



Evelyn Minor-Lawrence  
Director

DEPARTMENT OF HUMAN RESOURCES  
PUBLIC SERVICES BUILDING  
2051 Kaen Road | Oregon City, OR 97045

Board of County Commissioners  
Clackamas County

Members of the Board:

Approval of Contract between Clackamas County, Department of Human Resources and Navia Benefit Solutions, Inc., for Flexible Spending Account (FSA) Services

<b>Purpose/Outcomes</b>	Approval of Flexible Spending Account Contract through 12/31/2024
<b>Dollar Amount and Fiscal Impact</b>	Not to exceed \$189,100.00 over the life of the Contract.
<b>Funding Source</b>	Benefits Division pays \$5 per employee per month (PEPM) for administrative fees funded from the department Benefits Administration Fee. Employees fund their account through payroll deduction.
<b>Duration</b>	January 1, 2020 through December 31, 2024
<b>Previous Board Action</b>	No previous action
<b>Strategic Plan Alignment</b>	County departments and employees will benefit from increased engagement, productivity and benefit/needs alignment as evidenced by: <ul style="list-style-type: none"> <li>○ 80% of employees return to work within 90 days of initial non-occupational short-term disability</li> <li>○ By 2025, annual alignments of wellness programs with workforce needs</li> </ul> The FSA is a financial well-being tool to help employees have tax savings and pay for health care and dependent care needs.
<b>Counsel Review</b>	May 7, 2020
<b>Contact Person</b>	Kristi Durham, Benefits Manager 503-742-5470
<b>County Contract No.</b>	#2738

**BACKGROUND:**

A Flexible Spending Account (FSA) provides a tool for employees to use pre-tax earnings to pay for eligible health care and/or dependent daycare expenses administered by Navia Benefit Solutions, Inc. Employees designate a pre-determined amount to be deducted from each pay-period.

There are two types of FSAs:

- The **Health Care FSA** is used to pay for most out-of-pocket medical, vision, and dental care expenses for the employee and their eligible dependents.
- The **Dependent Care FSA** is for eligible day care expenses for a dependent child age under the age of 13, or elder care for a dependent adult, while the employee and their spouse work (or if spouse is a full-time student or disabled).



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**PROCUREMENT PROCESS:**

Flexible Spending Account (FSA) Services is exempt from the standard procurement process under the LCRB rule C-047-0288(10) Class Special Procurement, Insurance Contracts.

**RECOMMENDATION:**

Staff respectfully recommends the Board of County Commissioners approve the contract with Navia Benefit Solutions, Inc. for Flexible Spending Account (FSA) Services

Respectfully submitted,

Evelyn Minor-Lawrence, Director

Placed on the Agenda of \_\_\_\_\_ by the Procurement Division



**NAVIA BENEFIT SOLUTIONS ADMINISTRATIVE SERVICES AGREEMENT (v. 2020)**

**CONTRACT INFORMATION PAGE**

This NAVIA ADMINISTRATIVE SERVICES AGREEMENT ("Agreement") is entered into as of the Effective Date by and between Navia Benefit Solutions, Inc. ("Navia"), a Washington Corporation, and the Clackamas County ("County").

Name of County:	Clackamas County
Effective Date:	<b>January 1, 2020</b>
Expires on:	<b>December 31, 2024</b>
Notices Sent to County:	2051 Kaen Rd #310 Oregon City, OR 97045
Notices Sent to Navia	600 Naches Ave SW Renton, WA 98057

IN WITNESS WHEREOF, County and Navia have reviewed the forgoing Agreement in its entirety and have caused their undersigned Representative(s) to execute this Agreement, the same being duly authorized to do so.

**CLACKAMAS COUNTY**

**NAVIA BENEFIT SOLUTIONS, INC.**

\_\_\_\_\_  
Board of County Commissioners – Chair

SIGNATURE: \_\_\_\_\_

\_\_\_\_\_  
Recording Secretary

NAME: HILARIE AITKEN

\_\_\_\_\_  
Date

TITLE: CEO

DATE: \_\_\_\_\_

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## **NAVIA ADMINISTRATIVE SERVICE AGREEMENT**

County has asked Navia to provide administrative services for certain employee Benefit Plans maintained by County as described in this Agreement. In consideration of the mutual promises contained in this Agreement, County and Navia agree as follows:

### **GENERAL TERMS AND CONDITIONS**

#### **ARTICLE I: DEFINITIONS**

All capitalized terms in this Agreement not defined in this Section shall have the meanings set forth in the Sections or Schedules of this Agreement in which they are defined.

