through file push via FTP or Carrier pickup via FTP
  - 4.5.3 AdminDirect Benefits Enrollment System:

- Employee self-serve enrollment
- Agent assisted enrollment
- Call Center assisted enrollment
- 4.5.4 Single source billing service for reconciliation of multiple vendor billings for Voluntary Supplemental Insurances.
- 4.5.5 Reconcile differences for Flex Spending Accounts and Voluntary Supplemental Benefit Plans for accounting, billing, eligibility, and enrollment, and provide County with verification of reconciliation documentation on a monthly basis, by the 10<sup>th</sup> of the following month.

**5. COMPENSATION**

All services provided under this Agreement shall be performed and compensated based on the schedule of fees agreed upon through the SJVIA approved vendor process for such services. If during the contract period, the County would cease to be a member of the SJVIA, the services and fees would continue at the SJVIA approved PEPM rate. The County also agrees that Provider will remain as Agent of Record for the Voluntary Benefit Plans offered in conjunction with this Plan. Claims run out for each FLEX PLAN year and upon termination shall be provided at no additional fee.

Provider agrees to waive compensation under the SJVIA based fee schedule for the following classification groups: Employees not participating in the Core health plans, but are participating in the Dental & Vision only portion of the programs, AND for employees that are in Flexible Spending only, and are not participating in the County's Core health plans.

**6. OWNERSHIP OF DATA**

All data delivered by the County to Provider, or which is created by either party for the County in connection with the performance of this Agreement shall be the exclusive property of the County. Provider shall be the custodian of such data and shall immediately make such data available to the County upon request during normal working hours. Provider shall return all personnel/payroll raw data collected or generated in connection with the performance of the Agreement within thirty (30) days of the termination of this Agreement and shall not access said data for any purpose other than in connection with the performance of this Agreement.

**7. CONFIDENTIALITY**

- 7.1 All data, programs and other materials provided to Provider by the County, Eligible Employees and/or Participants in connection with this Agreement shall be deemed confidential as to the County and/or such Eligible Employees and/or Participants. Neither Provider, its officers, agents or employees shall disclose such data to any third party without the express prior written consent of the County, the affected Eligible Employees and/or Participants.
- 7.2 Provider shall protect confidential information from inadvertent disclosure to any third party in the same manner that they protect their own confidential information, unless such disclosure is required in response to a validly issued subpoena or other process of law. The provisions of this section shall continue to survive, upon completion of this Agreement,
- 7.3 The County agrees to provide Provider (or its authorized agent), personnel and payroll information including, but not limited to, employee names, addresses, phone numbers, salary, certain pay deductions and other personnel and payroll data base information on

all of its FLEX PLAN eligible employees for the sole and exclusive purpose of conducting automated enrollment for employer.

- 7.4 Provider agrees to keep in confidence all personnel and payroll information provided by County. Provider shall treat such information with at least the same degree of care as Provider exercises toward its own employees' personnel and payroll information.
- 7.5 Any agents who are trained to complete enrollments are instructed on the confidentiality of the employees' personnel/payroll information, and will not use the information except for the enrollment process. Furthermore, each agent will not access this information without the employee's permission to do so for the purpose of reviewing benefit information for the employee. Any employee who personally meets with an agent shall be requested to provide his/her Social Security number to allow Provider to access his/her personnel and payroll information.

## **8. COUNTY RESPONSIBILITIES**

The County shall, with respect to the FLEX PLAN:

- 8.1 Be solely responsible for compliance with the Internal Revenue Code and other Federal, State or local laws, including:
  - 8.1.1 The FLEX PLAN documents and their execution; and
  - 8.1.2 The payroll tax administration associated with the FLEX PLAN, including withholding and all required Federal, State or local income tax;
- 8.2 Furnish Provider with a copy of the FLEX PLAN and all amendments thereto, which are on file with the Clerk of the Board of Supervisors, during the term hereof;
- 8.3 Determine employee eligibility and allow only Eligible Employees to participate in the FLEX PLANS;
- 8.4 Remit to established vendors, through Eligible Employee salary reduction agreements, all AHPPP and post tax voluntary insurance premiums; and
- 8.5 Be solely responsible for the accuracy and integrity of County's data.

## **9. INDEPENDENT CONTRACTOR**

In the performance of the services under this Agreement, Provider shall be, and acknowledges that Provider is in fact and law, an independent contractor and not an agent or employee of County. Provider has and retains the right to exercise full supervision and control over the manner and methods of providing services to County under this Agreement. Provider retains full supervision and control over the employment, direction, compensation and discharge of all persons assisting Provider in the provision of services under Agreement. With respect to Provider's employees, if any, Provider shall be solely responsible for payment of wages, benefits and compensation, compliance with all occupational safety, welfare and civil rights laws, tax withholding and payment of employment taxes whether Federal, State or local, and compliance with any and all laws regulating employment.

