

ACAWORKS SERVICE AGREEMENT

This ACAWORKS Service Agreement (hereinafter "Agreement") is entered into this 01 day of January 2021 (hereinafter "Effective Date"), by and between Self Insured Services Company, doing business as Benefit Coordinators Corporation (hereinafter collectively "SISCO"), an Iowa Corporation, and County of El Dorado (hereinafter "Employer"), each of which may be hereinafter referred to individually as a "Party" and collectively as "Parties".

WHEREAS SISCO is a reseller of a web-based hosted online service known as ACAWORKS that collects, stores, and maintains data for purposes of Affordable Care Act recordkeeping and reporting; and

WHEREAS Employer wishes to purchase access to and use ACAWORKS;

NOW, THEREFORE, in consideration of the mutual covenants and promises exchanged herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree as follows:

1. **RiskRT End User License Agreement.** Employer's use of the ACAWORKS website and services is subject to and governed by the RiskRT End User License Agreement, marked Exhibit B, and incorporated herein and made by reference a part hereof. To acknowledge acceptance, Employer must click the "accept" box on the ACAWORKS website when first logging on to the ACAWORKS website.

2. **Scope of Services.** SISCO agrees to provide Employer access to the ACAWorks system necessary to provide Affordable Care Act benefit enrollment and eligibility management services for Employer's Human Resources Department. Services shall include, but not be limited to:

- Implementation Services
 - Saas Services and ACA compliance management
- ACAWORKS Includes the following features and functionality:
- Applicable Large Employer Status (ALE calculator)
 - Set lookback, measurement, administrative, and stability periods
 - Eligibility status tracking and forecasting
 - Employee status alerts
 - Month by month risk evaluations
 - Reporting services
 - Form generation
 - Form mailing
 - Filing Services
 - Electronically file forms with the IRS

SISCO shall invoice the Employer for the ACAWORKS setup and access fees in accordance with the Fee Schedule attached to this Agreement, marked as Exhibit A, and incorporated herein and made by reference a part hereof. SISCO shall also submit completed ACAWORKS Information Profile Forms to RiskRT to begin the implementation process.

3. **Term.** This Agreement shall become effective upon final execution by both parties and shall cover the period of January 1, 2021 through December 31, 2023.

4. **Compensation.** Total amount of this Agreement shall not exceed \$45,000, inclusive of all costs, taxes, and expenses.

5. Termination. This Agreement may be terminated pursuant to the terms and conditions of Paragraph eleven (11) of the RiskRT End User License Agreement. This Agreement may also be terminated by either party through a ninety (90) day written notice for any reason. If this Agreement is terminated effective prior to December 31 of any year and Employer does not continue to pay BCC's fees through December 31 of that year, BCC will be under no obligation to file Employer's 1094-C and 1095-C ACA Report. Notwithstanding the foregoing, SISCO shall have the right to immediately terminate Employer's access to ACAWORKS in the event that the Employer fails to comply with the terms of this Agreement in any material respect, including, but not limited to, failure of the Employer to timely pay the ACAWORKS access fees in accordance with the terms of Paragraph seven (7) and Exhibit A of this Agreement. If termination occurs prior to the next Effective Date anniversary, payment for the full one (1) year term shall become immediately due and payable to SISCO. Fees are based on a 12-month term. Upon termination of services, access to software and services may be charged on a month to month term until Employer has completed all transactions, filings, and corrections. Employer will be given the option of obtaining electronic copies of prior year's filings at a fee of \$250 per entity per filing year. Otherwise, Employer is responsible for downloading prior year filing reports and data prior to termination date as all Employer data will be purged from the ACAWORKS system after midnight ET of the termination date.

6. Access. SISCO hereby grants Employer access to the ACAWORKS website and software through the form of a limited, non-exclusive, non-transferable and non-assignable license. Your license to ACAWORKS shall be automatically revoked if this agreement is terminated for any reason.