##### **1.1 AFFILIATE**

“Affiliate” means a business entity now or hereafter controlled by, controlling or under common control with a Party. Control exists when an entity owns or controls directly or indirectly 50% or more of the outstanding equity representing the right to vote for the election of directors or other managing authority of another entity.

##### **1.2 AGREEMENT**

“Agreement” means the following: the Contract Information Page, the General Terms and Conditions, the Schedules and the Exhibits that are specifically incorporated by the Parties into this Agreement by reference.

##### **1.3 BENEFIT PLANS**

“Benefit Plan(s)” means one or more employee benefits plans, 132 Transportation benefits, COBRA Administration, or Direct Billing Administration established and maintained by County for the benefit of its employees and their eligible dependents for which Navia provides Services in accordance with this Agreement.

##### **1.4 BUSINESS DAY**

“Business Day” means Monday through Friday, excluding days deemed to be federal holidays.

##### **1.5 CARD RECIPIENT**

“Card Recipient” means the individual to whom Card Services Provider issues an Electronic Payment Card in accordance with this Agreement.

##### **1.6 CARD SERVICES PROVIDER**

“Card Services Provider” means the third party chosen by Navia to issue Electronic Payment Cards in accordance with this Agreement and/or process electronic payment card transactions.

##### **1.7 CARRIER**

“Carrier” means the insurance Carrier or other benefit provider designated by the County.

##### **1.8 CLAIMS ADMINISTRATOR**

“Claims Administrator” means Navia.

##### **1.9 COBRA ELECTION NOTICE**

“COBRA Election Notice” means the election form included in the Specific Rights Notice.

**1.10 CODE**

“Code” means the Internal Revenue Code of 1986 and the regulations thereunder, as amended from time to time.

**1.11 COVERED DEPENDENT**

“Covered Dependent” means any person other than the Covered Employee who is covered under a Benefit Plan by virtue of his relationship to the Covered Employee.

**1.12 COVERED EMPLOYEE**

“Covered Employee” means any of County’s employees or former employees who are enrolled in a Benefit Plan or who have established a Health Savings Account as defined in Code Section 223.

**1.13 COVERED INDIVIDUAL**

“Covered Individual” means a Covered Employee or a Covered Dependent.

**1.14 DISBURSEMENT REPORT**

“Disbursement Report” means a file or report created by Navia, posted to the Website that details the benefit disbursements.

**1.15 ELIGIBILITY AND PAYROLL DEDUCTION REPORT (“EDR”)**

“Eligibility and Payroll Deduction Report” means a file or report created by Navia, posted to the Website, and verified by the County against payroll deductions for each processing date.

**1.16 ELECTRONIC PAYMENT CARD**

“Electronic Payment Card” means a debit card or store value card used to pay for eligible expenses under the Benefit Plan(s).

**1.17 ELIGIBLE EMPLOYEE**

“Eligible Employee” means an employee that is eligible for the Benefit Plan(s) as determined by the County.

**1.18 EXHIBIT**

“Exhibit” means the document or documents specifically incorporated by the Parties into this Agreement by reference that describe the specific rights, duties, and obligations of the Parties.

**1.19 FEES**

“Fees” means the amount that must be paid as indicated in each Schedule.

**1.20 GRACE PERIOD**

“Grace Period” means the 2.5-month period after the end of the Plan Year during which eligible expenses incurred during that time may be applied toward the previous Plan Year.

**1.21 INTELLECTUAL PROPERTY RIGHTS**

“Intellectual Property Rights” means all intellectual property rights throughout the world, including copyrights, patents, mask works, trademarks, service marks, trade secrets, inventions (whether or not patentable), know how, authors’ rights, rights of attribution, and other proprietary rights and all applications and rights to apply for registration or protection of such rights.

**1.22 PARTY OR PARTIES**

“Party” means County or Navia collectively, and County and Navia shall be referred to as “Parties”.



**1.23 PLAN ADMINISTRATOR**

“Plan Administrator” means County.

**1.24 PLAN APPLICATION**

“Plan Application” means the online or form questionnaire provided by Navia to County used to gather County and Plan design information.

**1.25 PLAN DOCUMENT**

“Plan Document” means a document that describes the Plan’s terms and conditions related to the operation and administration of the plan.