**10. INDEMNIFICATION AND HOLD HARMLESS PROVISIONS**

Provider agrees to indemnify, defend (upon written request of County) and hold harmless County and County's agents, officers, employees, volunteers and authorized representatives from any and all losses, liabilities, costs, expenses, charges, damages, claims, liens, and causes of action, of whatsoever kind or nature (including, but not limited to, reasonable attorneys' fees) which are in any manner directly or indirectly caused, occasioned or contributed to in whole or in part, through any act, omission, fault or negligence, whether active or passive, of Provider or Provider's officers, agents, employees or authorized representatives, which relates in any manner to this Agreement, any work to be performed by Provider under this Agreement, or any authority delegated to Provider under this Agreement, even though the same may have resulted from the joint, concurring or contributory negligence, whether active or passive, of County or any other person or persons, unless the same is caused by the sole negligence or willfull misconduct of the party indemnified or held harmless. Without limiting the generality of the foregoing, the same shall include injury or death to any person or persons and damage to any property, regardless of where located, including the property of County, and any liability of the County for private attorney general fee awards. It is further expressly understood and agreed that the duty to indemnify shall include, but not be limited to, any internal costs for staff time, investigation costs and expenses, and fees of County Counsel at their external or non-county rate reasonably incurred as a result of any act, omission, fault or negligence, whether active or passive, of Provider or Provider's officers, agents, employees or authorized representatives, which relates in any manner to this Agreement, any work to be performed by Provider under this Agreement, or any authority delegated to Provider under this Agreement.

**11. INSURANCE**

Provider, in order to protect County and its agents, officers, and employees against all claims and liability for death, injury, loss and damage as a result of Provider's actions in connection with the performance of Provider's obligations, as required in this Agreement, shall secure and maintain insurance as described below. Provider shall be responsible for any deductibles under all required insurance policies.

11.1 Workers' Compensation Insurance Requirement: Provider shall submit written proof that Provider is insured against liability for workers' compensation in accordance with the provisions of section 3700 of the Labor Code.

In signing this Agreement, Provider makes the following certification, required by section 1861 of the Labor Code: *"I am aware of the provisions of section 3700 of the 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 code, and I will comply with such provisions before commencing the performance of the work of this Agreement."*

The Worker's Compensation Policy shall be endorsed with a waiver of subrogation in favor of the County for all work performed by the Provider and its employees. Such coverage is not maintained by the Provider for independent contractors. Provider waives all rights against the County and its officers, agents, employees and volunteers for recovery of damages to the extent these damages are covered by workers' compensation and employer liability.

11.2 Liability Insurance Requirements:

11.2.1 Provider shall maintain in full force and effect, at all times during the term of this Agreement, the following insurance:

- 11.2.1.1 Commercial General Liability Insurance, including, but not limited to, Contractual Liability Insurance (specifically concerning the indemnity provisions of this Agreement), Products-Completed Operations Hazard, and Personal Injury for liability arising out of Provider's performance of services under this Agreement. Said insurance coverage shall have minimum limits for Bodily Injury and Property Damage liability of one million dollars (\$1,000,000) each occurrence and three million dollars (\$3,000,000) aggregate. The Commercial General Liability Insurance shall include an endorsement naming the County of Tulare and County officers, agents, officials, employees and volunteers as insureds as their interests may appear.
  - 11.2.1.2 Automobile Liability Insurance coverage (non-owned auto) with limits of \$1,000,000 per occurrence.
  - 11.2.1.3 Professional Liability (Errors and Omissions) Insurance, for liability arising out of, or in connection with, the performance of services by Provider pursuant of this Agreement, with limits of not less than one million dollars (\$1,000,000).
- 11.2.2 Prior to approval of this Agreement by the County, Provider shall file with the County Administrative Officer certificates of insurance with original endorsements effecting coverage and a copy of the declarations page from the policy in effect in a form acceptable to the County. Endorsements must be signed by persons authorized to bind coverage on behalf of the insurer. The County reserves the right to require certified copies of all required insurance policies at any time.
- 11.3 Cancellation of Insurance: The above stated insurance coverages required to be maintained by Provider shall be maintained until the completion of all services to be performed by Provider under this Agreement. Each policy shall be endorsed to provide thirty (30) days prior written notice to County should the policies be reduced for canceled. Errors and Omissions coverage, if a claim is made, must be maintained for a minimum of three (3) years after contract completion.
- 11.4 For any claims related to this project, the Provider's insurance coverage shall be primary as respects the County, its officers, agents, officials, employees and volunteers. Any insurance of self-insurance maintained by the County, its officers, agents, officials, employees or volunteers shall be in excess of the Providers insurance and shall not contribute with it.
- 11.5 All insurance shall be issued by a company or companies listed in the current "Best's Key Rating Guide" publication with a minimum of a "B+,V" rating, or in special circumstances, be pre-approved by both the Risk Management Division of the Office of County Counsel and the County Administrative Officer.
- 11.6 If Provider is, or becomes during the term of this Agreement, self-insured or a member of a self-insurance pool, Provider shall provide coverage substantially equivalent to the insurance coverages and endorsements required above. The County Administrative Officer, or his designee, and the County's Risk Management Department shall determine, in their sole discretion, whether the coverage proposed to be provided by Provider is substantially equivalent to the above-required coverages.
- 11.7 Insurance coverages in the minimum amounts set forth herein shall not be construed to relieve Provider for liability in excess of such coverage, nor shall it preclude the County

from taking such other actions as are available to it under any other provision of this Agreement or otherwise in law.

- 11.8 Failure by Provider to maintain all such insurance in effect at all times required by this Agreement shall be a material breach of this Agreement by Provider. County, at its sole option, may terminate this Agreement and obtain damages from Provider resulting from said breach. Alternatively, County may purchase such required insurance coverage, and without further notice to Provider, County shall deduct from sums due to Provider any premiums and associated costs advanced by County for such insurance. If the balance of monies obligated to Provider pursuant to this Agreement are insufficient to reimburse County for the premiums and any associated costs, Provider agrees to reimburse County for the premiums and pay for all costs associated with the purchase of said insurance. Any failure of County to take this alternative action shall not work to relieve Provider of its obligation to obtain and maintain the insurance coverages required by this Agreement.

**12. AUDIT, INSPECTION AND RETENTION OF RECORDS**

Provider agrees to maintain and make available to County accurate books and records relative to all its activities under this Agreement. Provider shall permit County to audit, examine and make excerpts and transcripts from such records, and to conduct audits or reviews of all invoices, materials, records or personnel or other data related to all other matters covered by this Agreement. Provider shall maintain such data and records in an accessible location and condition for a period of not less than three (3) years from the date of final payment under this Agreement, or until after the conclusion of any audit, whichever occurs last. The State of California and/or any Federal Agency having an interest in the subject of this Agreement shall have the same rights conferred upon County herein.

**13. ASSIGNMENT**

Provider may only assign its rights or delegate or otherwise transfer its obligations hereunder only with County consent given or withheld is County's sole discretion. Any such assignment without County consent shall be void. County shall not be obligated to consider any proposed assignment if Provider is in breach of this Agreement at any time during the period of such consideration. Provider shall make any request for consent to assign in the form and manner prescribed by the County. For the purpose of the Section, the term "assign" includes, but is not limited to, the following:

- 13.1 selling, exchanging or otherwise transferring to a third party effective control of Provider management (through sale, exchange or other transfer or outstanding common stock of Provider or otherwise) or any of Provider's assets dedicated to the performance of services hereunder, unless such assets are promptly replaced with assets of greater or equal value and equivalent function;
- 13.2 issuing new stock or selling, exchanging or otherwise transferring ten percent (10%) or more of the then outstanding common stock of Provider to a party other than the shareholders owning said stock as of the date hereof;
- 13.3 any dissolution, reorganization, consolidation, merger, re-capitalization, stock issuance or re-issuance, voting trust, pooling agreement, escrow arrangement, liquidation or other transaction which results in a change of ownership or control of Provider;
- 13.4 any assignment by operation of law, including insolvency or bankruptcy, making assignment for the benefit of creditors, writ of attachment of an execution, being levied



against this Agreement, appointment of a receiver taking possession of any of Provider's property or transfer occurring in the event of a probate proceeding; and,

13.5 any combination of the foregoing (whether or not in related or contemporaneous transactions) which has the effect of any such transfer or change or ownership or control of Provider.

**14. NOTICES**

Notices to be given by one party to the other under this Agreement shall be given in writing by personal delivery, certified mail, return receipt requested, or express delivery service at the address specified below. Notices delivered personally shall be deemed received upon receipt; mailed or expressed notices shall be deemed received four (4) days after deposit. A party may change the address to which notice is to be given by giving notice as provided above.

County: Rhonda Sjostrom, Human Resources Director  
Human Resources & Development  
Tulare County Administrative Office  
2900 W. Burrel  
Visalia, CA 93291

Provider: Toney Chimienti, President  
Chimienti & Associates Insurance Services  
3400 W. Mineral King Avenue, Suite B  
Visalia, CA 93291

**15. EXCUSABLE FAILURE OF PERFORMANCE**

Strikes, lockouts, blockades, war, fire, earthquake, machine failure or repair, accidents or any other cause of a delay or failure to perform on the part of either party beyond the control of either party, shall be deemed an excusable delay or failure to perform and either party shall be granted a reasonable extension of time in which to perform after such cause for delay or failure to perform has subsided.

**16. SOLE AGREEMENT**

This document, including all attachments hereto, contains the entire agreement between the parties relating to the services, rights, obligations and covenants contained herein and assumed by the parties respectively. No inducements, representations or promises have been made, other than those recited in this Agreement. No oral promise, modification, change or inducement shall be effective or given any force or effect.

**17. CHOICE OF LAW/VENUE**

The parties hereto agree that the provisions of this Agreement will be construed pursuant to the laws of the State of California. This Agreement has been entered into and is to be performed in the County of Tulare. Accordingly, the parties agree that the venue of any action relating to this Agreement shall be in the County of Tulare.

**18. AUTHORITY TO BIND COUNTY**

It is understood that Provider, in Provider's performance of any and all duties under this Agreement, has no authority to bind County to any agreements or undertakings.

**19. MODIFICATIONS OF AGREEMENT**

This Agreement may be modified in writing only, signed by the parties in interest at the time of the modification.

**20. NON-WAIVER**

No covenant or condition of this Agreement can be waived except by the written consent of County. Forbearance or indulgence by County in any regard whatsoever shall not constitute a waiver of the covenant or condition to be performed by Provider. County shall be entitled to invoke any remedy available to County under this Agreement or by law or in equity despite said forbearance or indulgence.

**21. ENFORCEMENT OF REMEDIES**

No right or remedy herein conferred on or reserved to County is exclusive of any other right or remedy herein or by law or equity provided or permitted, but each shall be cumulative of every other right or remedy given hereunder or now or hereafter existing by law or in equity or by statute or otherwise, and may be enforced concurrently or from time to time.

**22. SIGNATURE AUTHORITY**

Each party represents that they have full power and authority to enter into and perform this Agreement, and the person signing this Agreement on behalf of each party has been properly authorized and empowered to enter into this Agreement.

**23. SEVERABILITY**

Should any part, term portion or provision of this Agreement be decided finally to be in conflict with any law of the United States or the State of California, or otherwise be unenforceable or ineffectual, the validity of the remaining parts, terms, portions, or provisions shall be deemed severable and shall not be affected thereby, provided such remaining portions or provisions can be construed in substance to constitute the agreement which the parties intended to enter into in the first instance.

**24. CONFLICT OF INTEREST**

The parties to this Agreement have read and are aware of the provisions of Section 1090 et seq. and Section 87100 et seq. of the Government Code relating to conflict of interest of public officers and employees. Provider agrees that they are unaware of any financial or economic interest of any public officer or employee of the County relating to this Agreement. It is further understood and agreed that if such a financial interest does exist at the inception of this Agreement, the County may immediately terminate this Agreement by giving written notice thereof. Provider shall comply with the requirements of Government Code section 87100 et seq. during the term of this Agreement.

**25. COMPLIANCE WITH LAW**

Provider shall observe and comply with all applicable County, State and Federal laws, ordinances, rules and regulations now in effect or hereafter enacted, each of which are hereby made a part hereof and incorporated herein by reference.

**26. CAPTIONS AND INTERPRETATION**

Paragraph headings in this Agreement are used solely for convenience, and shall be wholly disregarded in the construction of this Agreement.

No provision of the Agreement shall be interpreted for or against a party because that party or its legal representative drafted such provision, and this Agreement shall be construed as if jointly prepared by the parties.

**27. TIME OF ESSENCE**

Time is hereby expressly declared to be of the essence of this Agreement of each and every provision hereof, and each such provision is hereby made and declared to be a material, necessary and essential part of this Agreement.

**28. COUNTERPARTS**

This Agreement may be executed simultaneously in any number of counterparts, each of which shall be deemed an original but all of which together shall constitute one and the same instrument.

**29. NONDISCRIMINATION**

Neither the Provider, nor any officer, agent, employee, or subcontractor of Provider, shall discriminate in the treatment of employment of any individual or groups of individuals on the grounds of race, color, religion, national origin, age or sex, either directly, indirectly or through contractual or other arrangements.

**30. OUTSIDE SERVICE PROVIDERS**

Provider shall have the right to retain outside service providers to assist it in performing the duties under this Agreement. All such outside services shall be provided at the expense of Provider and shall be subject to the supervision, control and responsibility of Provider. Provider will notify County at least 90 days in advance of the date of any proposed change in service providers or change in status of any such provider, including, but not limited to change in ownership, key personnel, principals, or financial condition.

IN WITNESS WHEREOF, the parties have entered into this Agreement as of the year and date first above-written.

**APPROVED AND RECOMMENDED:**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: Chairman, Board of Supervisors

**COUNTY OF TULARE**

By: Rhonda Jackson

Name: \_\_\_\_\_

Title: Human Resources Director

**CHIMIEN TI & ASSOCIATES INSURANCE SERVICES:**

By: Tony Chimienti

Name: TONEY CHIMIEN TI

Title: PRESIDENT

By: Catherine Chimienti

Name: CATHERINE CHIMIEN TI

Title: VICE PRESIDENT & TREASURER

APPROVE AS TO FORM:

COUNTY COUNSEL

By: [Signature]

DEPUTY

(20151051)

## **Flexible Spending Account Administration**

1. Provider will provide the following services:
  - 1.1 Provider shall provide claim forms and other documentation necessary for the administration of the FLEX PLAN;
  - 1.2 Provider will maintain a list of Participants, including full names, social security numbers and effective date;
  - 1.3 Provider will credit to the appropriate Participant spending account, on a semi-monthly basis, an amount equal to the reduction in compensation for each participant for such account, upon receipt of the detail payroll report verifying such reduction was processed;
  - 1.4 Provider will reconcile payroll report each semi-monthly pay period, and adjust Dependent Care spending account credits for changes indicated;
  - 1.5 Provider will maintain records of Participant's contributions, eligible expenses submitted and reimbursements received, and the resulting account balances of Participants;
  - 1.6 Provider will prepare and mail to each Participant a statement of year-to-date contributions, reimbursements received, and the resulting account balance. Statements shall be mailed at least once each quarter and once each month end during the grace period following the FLEX PLAN Year.
  - 1.7 Provider will maintain records of all transactions under the Agreement during the term of the Agreement and for a period of three years thereafter;
  - 1.8 Provider will reconcile bank deposits (if applicable) to the spending account detail each month and furnish a copy of said reconciliation to County;
  - 1.9 Provider will provide an accurate annual accounting of all transactions for the previous FLEX PLAN year on or before May 1st.
  - 1.10 Provider will return to the County any unclaimed funds (forfeitures) within 30 days following the expiration of the 90 day Grace Period for the applicable FLEX PLAN year;
  - 1.11 Provider will receive claims for benefits transmitted by Participants either by mail or facsimile, and shall process same and issue payment to such Participants in accordance with FLEX PLAN and any guidelines issued by the County or the Internal Revenue Service;
  - 1.12 Provider will process on a weekly cycle and mail payment check directly to Participant unless Participant has applied to have funds transferred electronically by direct deposit. If Participant has applied to have funds transferred electronically by direct deposit, Provider will transfer reimbursement payment by electronic direct deposit to the bank account designated by Participant;
  - 1.13 Provider will furnish to County a monthly transaction report of actual reimbursements processed each weekly cycle;
  - 1.14 Provider will mail a notice to any Participant who submits a claim for benefits determined to be ineligible by Provider. Such notice shall include the reason for denial and a description of any additional information that might be necessary to perfect or complete the claim.
  - 1.15 Provider shall make benefit eligibility determinations on behalf of the County in accordance with its claims procedures set forth in the FLEX PLAN, based upon information provided to Provider by the employee and the County. It is understood that Provider is acting on behalf of the County in a ministerial, administrative capacity only and shall have no responsibility to investigate the accuracy or truthfulness of information provided; and
  - 1.16 Provider will assist the County in the maintenance and revision of FLEX PLAN documents to assure compliance with current law.

2. Provider is vested only with ministerial authority to investigate and process claims for benefits under the FLEX PLAN in accordance with the terms of the FLEX PLAN. Provider shall have no discretionary authority to make decisions as the FLEX PLAN policy, interpretations, practices or procedures but shall perform its duties and functions within the framework of the terms of the FLEX PLAN and policies, interpretations, rules, practices, and procedures made by the County. Provider is not fiduciary with regard to the FLEX PLAN and shall not be considered the FLEX PLAN administrator, a fiduciary or named fiduciary as those terms are defined in the Employee Retirement Income Security Act of 1974, as amended ("ERISA").
3. Provider shall not advance its personal funds for the payment of any benefits under the FLEX PLAN. Provider shall not be considered the insurer or underwriter of the liability of the County to provide benefits for the Participants.