7. Fees. As consideration for the services outlined above, Employer agrees to pay SISCO an ACAWORKS licensing fee as outlined in the Fee Schedule attached to this Agreement (attached hereto as Exhibit A) – which may be updated by the Parties from time to time, as agreed upon by the Parties.

8. Confidentiality. Each Party agrees that it, including any of its representatives and employees who learn of Confidential Information, shall use the same solely for the purposes of this Agreement. Moreover, each Party agrees that neither it nor its representatives or employees shall use any of the Confidential Information for any reason or purpose in any way detrimental to the disclosing Party or beneficial to the non-disclosing Party (it being acknowledged by each of the Parties that any use other than for the purposes outlined in this Agreement shall be deemed detrimental to the disclosing Party). The receiving Party shall hold in confidence and shall not disclose to any entity, agency, or person for any purpose any of the Confidential Information, except that the receiving Party may disclose the Confidential information to those of the receiving Party's officers, directors, employees, agents, and consultants needed to complete its duties under this Agreement. For the purposes of this Agreement, "Confidential Information" is defined as any nonpublic information pertaining to either Party's business, including, but not limited to, information relating to the Party's business processes, trade secrets, customers, suppliers, finances, and business plans and strategies. Notwithstanding the foregoing, information shall not be considered confidential under this Paragraph that: (i) is publicly known prior to or after disclosure hereunder other than through acts or omissions attributed to the recipient or its employees or representatives; (ii) as demonstrated by prior written records, is already known to the recipient at the time of disclosure hereunder; (iii) is disclosed in good faith to the recipient by a third party having a lawful right to do so; (iv) is the subject of written consent of the Party which supplied such information authorizing disclosure; or (v) is required to be disclosed by law; provided that the recipient shall give the disclosing party reasonable notice in writing prior to disclosing such information in order to facilitate seeking a protective order or other appropriate remedy from the proper authority.

9. Limitation of Liability and Acknowledgement of Compliance Responsibility. Employer acknowledges and understands that SISCO is merely a reseller of the ACAWORKS website, software and documentation. As such, SISCO does not guarantee the operation of the ACAWORKS website free from interruption, defect or error. Moreover, Employer understands and acknowledges that SISCO does not have any access to or control over the data feeds provided to ACAWORKS. As a result, SISCO does not guarantee the accuracy of the ACAWORKS website output based on inputted information over which SISCO has no control.

Employer hereby recognizes, acknowledges and agrees that it bears the ultimate responsibility for complying with federal law, including, but not limited to, provisions of the Patient Protection and Affordable Care Act. Moreover, Employer hereby recognizes and acknowledges that federal law is subject to change at any time and that the impact of such a change on the performance and applicability of the ACAWORKS website.

Employer hereby acknowledges that it has been given the opportunity to investigate the ACAWORKS website and tools. Employer further hereby acknowledges and understands that SISCO is merely a reseller of the ACAWORKS website and software. To the maximum extent permitted by law, ACAWORKS is presented 'as is' without warranties, conditions, representations or guaranties of any kind, either expressed, implied, statutory or otherwise, including but not limited to, any implied warranties or conditions of merchantability, satisfactory quality, title, noninfringement or fitness for a particular purpose. SISCO does not warrant the operation of the ACAWORKS website shall be uninterrupted or error free. Employer bears the entire risk as to the results, quality, and performance of the website and related services should the services prove defective. No oral or written information or advice given by SISCO shall create any warranty. This disclaimer of warranty constitutes an essential part of this agreement. ACAWORKS was designed to be a supplementary educational tool. You are advised to not solely rely on the ACAWORKS website and services for any reason.

10. Indemnity, Release, and Covenant not to Sue. Employer hereby acknowledges and understands that SISCO is merely a reseller of the ACAWORKS website and software.

As a result, Employer and its officers, directors, employees, agents, successors and assigns hereby agree to defend, indemnify and hold SISCO and SISCO's officers, directors, employees, agents, successors and assigns harmless from and against any and all claims, costs, damages, losses, liabilities, actions, recoveries, judgments, and expenses (including attorney's fees and expenses regardless of whether litigation was commenced) arising out of or in connection with: (i) any negligent acts or omissions of the ACAWORKS Backend Service Provider, (hereinafter "RiskRT"); (ii) the alleged glitch, malfunction or non-performance of ACAWORKS as contemplated in this Agreement; or (iii) RiskRT's breach of its duties, responsibilities or warranties under the terms and conditions of the End User License Agreement.

Employer and its officers, directors, employees, agents, successors and assigns do hereby release, acquit and forever discharge SISCO and SISCO's officers, directors, employees, agents, successors and assigns from and against any and all claims, suits, allegations, judgments, actions, liabilities, losses, damages, costs and expenses (including, without limitation, reasonable attorney and expert witness fees) which Employer may now have or ever have, sustain or suffer as a result of its use of the ACAWORKS website and software designed and operated by RiskRT.

Employer and its officers, directors, employees, agents, successors and assigns promise not to sue or proceed in any manner, in agency or other proceedings, whether at law, in equity, by way of administrative hearing, or otherwise, or to solicit others to institute any such actions or proceedings, against SISCO and SISCO's officers, directors, employees, agents, successors and assigns on account of Employer's use of the ACAWORKS website and software designed and operated by RiskRT.

The obligations of Employer under this Section 10 shall survive termination of this Agreement.

11. Waiver. If either Party shall fail to insist on strict compliance with this Agreement, or to exercise any right or remedy hereunder, neither Party shall be deemed to have waived any rights or remedies such party may have against the other Party. Both parties may demand full and complete compliance with all provisions of this Agreement.

12. Invalidity. If any provision of this Agreement shall be held to be invalid or in conflict with any applicable law, the other provisions of this Agreement shall remain in full force and effect.

13. Assignment. Neither this Agreement nor any rights, licenses, or obligations hereunder, may be assigned by Employer without the prior written consent SISCO.

14. Limitation of Liability. The provisions of this Agreement are for the sole benefit of Employer and SISCO, and neither Employer nor SISCO shall be liable under this Agreement to any other person for any loss, liability, damage, or expense. There are no third-party beneficiaries to this Agreement. Moreover, in no event shall either of the Parties be liable to the other for the payment of incidental damages, including but not limited to loss of data, loss of profits, lost goodwill, or the cost of cover arising from the use of ACAWORKS.

15. Governing Law. This Agreement shall be governed by, and its provisions shall be construed in accordance with the laws of the State of Iowa, without giving effect to principles of conflict of laws.

16. Ownership of Data. All data delivered by Employer to Benefit Coordinators Corporation (BCC), or which is created by either party for Employer shall be the exclusive property of Employer. Employer has full access to ACAWORKS system up to Midnight ET of termination date to obtain and download data.

17. Amendment. This Agreement may be amended only by written agreement of the Parties hereto.

18. The County Officer or employee with responsibility for administering this Agreement is Tameka Usher, Human Resource Department Director, Human Resource Department, or successor.

In WITNESS WHEREOF, ADMINSTRATOR and EMPLOYER have entered into this Agreement as of the Effective Date.

County of El Dorado

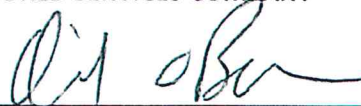
Signature: 
(Purchasing Agent)

Printed Name: Laura Schwartz

Title: Deputy CAO

Date: 11-17-2020

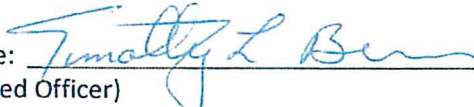
SELF INSURED SERVICES COMPANY

Signature: 
(Authorized Officer)

Printed Name: David Becker

Title: CEO

Date: 10-29-2020

Signature: 
(Authorized Officer)

Printed Name: Timothy Berns

Title: Secretary

Date: 10.29.20

EXHIBIT A
Fee Schedule

Employer will pay SISCO the following ACAWORKS access fees as described below:

- A. Set Up Fee. The set up fee is due upon execution of this Agreement and is non-refundable.
- B. PEPM (Per Employee Per Month) Fee. Employer will pay SISCO a set access fee calculated per employee, per month (hereinafter "PEPM"), the first installment of which is due and payable upon execution of this Agreement and then payable monthly, as invoiced, thereafter. Failure to pay any invoice when due shall constitute a material breach of this Agreement. Moreover, any amount past due over thirty (30) days shall accrue interest at 1.5% per month.

The PEPM Fee can't increase by more than three percent (3%) annually unless otherwise agreed to in writing by the Parties.

Fee Schedule	
One Time Set Up Fee ¹	\$3,095.00
Monthly PEPM Fee ^{2,3}	\$735.00 per Month
Annual IRS Electronic Filing Fee	\$520 (\$100 per add'l EIN)
Annual Paper Employee Statement Fee	\$1.50 per statement
Development & Programming ⁴	\$250 per hour; based on scope of project
Possible One Time Additional Set Up fees¹	
Employer EINs	\$100 per add'l over one, if applicable
User Login	\$50 per add'l over two, if requested
Payroll engines	\$250 per add'l engine over one, if applicable
Medical Insurance Plans	\$50 per add'l over one, if applicable
Bargaining Units	\$50 per add'l over one, if applicable
Employee Classification for Insurance Plans	\$50 per add'l over one, if applicable

¹ One Time Set Up Fees may increase based upon multiple payroll engines, insurance plans, employee classifications, and/or data file complexity.

² Ongoing fees include all full-time, part-time, variable, and seasonal employees.

³ A change in employee population of +/- 20% may result in the re-evaluation of monthly administration fees.

⁴ Employer will be charged on an hourly basis for services deemed 'non-standard' by the ACAWORKS team; such as custom development, design, and/or major enhancements to the existing Web Services that are requested to be performed on behalf of and for the benefit of the Employer.

RiskRT End User License Agreement

TERMS OF SERVICE FOR END USERS

THE SERVICE PROVIDERS (DEFINED BELOW) ARE WILLING TO GRANT YOU RIGHTS TO ESTABLISH AN ACCOUNT AND TO USE THE WEB SERVICES (DEFINED BELOW) ONLY UPON THE CONDITION THAT YOU ACCEPT ALL OF THE TERMS CONTAINED IN THIS END USER LICENSE AGREEMENT. PLEASE READ THE TERMS CAREFULLY. BY CLICKING ON "I ACCEPT" YOU WILL INDICATE YOUR AGREEMENT WITH THEM. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOUR ACCEPTANCE REPRESENTS THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS, IN WHICH CASE "YOU" OR "YOUR" SHALL REFER TO YOUR ENTITY. IF YOU DO NOT AGREE WITH THESE TERMS, OR IF YOU DO NOT HAVE THE AUTHORITY TO BIND YOUR ENTITY, THEN BACKEND SERVICE PROVIDER IS UNWILLING TO LICENSE THE SERVICE, AND YOU SHOULD SELECT THE "DECLINE" BUTTON.

END USER LICENSE AGREEMENT

Effective Date: April 6, 2015

v. 3 Revised August 1, 2016

1. Parties.

1.1 This is a three-party agreement by and among Self Insured Services Company, doing business as Benefit Coordinators Corporation, the party that offered and sold you the Web Services (the "Primary Service Provider"), and Pay Plus Benefits, Inc, the originator of the Web Services (the "Backend Service Provider"), and you.

1.2 Both the Primary Service Provider and the Backend Service Provider will be referred to collectively as the "Service Provider", and both will have full rights to enforce this Agreement. All references to "we", "us", and "our" shall be construed to mean the Service Provider.

1.3 If you are not acting on behalf of yourself as an individual, then "you", "your", and "yourself" means your company or organization or the person you are representing.

2. Agreement.

2.1 This Agreement between you and the Service Provider consists of this Terms of Service Agreement.

2.2 This Agreement between you and the Service Providers is also subject to their respective Privacy Policies. Privacy Policies are available upon request.

3. Modification of Agreement. We reserve the right to modify this Agreement at any time by posting an amended Agreement that is always accessible through links placed on one of the Web Services or login pages and/or by giving you prior notice of a modification. You should check this Agreement periodically for modifications by scrolling to the bottom of this page for a listing of material modifications and their effective dates. IF ANY MODIFICATION IS UNACCEPTABLE TO YOU, YOUR ONLY RECOURSE IS TO TERMINATE THIS AGREEMENT. YOUR CONTINUED USE OF THIS SITE FOLLOWING OUR POSTING OF AN AMENDED AGREEMENT OR PROVIDING YOU NOTICE OF A MODIFICATION WILL CONSTITUTE BINDING ACCEPTANCE.

4. Eligibility. Web Services are not available to minors under the age of 18 years of age and any user that has been suspended or removed from the system.

5. Web Services. "Web Services" consist of Web-based online services generated by RiskRT® a web-based hosted online service that collects, displays, stores and maintains data for purposes of Affordable Care Act recordkeeping and reporting, including all future publicly released versions that the Backend Services Provider provides through its website. We reserve the right to update and modify the Web Services from time to time.

6. Your Data. Subject to the terms and conditions of this Agreement, you grant to Backend Service Provider a limited, non-transferable license to use the data entered into the Web Services by you, your personnel, and/or your Third Party Agents (such data collectively, "Data") for the purpose of providing the Web Services. You represent and warrant that: (I) you own the Data posted on or through the Web Services or otherwise have the right to grant the license set forth in this Agreement; (II) the posting and use of Data on or through the Web Services does not violate the privacy rights, publicity rights, copyrights, contract rights, intellectual property rights,

or any other rights of any person; and (III) the posting of Data on the Web Services does not result in a breach of contract between you and a third party.

7. Use and Restrictions. Subject to the terms and conditions of this Agreement, you may access and use the Web Services only through the login protocols provided to you, but only for your own internal purposes. All rights not expressly granted in this Agreement are reserved by the Service Providers and their licensors.

7.1 You will be granted authorized login protocols for the Web Services, and you agree not to use the Web Services in excess of your authorized login protocols. You agree not to access (or attempt to access) the Web Services by any means other than through the login protocols we provide. You agree not to access (or attempt to access) the Web Services through any automated means (including use of scripts or web crawlers), and you agree to comply with the instructions set out in any robots.txt file present on the Web Services.

7.2 You are not authorized to (i) resell, sublicense, transfer, assign, or distribute the Web Services or content; (ii) modify or make derivative works based upon the Web Services or content; (iii) "frame" or "mirror" the Web Services or content on any other server or Internet-enabled device, or (iv) reverse engineer, decompile the Web Services or their enabling software for any purpose.

7.3 You are not authorized to use our Web Services or servers for the propagation, distribution, housing, processing, storing, or otherwise handling in any way lewd, obscene, or pornographic material, or any other material which we deem to be objectionable. The designation of any such materials is entirely at our sole discretion.

8. Inquiries Regarding Web Services. You agree to make all inquiries regarding the Web Services and technical support directly to the Backend Service Provider unless the Backend Service Provider requests you to contact the Primary Service Provider.

9. Transition from Primary Service Provider. If the Backend Service Provider notifies you of a transition from the Primary Service Provider, you may complete your current term of service (not to exceed 12 months) according to your current rates and terms. Following completion of your current term of service (not to exceed 12 months), you will have a period of thirty (30) days during which you may enter into an agreement with the Backend Service Provider for continuation of the Web Services under mutually agreeable terms and conditions. If a mutual agreement is not entered into during such thirty (30) day period, you will have an additional thirty (30) day period to transition to another service provider.

10. Ownership. The software and technology used by the Backend Service Provider to generate and provide the Web Services are protected by law, including, but not limited to, United States copyright law and international treaties. The copyrights and other intellectual property rights in this material are owned by the Backend Service Provider and/or others. Except for the limited rights granted herein, all other rights are reserved.

11. Termination. You agree that we may terminate your account and access to the Web Services for cause without prior notice, upon the occurrence of any one of the following: (i) any material breach of this Agreement, or (ii) requests by law enforcement or other government agencies. Termination of your account includes (i) removal of access to all Web Services, and (ii) deletion of your login protocols.

12. Effect of Termination. In the event of termination of your account for any reason, pursuant to the provisions of Section 6 hereof, Backend Service Provider's license to hold and use your data will end at midnight Pacific Time on the date of termination. All End User accounts will be disabled and all data files destroyed. Downloadable reports and a downloadable XML file if data has been transmitted to the IRS for prior calendar year reporting will be available through the Web Services through the date of termination.

13. Your Account-Related Responsibilities. You are responsible for maintaining the confidentiality of your login protocols, and any additional information that we may provide regarding accessing the Web Services. If you knowingly share your login protocols with another person who is not authorized to use the Web Services, this Agreement is subject to termination for cause. You agree to immediately notify us of any unauthorized use of your login protocols or any other breach of security.

14. Warranty Disclaimers. EXCEPT AS MAY BE PROVIDED IN ANY SEPARATE WRITTEN AGREEMENTS SIGNED BY THE PARTIES, THE WEB SERVICES ARE PROVIDED "AS-IS" AND PROVIDED WITH ALL FAULTS, AND NEITHER WE NOR ANY OF OUR LICENSORS MAKE ANY REPRESENTATION OR WARRANTY WITH RESPECT TO SUCH THE WEB SERVICES. THE SERVICE PROVIDER AND ITS LICENSORS SPECIFICALLY DISCLAIM, TO THE FULLEST EXTENT PERMITTED BY LAW, ANY AND ALL WARRANTIES, EXPRESS OR IMPLIED, RELATING TO THE WEB SERVICES, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, COMPLETENESS, TIMELINESS,

CORRECTNESS, NON-INFRINGEMENT, OR FITNESS FOR ANY PARTICULAR PURPOSE. THE SERVICE PROVIDERS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT THE WEB SERVICES: (A) WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, OR (C) WILL BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THESE DISCLAIMERS CONSTITUTE AN ESSENTIAL PART OF THIS AGREEMENT. IF IMPLIED WARRANTIES MAY NOT BE DISCLAIMED UNDER APPLICABLE LAW, THEN ANY IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE PERIOD REQUIRED BY APPLICABLE LAW. SOME STATES OR JURISDICTIONS DO NOT ALLOW LIMITATIONS ON HOW LONG AN IMPLIED WARRANTY MAY LAST, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO YOU.

15. Service Disclaimer. The Web Services are for general informational purposes only and should not be construed as, nor is it intended to provide, legal advice to be applied to any situation. Due to the changing nature of laws and regulations as they may pertain to the Affordable Care Act, many provisions are subject to good-faith interpretations which may ultimately change due to newly released regulations, guidance or other binding legal interpretations. The Web Service will be updated as soon as reasonably practicable for such changes. Service Providers shall not be liable for losses incurred due to such changes. Questions regarding specific issues and application of the Affordable Care Act rules and regulations should be addressed by Licensee's legal counsel. SERVICE PROVIDERS DO NOT provide any legal advice.

16. Limitation of Liability. IN NO EVENT SHALL THE SERVICE PROVIDER AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY DIRECT, INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THE WEB SERVICES, INCLUDING WITHOUT LIMITATION THE USE OR INABILITY TO USE THE WEB SERVICES, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE WEB SERVICES, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

16.1 Gross Negligence and Willful Misconduct. Notwithstanding the limitation of liability above, Backend Service Provider may be liable in the event that you incur damages as a result of the gross negligence or willful misconduct of Backend Service Provider, provided that the damage incurred (i) was the direct cause of the gross negligence or willful misconduct, and (ii) was the sole proximate cause of the gross negligence or willful misconduct.

16.2 Breach of this Agreement. Notwithstanding the limitation of liability above, Backend Service Provider may also be liable in the event that you incur damages as a result of a breach of this agreement by Backend Service Provider, provided that the damage incurred (i) was the direct cause of the breach of this agreement by Backend Service Provider, and (ii) was the sole proximate cause of the gross negligence or willful misconduct.

17. Indemnity. You shall indemnify, defend and hold Backend Service Provider harmless from and against any and all liabilities, claims, penalties, damages, forfeitures, suits, and the costs and expenses incident thereto (including the costs and expenses of defense, settlement and reasonable attorneys' fees), arising from or claimed to have arisen from the performance of Web Services, including any such liability, claims, damages, costs or expenses arising from or claimed to have arisen from actions Backend Service Provider performs in connection with Web Services to any Data (as defined herein) supplied by you or any instruction, request or representation of you, except to the extent such liability, claims, damages, costs or expense arise from the negligence or willful misconduct of Backend Service Provider, or any breach by Backend Service Provider of this Agreement. The provisions of this section shall survive the expiration or termination of this agreement.

18. Confidential Information. You agree that all non-public information that we provide regarding the Web Services, including without limitation, our pricing, marketing methodology, and business processes, is our proprietary confidential information. You agree to use this confidential information only for purposes of exercising your rights as our affiliate while in strict compliance with this Agreement, and you further agree not to use or disclose this confidential information for a period of three (3) years after termination as our affiliate.

19. Onward Transfer of Personal Information outside Your Country of Residence. Any personal information which we may collect on the Web Services will be stored and processed in our servers located only in the United

States. If you reside outside the United States, you consent to the transfer of personal information outside your country of residence to the United States.

20. **Export Control.** We provide Web Services and use software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. You acknowledge and agree that the Web Services shall not be used in, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to, countries to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Web Services, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

21. **Registration Data.** Registration is required for you to establish an account at the Web Services. You agree (i) to provide certain current, complete, and accurate information about you as prompted to do so by our online registration form ("Registration Data"), and (ii) to maintain and update such Registration Data as required to keep such information current, complete and accurate. You warrant that your Registration Data is and will continue to be accurate and current and that you are authorized to provide such Registration Data. You authorize us to verify your Registration Data at any time. If any Registration Data that you provide is untrue, inaccurate, not current or incomplete, we retain the right, in its sole discretion, to suspend or terminate rights to use your account. Solely to enable us to use information you supply us internally, so that we are not violating any rights you might have in that information, you grant to us a nonexclusive license to (i) convert such information into digital format such that it can be read, utilized and displayed by our computers or any other technology currently in existence or hereafter developed capable of utilizing digital information, and (ii) combine the information with other content provided by us in each case by any method or means or in any medium whether now known or hereafter devised.

22. **Monitoring.** We reserve the right to monitor your access and use of the Web Services without notification to you.

23. **Security.** You shall be solely responsible for acquiring and maintaining technology and procedures for maintaining the security of your link to the Internet. As part of the Web Services, the Service Provider shall implement reasonable and appropriate security procedures consistent with prevailing industry standards to protect data from unauthorized access by physical and electronic intrusion; provided, however, unless resulting from the failure of Service Provider to perform the forgoing obligations, the parties agree that Service Provider shall not, under any circumstances, be held responsible or liable for situations (i) where data or transmissions are accessed by third parties through illegal or illicit means, or (ii) where the data or transmissions are accessed through the exploitation of security gaps, weaknesses, or flaws unknown to Service Provider at the time. Service Provider will promptly report to you any unauthorized access to your data promptly upon discovery by Service Provider, and Service Provider will use diligent efforts to promptly remedy any breach of security that permitted such unauthorized access. In the event notification to persons included in your data is required, you shall be solely responsible for any and all such notifications at your expense.

24. **Notices.** We may give notice to you by means of (i) a general notice in your account information, (ii) by electronic mail to your e-mail address on record in your Registration Data, or (iii) by written communication sent by first class mail or pre-paid post to your address on record in your Registration Data. Such notice shall be deemed to have been given upon the expiration of forty-eight (48) hours after mailing or posting (if sent by first class mail or pre-paid post) or twelve (12) hours after sending (if sent by email). You may give notice to the Primary Service Provider (such notice shall be deemed given when received) at any time by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail as follows: Benefit Coordinators Corporation, 10805 Rancho Bernardo Rd, Suite 130, San Diego, CA 92127, in either case, addressed to the attention of "President of the Company". Notices will not be effective unless sent in accordance with the above requirements.

25. Arbitration. Except for actions to protect intellectual property rights and to enforce an arbitrator's decision hereunder, all disputes, controversies, or claims arising out of or relating to this Agreement or a breach thereof shall be submitted to and finally resolved by arbitration under the rules of the American Arbitration Association ("AAA") then in effect. There shall be one arbitrator, and such arbitrator shall be chosen by mutual agreement of the parties in accordance with AAA rules. The arbitration shall be conducted by telephone or online. The arbitrator shall apply the laws of the State of Washington to all issues in dispute. The controversy or claim shall be arbitrated on an individual basis, and shall not be consolidated in any arbitration with any claim or controversy of any other party. The findings of the arbitrator shall be final and binding on the parties, and may be entered in any court of competent jurisdiction for enforcement. Enforcements of any award or judgment shall be governed by the Federal Arbitration Act. Should either party file an action contrary to this provision, the other party may recover attorney's fees and costs up to \$1000.00.

26. Applicable Law; Jurisdiction and Venue. This Agreement shall be construed under the laws of the State of Washington, without regard to its principles of conflicts of law. The courts of Benton County in the State of Washington, USA and the nearest U.S. District Court in the State of Washington shall be the exclusive jurisdiction and venue for all legal proceedings that are not arbitrated under this Agreement.

27. Severability. If any provision of this Agreement is declared invalid or unenforceable, such provision shall be deemed modified to the extent necessary and possible to render it valid and enforceable. In any event, the unenforceability or invalidity of any provision shall not affect any other provision of this Agreement, and this Agreement shall continue in full force and effect, and be construed and enforced, as if such provision had not been included, or had been modified as above provided, as the case may be.

28. Force Majeure. We shall not be liable for damages for any delay or failure of delivery arising out of causes beyond our reasonable control and without our fault or negligence, including, but not limited to, Acts of God, acts of civil or military authority, fires, riots, wars, embargoes, Internet disruptions, hacker attacks, or communications failures.

29. Survival. Those clauses the survival of which is necessary for the interpretation or enforcement of this Agreement shall continue in full force and effect in accordance with their terms notwithstanding the expiration or termination hereof, such clauses to include, without limitation, the following: Warranty Disclaimers, Limitation of Liability, Confidential Information, Security, Notices, Arbitration, Applicable Law, Jurisdiction and Venue, Severability, Force Majeure, and Miscellaneous.

30. U.S. Government End-Users. We provide the Web Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Web Services include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data - Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with us to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement. Unpublished-rights reserved under the copyright laws of the United States.

31. Miscellaneous. This Agreement constitutes the entire understanding of the parties with respect to the subject matter of this Agreement and merges all prior communications, understandings, and agreements. This Agreement may be modified only by a written agreement signed by the parties. The failure of either party to enforce at any time any of the provisions hereof shall not be a waiver of such provision, or any other provision, or of the right of such party thereafter to enforce any provision hereof. The application the United Nations Convention of Contracts for the International Sale of Goods is expressly excluded. This license is written in English, and English is its controlling language.