**1.26 PLAN YEAR**

“Plan Year” means a period of time determined by the County no longer than 12 months.

**1.27 REPRESENTATIVE**

“Representative” means an officer, director, or individual with authority to bind the Party.

**1.28 RUN-OUT-PERIOD**

“Run-out Period” means the period of time after the end of the Plan Year during which Covered Individuals can submit claims.

**1.29 SCHEDULE(S)**

“Schedule(s)” means the document or documents specifically incorporated by the Parties into this Agreement by reference that describe the specific Services and the specific rights and obligations of the Parties with respect to such Services.

**1.30 SERVICES**

“Services” means Benefit Plan related administrative services as described specifically in the Schedules, together with any materials, supplies, tangible items or other goods Navia furnishes in connection with the Services.

**1.31 SPECIFIC RIGHTS NOTICE**

“Specific Rights Notice” means the notice that must be provided to each qualified beneficiary in connection with a COBRA qualifying event.

**1.32 SUBCONTRACTOR**

“Subcontractor” means a third-party to whom a Party has delegated or subcontracted any portion of its obligations set forth herein.

**1.33 WE OR US**

“We” or “Us” means Navia.

**1.34 YOU OR YOUR**

“You” or “your” means County.

**1.35 YEAR-TO-DATE REPORT**

“Year-to-Date Report” means a file or report created by Navia, posted to the Website that details contributions, disbursements, and benefit election, if applicable.

## **ARTICLE II. RELATIONSHIP AND TERM**

### **2.1 RELATIONSHIP OF THE PARTIES**

Navia is an independent contractor. Nothing in this Agreement or in the activities contemplated by the Parties hereunder shall be deemed to create an agency, partnership, employment, or joint venture relationship between the Parties, their Affiliates, or any of their Subcontractors or Representatives County acknowledges that Navia is not an accounting or law firm. No Services, and no written or oral communications made by Navia during the course of providing Services, are or should be construed by County as tax or legal advice.

### **2.2 TERM OF THE AGREEMENT**

This Agreement shall be in effect from **January 1, 2020**, Effective Date and will continue until **December 31, 2024** (“Term”). County and Navia acknowledge that services have been performed previous to Agreement signing and desire to affirm and pay for such services pursuant to this Agreement. Provided, however, that nothing herein shall constitute a waiver of any right or claim County may have against Navia for previously performed services. Each Schedule may have a later effective date than this Agreement to the extent that County and Navia agree to the terms set forth in the Schedule after this Agreement has already become effective. If the County uses the Services of Navia, this Agreement will be deemed to be in effect as of the date Navia begins providing such Services even if a copy of this Agreement has not been signed and returned by the County—all fees and monthly charges will be due and payable as set forth herein.

### **2.3 TERMINATION WITHOUT CAUSE**

Either Party may terminate this Agreement for convenience, without cause, at any time without further charge or expense with at least thirty (30) calendar days prior written notice to the other Party.

### **2.4 TERMINATION FOR CAUSE**

In addition to any other remedies available to a Party, a Party may immediately terminate this Agreement upon the occurrence of a Termination Event by the other Party by providing written notice of termination to the other Party.

The following events constitute a Termination Event:

- (a) County fails to pay the applicable Fees or satisfy the applicable funding requirements as set forth herein;
- (b) Failure of a Party to cure a material breach (to the extent curable) within thirty (30) calendar days after written notice of the breach and intent to terminate is provided by the non-breaching Party;
- (c) County files for bankruptcy, becomes or is declared insolvent (generally unable to pay its debts as they become due), is the subject of any proceedings (not dismissed within 30 days) related to its liquidation, insolvency or the appointment of a receiver or similar officer, makes an assignment for the benefit of all or substantially all of its creditors, takes any corporate action for its winding-up, dissolution or administration, enters into an Agreement for the extension or readjustment of substantially all of its obligations, or recklessly or intentionally makes any material misstatement as to its financial condition. In the interest of risk reduction for both Parties, Navia may immediately suspend Benefit Plan processing (including debit cards) without notice upon the occurrence of any of the circumstances described in this section (c). Upon written notice to County, Navia may terminate services for a Covered Employee for persistent abusive, offensive, or similar behavior toward Navia employees.

## **2.5 POST TERMINATION OBLIGATIONS**

- (a) If County terminates this Agreement, