

PENDING APPROVAL

OKLAHOMA COUNTY BOARD OF COUNTY COMMISSIONERS

AGENDA ITEM REQUEST SHEET

FOR THE 06/30/2010 AGENDA

DEPARTMENT: County Clerk's Benefits Department REQUESTED BY: Jon Wilkerson for Carolyn Caudill, County Clerk

REQUISITION NO.: 11008057 REQUISITION SHEET ATTACHED: YES

NAME OF FUNDS: EMPLOYEE BENEFITS

FUND NUMBERS: 4010/54507/2011

DOES THE AGENDA ITEM CONTAIN PRIVACY-PROTECTED OR SECURITY INFORMATION? NO

AGENDA ITEMS CONTAINING PRIVACY-PROTECTED OR SECURITY INFORMATION WILL NOT BE HYPERLINKED TO THE AGENDA.

NUMBER OF ORIGINAL DOCUMENTS TO BE RETURNED TO YOUR DEPARTMENT: 1

AGENDA ITEM READS AS FOLLOWS: : Discussion and possible action to approve the Cafeteria Plan Service Agreement including Exhibits A, B and C between Mutual Assurance Administrators, Inc. and the County of Oklahoma County, effective July 1, 2010. Oklahoma County will pay Administration Fee of \$4.00 per month, per participant who elects coverage under the Medical Reimbursement Plan or the Dependent Care Assistance Plan and \$7.00 per participant per month for those participants who elect coverage under both the Medical Reimbursement Plan and the Dependent Care Assistance Plan with a minimum monthly Administrative Fee of \$250.00. Requisition No. 11008057 has been issued to Mutual Assurance Administrators, Inc. in the amount of \$6,000.00 from Employee Benefits Fund 4010 contingent upon encumbrance of funds. This item was approved at the June 24th, 2010 Budget Board of Oklahoma County. Requested by Carolyn Caudill, County Clerk and Secretary to the Budget Board of Oklahoma County and approved as to form and legality by John Jacobsen, Asst. District Attorney.

APPROVED BY DA
(If Applicable)

APPROVED BY ENGINEER
(If Applicable)

APPROVED BY PURCHASING
(If Applicable)

ASSISTANT DISTRICT ATTORNEY

COUNTY ENGINEER

PURCHASING AGENT

Please initial that document has been reviewed for privacy-protected or security information

DISTRICT ATTORNEY: _____ YES _____ N/A

COUNTY CLERK: RC YES _____ N/A

Indicate any privacy-protected information that exists _____

(NOTE: THE CHAIRMAN/CHIEF DEPUTY MUST APPROVE ALL EMERGENCY REQUESTS FOR ANY ITEM SUBMITTED AFTER THE DEADLINE)

DATE OF REQUEST: _____ APPROVED BY: _____

CHAIRMAN

PENDING APPROVAL

SERVICE AGREEMENT

**THE COUNTY OF OKLAHOMA COUNTY
CAFETERIA PLAN**

and

MUTUAL ASSURANCE ADMINISTRATORS, INC.

PENDING APPROVAL

CAFETERIA PLAN SERVICE AGREEMENT

This Cafeteria Plan Service Agreement (the "Agreement") is made as of the 1st day of July, 2010, by and through the **Board of County Commissioners of Oklahoma County**, State of Oklahoma, hereinafter "Employer," and **Mutual Assurance Administrators, Inc.**, hereinafter "Mutual."

WITNESSETH

WHEREAS, Employer has established certain employee benefit programs, including a health flexible spending arrangement (Health FSA) pursuant to IRS Code § 105 and/or a dependent care assistance program (DCAP) pursuant to IRS Code § 129. Such programs are offered under an IRS Code § 125 Cafeteria Plan, established by the Employer entitled "County of Oklahoma County Cafeteria Plan" (the "Plan"), and

WHEREAS, Mutual is a third party administrator specializing in assisting in the administration of such plans, and

WHEREAS, it is the Employer's desire that Mutual assist it in accepting and processing claims for benefits under the Plan by providing certain non-discretionary, ministerial and administrative services with respect to the Plan under the contractual supervision of the Employer, and Mutual is willing to provide such services, subject to the terms and conditions hereof.

NOW, THEREFORE, in consideration of the Mutual promises and covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereto agree as follows:

ARTICLE I PROVISIONS OF PLAN

Section 1: The provisions of the County of Oklahoma County Cafeteria Plan, as may be amended from time to time, in so far as applicable to the performance of this Agreement, are incorporated herein by reference and are expressly binding on the parties hereto.

Section 2: Employer represents that it has the exclusive authority to adopt, amend or terminate the Plan and to enter into this Agreement and that the duties contemplated in this Agreement are contained, generally in the Administration Section of the Plan. Employer further represents that the Plan specifically authorizes the delegation by the Employer, to the extent permitted by law, of the responsibilities contemplated by this Agreement.

Section 3: In the event that the Plan is amended, which rights are expressly reserved to the respective parties thereto, in such a manner as to effect the performance of the obligations of the parties undertaken by this Agreement, then the parties agree that said Amendments shall likewise be binding on the parties hereto to the same extent as if said Amendments were initially incorporated herein.

ARTICLE II TERM AND TERMINATION

Section 1: This Agreement shall commence on July 1, 2010, and shall continue unless terminated by the parties as specified herein.

Section 2: This Agreement may be terminated at any time by the written Agreement of the parties hereto.

Section 3: This Agreement may be terminated by 30 day written Notice of Intention to Terminate given to the other party. The parties agree that said Notice must be in writing and mailed to the last known address of the

PENDING APPROVAL

other party with sufficient postage attached, and deposited in the United States Mails. For the purpose of determining the 30 day period, the date of the mailing shall not be counted. If the 30th day falls on a Saturday, Sunday or Legal Holiday, then the next business day shall be determined to be the 30th day.

Section 4: In the event of nonpayment of compensation of ten (10) days or more, Mutual may terminate this Agreement after giving thirty (30) days written notice to terminate to Employer. Said termination will not relieve Employer's obligation to pay for services rendered on a prorata basis through the termination date.

Section 5: This Agreement shall automatically terminate as of the earliest of the following: (a) the effective date of any legislation which makes the benefit programs offered by the Employer and/or this Agreement illegal; or (b) the termination date of the Plan, subject to any agreement between Employer and TPA regarding payment of benefits after the Plan is terminated.

ARTICLE III EFFECTS OF TERMINATION

Section 1: Upon termination, however effected, Mutual shall turn over to the Employer all records, memoranda, supplies, and computerized data relating to the Employer; but provided, that Mutual shall have the right to make copies of all documents and records which it deems necessary to the protection of its interest. The confidentiality of such records shall be maintained by Mutual and the information therein shall not be divulged or disclosed or made available to persons other than the Employer without the prior written approval of the Employer or an order from a court of competent jurisdiction. Said records as set out above shall be transferred to the employer within five (5) working days following termination at no cost to the Employer. In addition, upon request, Mutual shall provide to the Employer, in Mutual's standard format, such claim and eligibility data as is then maintained in the Plan files by Mutual. As of the date of termination, all other duties of Mutual under this Agreement shall terminate.

Section 2: If the Plan is terminated, Employer and Mutual may agree in writing that this Agreement shall continue for the purpose of payment of any Plan benefit, expense or claims incurred prior to the date of the termination of the Plan. Further, if this Agreement is terminated while the Plan continues in effect, Employer and Mutual may agree in writing that this Agreement shall continue for the purpose of payment of any claims where such requests for reimbursement have been received by Mutual before the date of such termination.

Section 3: Notwithstanding the termination of this Agreement, any financial obligations or responsibilities of the Employer in regard to payment of benefits or related direct expenses on behalf of eligible participants or their dependents or payment of Mutual's invoices shall remain the obligation and responsibility of the Employer until satisfied.

Section 4: Termination of this Agreement shall not terminate the rights or obligations of either party arising out of a period prior to such termination. Articles VII, VIII, IX, X and XIII of this Agreement shall survive its termination.

ARTICLE IV MUTUAL'S DUTIES AND RESPONSIBILITIES

Section 1: Mutual hereby agrees to perform the services for the benefit of Employer as described in the attached Exhibit A. The parties hereto agree that the scope of Mutual's duties and responsibilities may be changed or modified from time to time by attaching hereto a Supplemental Exhibit A describing in detail the new duties and responsibilities of Mutual. Any Supplemental Exhibit A's shall be dated and the parties approval endorsed thereon. In performing the services provided under this Agreement, Mutual may rely without qualification, investigation or inquiry on the information provided by Employer.

PENDING APPROVAL

Section 2: The parties agree that Employer has delegated, and Mutual agrees to perform, only such duties and responsibilities as are specifically described on the attached Exhibit A, or on a Supplemental Exhibit A, as the case may be.

Section 3: All other Employer's duties and responsibilities, as specifically required to be performed by the Employer according to the terms of the Plan, shall be, and are required to be, performed by the Employer. The Employer has sole and final authority to control and manage the operation of the Plan. Mutual is and shall remain an independent contractor with respect to the services to be performed hereunder and shall not for any purpose be deemed an employee of Employer, nor shall Mutual and Employer be deemed partners, engaged in a joint venture or governed by any legal relationship other than that of independent contractor. Mutual does not assume any responsibility for the design of the Plan, the adequacy of its funding, or act as a guarantor with respect to any benefits payable under the Plan. Mutual does not assume any financial risk or obligation with respect to claims for benefits payable by Employer under the Plan. Nothing herein shall be deemed to construe Mutual as a party to the Plan or to confer upon Mutual any authority or control respecting management of the Plan, authority or responsibility in connection with administration of the Plan, or responsibility for the terms or validity of the Plan. Nothing in this Agreement shall be deemed to impose upon Mutual any obligation to any employee of Employer or any person who is participating in the Plan ("Plan Participant").

Section 4: The parties agree that the services of Mutual with respect to the administration of the Plan are clerical and ministerial in nature and are to be performed under the supervision of the Employer which shall exercise all ultimate discretion under the Plan. The parties hereby agree that any recommendations by Mutual with respect to the approval or denial of claims shall be based upon the Plan. The Employer shall exercise all ultimate discretion for the final decisions in accepting or not accepting any recommendation made by Mutual. Mutual will exercise absolutely no authority, or discretion, with respect to supervision or operation of the Plan.

Section 5: Mutual shall maintain licensure under any and all applicable state laws that pertain to the services it agrees to perform hereunder. Mutual agrees to use reasonable care and due diligence in the exercise of its powers and the performance of its duties under this Agreement. If Mutual makes any payment under this Agreement to an ineligible person, or if more than the correct amount is paid, Mutual shall make a reasonable effort to recover any payment made to or on behalf of an ineligible person or any overpayment. However, Mutual shall not be required to initiate legal action to recover such payment and Mutual shall not be liable for such payment, unless it would otherwise be liable under another provision of this Agreement.

Section 6: To the extent discretion must be used in making any decision regarding a claim or an appeal of a claim denial, Mutual shall refer the claim or appeal to the Employer, who shall have the sole authority to make discretionary decisions with respect to the Plan and who shall communicate such decisions to Mutual and Plan participants, as appropriate. To the extent required by applicable law, any appeal required to be reviewed by an entity other than Mutual (whether or not discretion is involved in making a decision regarding such appeal) shall be referred to the Employer for handling. This provision may be disclosed by Mutual in any communication, whether oral or written, including, without limitation, periodic statements to the Employer, the Employer or the Plan participants.

ARTICLE V EMPLOYER'S DUTIES AND RESPONSIBILITIES

Section 1: Employer is responsible for the Plan's compliance with all applicable laws and regulations and shall have final authority with respect to the approval of all Plan Documents, including the initial documentation and any amendments thereto. Employer acknowledges that Mutual is not providing tax or legal advice and that Employer shall be solely responsible for determining the legal and tax status of the Plan.

Section 2: Employer shall have the responsibility to provide Mutual with prior notice regarding any changes in its procedures or amendments to the Plan Documents in order to allow Mutual sufficient time to communicate such changes or amendments internally and change administrative processes, if necessary. Mutual shall have no obligation to act in accordance with any amendment to the Plan unless such amendment has been

duly adopted by the Employer, and furnished to Mutual as provided herein.

Section 3: Employer shall have the responsibility to provide funds for payment of benefit claims and any directly related service expenses under the Plan. Mutual shall have no responsibility, risk, liability or obligation for the funding of the Plan. The responsibility and obligation for funding the Plan shall be solely and totally the responsibility of the Employer and/or participants as provided in the Plan while the Plan is effective and for all extended liabilities of the Plan.

Section 4: The Employer shall have the responsibility to make full payment of Mutual's invoices on or before the specified due date.

Section 5: The Employer shall furnish the information requested by Mutual as determined necessary to perform Mutual's services hereunder, including information concerning the Plan and the eligibility of individuals to participate in and receive Plan benefits. Such information shall be provided to Mutual in the time and in the manner agreed to by Employer and Mutual. Mutual shall have no responsibility with regard to benefits paid in error due to Employer's failure to timely update such information. From time to time, but no more frequently than monthly, Mutual shall provide Employer with updated reports summarizing the eligibility data provided by Employer ("Eligibility Reports") by electronic medium unless otherwise agreed by the parties. The Eligibility Reports shall specify the effective date for each Participant who is added to or terminated from participation in the Plan. Employer shall be responsible for ensuring the accuracy of its Eligibility Reports, and bears the burden of proof in any dispute with Mutual relating to the accuracy of any Eligibility Report. Mutual shall have no liability to Employer or any Participant as a consequence of an inaccurate Eligibility Report, and Mutual shall not have any obligation to credit Employer for any claims expenses or administrative fees incurred or paid to Mutual as a consequence of Employer failing to review Eligibility Reports for accuracy. Mutual shall assume that all such information is complete and accurate and is under no duty to question the completeness or accuracy of such information. Such Eligibility Reports shall be considered PHI and subject to the privacy rules under HIPAA and Exhibit "C" of this Agreement.

Section 6: Employer shall, if required by law or regulation, notify each Participant and provide each Participant with an opportunity to opt out (if required) or obtain from each Participant such written authorization for release of any personal financial records and medical records in accordance with applicable state and / or federal law to permit Employer and/or Mutual to perform their obligations under this Agreement.

Section 7: Employer shall provide Mutual with notice of the privacy practices that Employer produces in accordance with HIPAA, as well as any subsequent changes to such notices. Employer shall provide Mutual with any changes to, or revocation of, permission by a Participant to use or disclose PHI if such changes affect Mutual's permitted or required uses or disclosures. Employer shall notify Mutual of any restriction to the use or disclosure of PHI that Employer has agreed to in accordance with the privacy rules under HIPAA. Employer shall not request Mutual to use or disclose PHI in any manner that would not be permissible under the privacy rules under HIPAA if done by Employer, except that Mutual may use or disclose PHI for purposes of data aggregation and the management and administrative activities of Mutual, as may be provided in this Agreement.

ARTICLE VI COMPENSATION

Section 1: The Employer hereby agrees to pay to Mutual the compensation set forth in Exhibit B attached hereto and made a part hereof. Furthermore, the parties agree that the terms of said compensation may be changed or modified from time to time as the parties may agree. In the event the parties agree to change or modify the terms of compensation to be paid to Mutual, then in such event, the parties agree to attach a Supplemental Exhibit B to this Agreement showing the effective date of the change or modification and the parties' approval endorsed thereon.

Section 2: The administration fee and other compensation as provided in the attached Exhibit B, shall be paid by the Employer not later than the twentieth (20th) day of the calendar month.

PENDING APPROVAL

Section 3: The compensation provided for by this Agreement is for the services of Mutual and does not include the direct expenses of Mutual incurred on behalf of the Employer.

ARTICLE VII INDEMNIFICATION

Mutual agrees to indemnify and hold the Employer harmless against any and all loss, damage, expense and claims made by participants or beneficiaries of the Plan arising out of the dishonest, fraudulent, grossly negligent or criminal acts of Mutual's agents or employees. In addition, Mutual further agrees to maintain during the contract period general liability insurance and errors and omissions insurance which provides for payment on behalf of Mutual for any negligent acts resulting from its performance of the duties and responsibilities outlined in Exhibit A. The liability insurance policy must be written with a company licensed to do business in the State of Oklahoma in sufficient amounts to provide the statutory limits of liability under the Oklahoma Governmental Tort Claims Act 51 O.S. § 151 et. seq. (\$25,000.00 for loss of property, \$175,000.00 for any other loss, and one million dollars for any number of claims arising out of a single occurrence). Mutual agrees to maintain a fidelity bond covering employee dishonesty, forgery, alteration, theft, and computer fraud. Mutual shall provide a copy of its insurance policy certificate and bond document to Oklahoma County upon request.

ARTICLE VIII PROPRIETARY INFORMATION

The Employer acknowledges that Mutual's proprietary computer software, records, reports, forms, documents and business methods remain the sole property of Mutual and may not be duplicated, used or disclosed in any manner by the Employer.

ARTICLE IX OWNERSHIP OF BOOKS AND RECORDS/ACCESS BY EMPLOYER

Section 1: Mutual acknowledges that all records and files maintained by it with regard to the Plan are the property of the Employer. In the event the Employer or its employees accesses the Plan's records or files, whether to update eligibility information, process claims or perform some other function, the Employer acknowledges and agrees that Mutual shall have no responsibility or liability in connection with any actions taken by it or its employees or the results thereof.

Section 2: The parties understand and agree that although Oklahoma acknowledges the right to certain records being open to public inspection, certain personnel and confidential records may be entitled to exemption under Oklahoma's Open Records Act, or other state and federal confidentiality laws.

Section 3: The parties understand and agree that Employer reserves the right to hire an outside auditor to audit services and practices of Mutual as it pertains to the Employer, at the Employer's expense. Employer agrees to provide Mutual with thirty (30) days written notice prior to any such audit.

ARTICLE X SEVERABILITY

If any part of this Agreement is, at any time, declared invalid by a court of competent jurisdiction, such part of the Agreement shall not affect the wording of any remaining portions, which remaining portions shall remain in effect and force as if the Agreement had been executed with the invalid portion eliminated.

PENDING APPROVAL

ARTICLE XI ENTIRE AGREEMENT; AMENDMENT

This Agreement, together with all Exhibits hereto, represents the entire agreement between the parties relating to the subject matter hereof. This Agreement shall not be subject to any amendment, modification or alteration except as may be agreed to at any time in writing by the parties; provided, however, that if this Agreement or any portion shall be determined to be in violation of any statute, rule and/or regulation under state or federal law, the parties agree to amend this Agreement to conform to such statute, rule and/or regulation unless it is clearly unreasonable to do so, or such amendment would substantially change the terms of this Agreement to impose new and/or different obligations and rights on the parties.

ARTICLE XII BINDING EFFECT

The terms of this Agreement shall be binding on the parties hereto and their heirs, devisees, legatees, personal representatives, successors, and permitted assigns.

ARTICLE XIII APPLICABLE LAW

The law of the State of Oklahoma shall apply in the interpretation of the provisions of this Agreement.

ARTICLE XIV ASSIGNMENT

Neither party may assign its rights or obligations hereunder without the prior written consent of the other, which consent shall not be unreasonably withheld, except that Mutual may assign this Agreement to a purchaser of substantially all of its assets without the consent of the Employer.

ARTICLE XV NOTICES

Section 1: Except as otherwise set forth in this Agreement, all notices hereunder shall be in writing and delivered by hand, by certified mail, return receipt requested, by overnight delivery, or by other delivery methods as may be agreed upon by the parties from time to time. Notices shall be addressed as follows, or at such other addresses as the parties may from time to time designate in writing:

If to Mutual, to:

3121 Quail Springs Parkway
Oklahoma City, OK 73134
Fax: 405.607.2626
Email: toddarcher@maa-tpa.com
Attention: Todd E. Archer, President

If to Employer, to:

Chairman, Board of County Commissioners
Oklahoma County Courthouse, Room 101
320 Robert K. Kerr Ave.
Oklahoma City, OK 73102

Section 2: All correspondence and reports pursuant to this contract shall be addressed to: The Chairman of the Board of County Commissioners, Oklahoma County Courthouse, Room 101, 320 Robert K. Kerr Ave., Oklahoma City, Oklahoma, 73102 with the exception of the check register which shall be sent to The County Treasurer and copies of the check register to the Chairman of the Board of County Commissioners. Copies of all reports shall be provided to the County Clerk's office.

PENDING APPROVAL

ARTICLE XVI NO THIRD PARTY BENEFICIARIES

There shall be no third party beneficiaries to this Agreement, and no individual or entity who is not a party to this Agreement shall have any rights in connection with a breach or violation of this Agreement.

ARTICLE XVII HIPAA BUSINESS ASSOCIATE AGREEMENT

The parties agree that the terms of Exhibit C hereto, the Business Associate Agreement, are incorporated herein and made a part hereof.

ARTICLE XVIII FORCE MAJEURE

Neither party shall be liable to the other for any failure to satisfy an obligation, representation or warranty under this Agreement (except for the Employer's obligation to fund claims and/or make any other payments due hereunder) due to any cause beyond its reasonable control including, but not limited to, inclement weather, Acts of God, war, riot, malicious acts of damage, civil commotion, strike, lockout, industrial dispute, power failure or fire, or unforeseeable acts of third parties. If such condition prevents a party's performance for a continuous period of ninety (90) days, the other party may terminate this Agreement by properly delivered written notice.

ARTICLE XIX SUBSEQUENT DOCUMENTS

The parties agree that each shall timely execute any further documents that will be reasonably necessary to effect any term, condition, warranty or other part or aspect of this Agreement.

ARTICLE XX WAIVER

No waiver of any term or provision of this Agreement, nor consent to any misperformance under or breach of this Agreement, shall be binding against either of the parties unless the party to be bound properly delivers a writing, signed by a duly authorized representative, expressly stating what has been waived or consented to. There shall be no implied waivers or consents. No waiver respecting an expressly identified term or provision, or consent to expressly identified act or omission, will have any effect on the balance of this Agreement, or the balance of a party's conduct.

Dated effective the 1st day of July, 2010.

PENDING APPROVAL

APPROVED AND EXECUTED by Mutal effective July 1, 2010.

MUTUAL ASSURANCE ADMINISTRATORS, INC.,
an Oklahoma corporation

By: 
Todd Archer, President / Chief Executive Officer

APPROVED AND ADOPTED by the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA
COUNTY this _____ day of _____, 2010, to be effective July 1, 2010.

BOARD OF COUNTY COMMISSIONERS
OF OKLAHOMA COUNTY

By: _____
Chairman

By: _____
Member

By: _____
Member

ATTEST:

County Clerk, Oklahoma County

APPROVED as to form and legality this 15 day of June, 2010.

By: 
Assistant District Attorney

PENDING APPROVAL

SERVICE AGREEMENT EXHIBIT A MUTUAL SERVICES

Mutual hereby agrees to perform the following services for the benefit of Employer, to wit:

1. prepare checks for reimbursement to employees of qualified expenses.
2. respond to questions from the Employer for information necessary to administer the Plan.
3. keep accurate and detailed accounts of all disbursements and expenditures and all receipts of contribution charges. Upon reasonable notice, these accounts and records shall be open to inspection and audit at all reasonable times by the Employer.
4. advise the Employer, monthly, of the adjustments to accounts of Plan Participants.
5. report to the Employer and Plan participants on a timely basis the status of individual contributions and disbursements.
6. use its best efforts and good faith in the performance of the foregoing duties in order to aid the Employer in complying with the provisions of the Internal Revenue Code and the rules and regulations thereunder.

This agreement may be modified, changed or cancelled by subsequent written Exhibit or agreement.

PENDING APPROVAL

SERVICE AGREEMENT EXHIBIT B COMPENSATION OF MUTUAL

Employer agrees to pay Mutual as compensation and reimbursement for the duration of this Agreement as follows:

1. Four and 00/100 Dollars (\$4.00) per participant per month for those participants who elect coverage under the Medical Reimbursement Plan or the Dependent Care Assistance Plan.
2. Seven and 00/100 Dollars (\$7.00) per participant per month for those participants who elect coverage under both the Medical Reimbursement Plan and the Dependent Care Assistance Plan.
3. Two Hundred Fifty and 00/100 Dollars (\$250.00) minimum monthly administration fee.

This agreement may be modified, changed or cancelled by subsequent written Exhibit or agreement.

EXHIBIT C BUSINESS ASSOCIATE AGREEMENT

1. PREAMBLE

County of Oklahoma County ("Covered Entity") and Mutual Assurance Administrators, Inc. ("Business Associate") (jointly "the Parties") wish to modify the Administrative Services Agreement ("Agreement") to incorporate the terms of this Addendum to comply with the requirements of: (i) the implementing regulations at 45 C.F.R Parts 160, 162, and 164 for the Administrative Simplification provisions of Title II, Subtitle F of the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") (i.e., the HIPAA Privacy Rule, the HIPAA Security Standards, and the HIPAA Standards for Electronic Transactions (collectively referred to in this Addendum as "the HIPAA Regulations")), and (ii) the requirements of the Health Information Technology for Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009 (the "HITECH Act") that are applicable to business associates, along with any guidance and/or regulations issued by the U.S. Department of Health and Human Services ("DHHS") as of September 2009. Covered Entity and Business Associate agree to incorporate into this Addendum any regulations issued by DHHS with respect to the HITECH Act that relate to the obligations of business associates and that are required to be (or should be) reflected in a business associate agreement. Business Associate recognizes and agrees that it is obligated by law to meet the applicable provisions of the HITECH Act.

2. DEFINITIONS

(a) "**Electronic PHP**" shall mean protected health information that is transmitted or maintained in any electronic media, as this term is defined in 45 C.F.R. § 160.103.

(b) "**Limited Data Set**" shall mean protected health information that excludes the following direct identifiers of the individual or of relatives, employers, or household members of the individual:

- (i) Names;
- (ii) Postal address information, other than town or city, State, and zip code;
- (iii) Telephone numbers;
- (iv) Fax numbers;
- (v) Electronic mail addresses;
- (vi) Social security numbers;
- (vii) Medical record numbers;
- (viii) Health plan beneficiary numbers;
- (ix) Account numbers;
- (x) Certificate/license numbers;
- (xi) Vehicle identifiers and serial numbers, including license plate numbers
- (xii) Device identifiers and serial numbers;
- (xiii) Web Universal Resource Locators (URLs);
- (xiv) Internet Protocol (IP) address numbers;
- (xv) Biometric identifiers, including finger and voice prints; and
- (xvi) Full face photographic images and any comparable images.

(c) "**Protected Health Information**" or "**PHI**" shall mean information created or received by a health care provider, health plan, employer, or health care clearinghouse, that: (i) relates to the past, present, or future physical or mental health or condition of an individual, provision of health care to the individual, or the past, present, or future payment for provision of health care to the individual; (ii) identifies the individual, or with respect to which there is a reasonable basis to believe the information can be used to identify the individual; and (iii) is transmitted or maintained in an electronic medium, or in any other form or medium. The use of the term "Protected Health Information" or "PHI" in this Addendum shall mean both Electronic PHI and non-electronic PHI, unless another meaning is clearly specified.

(d) "**Security Incident**" shall mean the attempted or successful unauthorized access, use, disclosure, modification, or destruction of information or interference with system operations in an information system.

PENDING APPROVAL

(e) All other terms used in this Addendum shall have the meanings set forth in the applicable definitions under the HIPAA Regulations and/or the security and privacy provisions of the HITECH Act that are applicable to business associates along with any regulations issued by the DHHS.

3. GENERAL TERMS

(a) In the event of an inconsistency between the provisions of this Addendum and a mandatory term of the HIPAA Regulations (as these terms may be expressly amended from time to time by the DHHS or as a result of interpretations by DHHS, a court, or another regulatory agency with authority over the Parties), the interpretation of DHHS, such court or regulatory agency shall prevail. In the event of a conflict among the interpretations of these entities, the conflict shall be resolved in accordance with rules of precedence.

(b) Where provisions of this Addendum are different from those mandated by the HIPAA Regulations or the HITECH Act, but are nonetheless permitted by the Regulations or the Act, the provisions of this Addendum shall control.

(c) Except as expressly provided in the HIPAA Regulations, the HITECH Act, or this Addendum, this Addendum does not create any rights in third parties.

4. SPECIFIC REQUIREMENTS

(a) Privacy of Protected Health Information

(i) **Permitted Uses and Disclosures of PHI.** Business Associate agrees to create, receive, use, or disclose PHI only in a manner consistent with this Addendum or the HIPAA Privacy Rule and only in connection with providing services to Covered Entity identified in the Agreement. Accordingly, in providing services to or for the Covered Entity, Business Associate, for example, will be permitted to use and disclose PHI for "treatment, payment, and health care operations" in accordance with the HIPAA Privacy Rule.

(1) Business Associate shall report to Covered Entity any use or disclosure of PHI that is not provided for in this Addendum.

(2) Business Associate shall maintain safeguards as necessary to ensure that PHI is not used or disclosed except as provided for by this Addendum.

(ii) **Business Associate Obligations.** As permitted by the HIPAA Privacy Rule, Business Associate also may use or disclose PHI received by the Business Associate in its capacity as a Business Associate to the Covered Entity for Business Associate's own operations if:

(1) the use relates to: (1) the proper management and administration of the Business Associate or to carry out legal responsibilities of the Business Associate, or (2) data aggregation services relating to the health care operations of the Covered Entity; or

(2) the disclosure of information received in such capacity will be made in connection with a function, responsibility, or services to be performed by the Business Associate, and such disclosure is required by law or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will be held confidential and the person agrees to notify the Business Associate of any breaches of confidentiality.

(iii) **Minimum Necessary Standard and Creation of Limited Data Set.** Business Associate's use, disclosure, or request of PHI shall utilize a Limited Data Set if practicable. Otherwise, in performing the functions and activities as specified in the Agreement and this Addendum, Business Associate agrees to use, disclose, or request only the minimum necessary PHI to accomplish the intended purpose of the use, disclosure, or request.

PENDING APPROVAL

(iv) Access. In accordance with 45 C.F.R. § 164.524 of the HIPAA Privacy Rule and, where applicable, in accordance with the HITECH Act, Business Associate will make available to those individuals who are subjects of PHI, their PHI in Designated Record Sets by providing the PHI to Covered Entity (who then will share the PHI with the individual), by forwarding the PHI directly to the individual, or by making the PHI available to such individual at a reasonable time and at a reasonable location. Business Associate shall make such information available in an electronic format where directed by the Covered Entity.

(v) Disclosure Accounting.

Business Associate shall make available the information necessary to provide an accounting of disclosures of PHI as provided for in 45 C.F.R. § 164.528 of the HIPAA Privacy Rule, and where so required by the HITECH Act and/or any accompanying regulations, Business Associate shall make such information available directly to the individual. Business Associate further shall provide any additional information to the extent required by the HITECH Act and any accompanying regulations.

Business Associate is not required to record disclosure information or otherwise account for disclosures of PHI that this Addendum or the Agreement in writing permits or requires: (i) for the purpose of payment activities or health care operations (except where such recording or accounting is required by the HITECH Act, and as of the effective dates for this provision of the HITECH Act), (ii) to the individual who is the subject of the PHI disclosed, or to that individual's personal representative; (iii) to persons involved in that individual's health care or payment for health care; (iv) for notification for disaster relief purposes, (v) for national security or intelligence purposes, (vi) to law enforcement officials or correctional institutions regarding inmates; (vii) pursuant to an authorization; (viii) for disclosures of certain PHI made as part of a limited data set; and (ix) for certain incidental disclosures that may occur where reasonable safeguards have been implemented.

(vi) Amendment. Business Associate shall make available PHI for amendment and incorporate any amendment to PHI in accordance with 45 C.F.R. § 164.526 of the HIPAA Privacy Rule.

(vii) Right to Request Restrictions on the Disclosure of PHI and Confidential Communications. If an individual submits a Request for Restriction or Request for Confidential Communications to the Business Associate, Business Associate and Covered Entity agree that Business Associate, on behalf of Covered Entity, will evaluate and respond to these requests according to Business Associate's own procedures for such requests.

(viii) Return or Destruction of PHI. Upon the termination or expiration of the Agreement or this Addendum, Business Associate agrees to return the PHI to Covered Entity, destroy the PHI (and retain no copies), or further protect the PHI if Business Associate determines that return or destruction is not feasible.

(ix) Availability of Books and Records. Business Associate shall make available to DHHS or its agents the Business Associate's internal practices, books, and records relating to the use and disclosure of PHI in connection with this Addendum.

(x) Termination for Breach.

(1) Business Associate agrees that Covered Entity shall have the right to terminate this Addendum or seek other remedies if Business Associate violates a material term of this Addendum.

(2) Covered Entity agrees that Business Associate shall have the right to terminate this Addendum or seek other remedies if Covered Entity violates a material term of this Addendum.

(b) Information and Security Standards

(i) Business Associate will develop, document, implement, maintain, and use appropriate administrative, technical, and physical safeguards to preserve the integrity, confidentiality, and availability of, and to prevent nonpermitted use or disclosure of, PHI created or received for or from the Covered Entity.

PENDING APPROVAL

(ii) Business Associate agrees that with respect to PHI, these safeguards, at a minimum, shall meet the requirements of the HIPAA Security Standards applicable to Business Associate.

(iii) More specifically, to comply with the HIPAA Security Standards for PHI, Business Associate agrees that it shall:

(1) Implement administrative, physical, and technical safeguards consistent with (and as required by) the HIPAA Security Standards that reasonably protect the confidentiality, integrity, and availability of PHI that Business Associate creates, receives, maintains, or transmits on behalf of Covered Entity. Business Associate shall develop and implement policies and procedures that meet the Security Standards documentation requirements as required by the HITECH Act.

(2) As also provided for in Section 4(d) below, ensure that any agent, including a subcontractor, to whom it provides such PHI agrees to implement reasonable and appropriate safeguards to protect it;

(3) Report to Covered Entity, Security Incidents of which Business Associate becomes aware that result in the unauthorized access, use, disclosure, modification, or destruction of the Covered Entity's PHI, (hereinafter referred to as "Successful Security Incidents"). Business Associate shall report Successful Security Incidents to Covered Entity as specified in Section 4(e);

(4) For any other Security Incidents that do not result in unauthorized access, use, disclosure, modification, or destruction of PHI (including, for purposes of example and not for purposes of limitation, pings on Business Associate's firewall, port scans, attempts to log onto a system or enter a database with an invalid password or username, denial-of-service attacks that do not result in the system being taken off-line, or malware such as worms or viruses) (hereinafter "Unsuccessful Security Incidents"), Business Associate shall aggregate the data and, upon the Covered Entity's written request, report to the Covered Entity in accordance with the reporting requirements identified in Section 4(e);

(5) Take all commercially reasonable steps to mitigate, to the extent practicable, any harmful effect that is known to Business Associate resulting from a Security Incident;

(6) Permit termination of this Addendum if the Covered Entity determines that Business Associate has violated a material term of this Addendum with respect to Business Associate's security obligations and Business Associate is unable to cure the violation; and

(7) Upon Covered Entity's request, Business Associate will provide Covered Entity with access to and copies of documentation regarding Business Associate's safeguards for PHI.

(c) Compliance with HIPAA Transaction Standards

(i) **Application of HIPAA Transaction Standards.** Business Associate will conduct Standard Transactions consistent with 45 C.F.R. Part 162 for or on behalf of the Covered Entity to the extent such Standard Transactions are required in the course of Business Associate's performing services under the Agreement and this Addendum for the Covered Entity. As provided for in Section 4(d) below, Business Associate will require any agent or subcontractor involved with the conduct of such Standard Transactions to comply with each applicable requirement of 45 C.F.R. Part 162. Further, Business Associate will not enter into, or permit its agents or subcontractors to enter into, any trading partner agreement in connection with the conduct of Standard Transactions for or on behalf of the Covered Entity that:

(1) Changes the definition, data condition, or use of a data element or segment in a Standard Transaction;

(2) Adds any data element or segment to the maximum defined data set;

PENDING APPROVAL

(3) Uses any code or data element that is marked "not used" in the Standard Transaction's implementation specification or is not in the Standard Transaction's implementation specification; or

(4) Changes the meaning or intent of the Standard Transaction's implementation specification.

(ii) Specific Communications. Business Associate, Plan Sponsor and Covered Entity recognize and agree that communications between the parties that are required to meet the Standards for Electronic Transactions will meet the Standards set by that regulation. Communications between Plan Sponsor and Business Associate, or between Plan Sponsor and the Covered Entity, do not need to comply with the HIPAA Standards for Electronic Transactions. Accordingly, unless agreed otherwise by the Parties in writing, all communications (if any) for purposes of "enrollment" as that term is defined in 45 C.F.R. Part 162, Subpart O or for "Health Covered Entity Premium Payment Data," as that term is defined in 45 C.F.R. Part 162, Subpart Q, shall be conducted between the Plan Sponsor and either Business Associate or the Covered Entity. For all such communications (and any other communications between Plan Sponsor and the Business Associate), Plan Sponsor shall use such forms, tape formats, or electronic formats as Business Associate may approve. Plan Sponsor will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

(iii) Communications Between the Business Associate and the Covered Entity. All communications between the Business Associate and the Covered Entity that are required to meet the HIPAA Standards for Electronic Transactions shall do so. For any other communications between the Business Associate and the Covered Entity, the Covered Entity shall use such forms, tape formats, or electronic formats as Business Associate may approve. The Covered Entity will include all information reasonably required by Business Associate to affect such data exchanges or notifications.

(d) Agents and Subcontractors.

Business Associate shall include in all contracts with its agents or subcontractors, if such contracts involve the disclosure of PHI to the agents or subcontractors, the same restrictions and conditions on the use, disclosure, and security of such PHI that are set forth in this Addendum.

(e) Breach of Privacy or Security Obligations.

(i) Notice and Reporting to Covered Entity. Business Associate will notify and report to Covered Entity (in the manner and within the timeframes described below) any use or disclosure of PHI not permitted by this Addendum, by applicable law, or permitted in writing by Covered Entity.

(ii) Notice to Covered Entity. Business Associate will notify Covered Entity following discovery and without unreasonable delay but in no event later than ten (10) calendar days following discovery, any "Breach" of "Unsecured Protected Health Information" as these terms are defined by the HITECH Act and any implementing regulations. Business Associate shall cooperate with Covered Entity in investigating the Breach and in meeting the Covered Entity's obligations under the HITECH Act and any other security breach notification laws. Business Associate shall follow its notification to the Covered Entity with a report that meets the requirements outlined immediately below.

(iii) Reporting to Covered Entity.

(1) For Successful Security Incidents and any other use or disclosure of PHI that is not permitted by this Addendum, the Agreement, by applicable law, or without the prior written approval of the Covered Entity, Business Associate – without unreasonable delay and in no event later than thirty (30) days after Business Associate learns of such non-permitted use or disclosure – shall provide Covered Entity a report that will:

a. Identify (if known) each individual whose Unsecured Protected Health Information

PENDING APPROVAL

has been, or is reasonably believed by Business Associate to have been accessed, acquired, or disclosed during such Breach;

b. Identify the nature of the non-permitted access, use, or disclosure including the date of the incident and the date of discovery;

c. Identify the PHI accessed, used, or disclosed (e.g., name; social security number; date of birth);

d. Identify who made the non-permitted access, use, or received the non-permitted disclosure;

e. Identify what corrective action Business Associate took or will take to prevent further non-permitted accesses, uses, or disclosures;

f. Identify what Business Associate did or will do to mitigate any deleterious effect of the non-permitted access, use, or disclosure; and

g. Provide such other information, including a written report, as the Covered Entity may reasonably request.

(2) For Unsuccessful Security Incidents, Business Associate shall provide Covered Entity, upon its written request, a report that: (a) identifies the categories of Unsuccessful Security Incidents as described in Section 4(b)(iii)(4); (b) indicates whether Business Associate believes its current defensive security measures are adequate to address all Unsuccessful Security Incidents, given the scope and nature of such attempts; and (c) if the security measures are not adequate, the measures Business Associate will implement to address the security inadequacies.

(iv) Termination for Breach.

(1) Covered Entity and Business Associate each will have the right to terminate this Addendum if the other party has engaged in a pattern of activity or practice that constitutes a material breach or violation of Business Associate's or the Covered Entity's respective obligations regarding PHI under this Addendum and, on notice of such material breach or violation from the Covered Entity or Business Associate, fails to take reasonable steps to cure the material breach or end the violation.

(2) If Business Associate or the Covered Entity fail to cure the material breach or end the violation after the other party's notice, the Covered Entity or Business Associate (as applicable) may terminate this Addendum by providing Business Associate or the Covered Entity written notice of termination, stating the uncured material breach or violation that provides the basis for the termination and specifying the effective date of the termination. Such termination shall be effective 60 days from this termination notice.

(v) Continuing Privacy and Security Obligations. Business Associate's and the Covered Entity's obligation to protect the privacy and security of the PHI it created, received, maintained, or transmitted in connection with services to be provided under the Agreement and this Addendum will be continuous and survive termination, cancellation, expiration, or other conclusion of this Addendum or the Agreement. Business Associate's other obligations and rights, and the Covered Entity's obligations and rights upon termination, cancellation, expiration, or other conclusion of this Addendum, are those set forth in this Addendum and/or the Agreement.

PENDING APPROVAL

APPROVED AND EXECUTED by Mutual effective _____, 2010.

MUTUAL ASSURANCE ADMINISTRATORS, INC., an
Oklahoma corporation

By: 
Todd E. Archer, President / Chief Executive Officer

APPROVED AND ADOPTED by the BOARD OF COUNTY COMMISSIONERS OF OKLAHOMA
COUNTY this _____ day of _____, 2010, effective July 1, 2010.

BOARD OF COUNTY COMMISSIONERS
OF OKLAHOMA COUNTY

By _____
Chairman

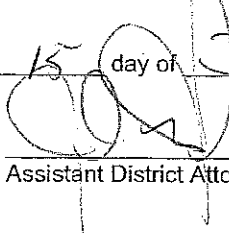
By _____
Member

By _____
Member

ATTEST:

County Clerk, Oklahoma County

APPROVED as to form and legality this 15 day of June, 2010.



Assistant District Attorney

PENDING APPROVAL

OKLAHOMA COUNTY INCOMPLETE REQUISITIONS REPORT

DATE PRINTED--: 06-17-2010

Requisition No--: 11008057
Requisition Type--: Purchase Requisition
Creation Date--: 06-17-2010
Description--: Flexible spending account administration

Requestor	Qty/Amt	Unit Price	Line Amt	Category
Holt, Bradford C	6,000	\$ 1.00	\$6,000.00	SERVICE FEES
Item Description: Administrative fees for flexible spending accounts.				
Vendor: MUTUAL ASSURANCE ADMINISTRATOR				
Requisition Total:			\$6,000.00	
Distribution:	4010.0001	54507	2011	

Approval Action (Circle One)

Approve Forward Reject

Forward To : _____

Note : _____

Signature: _____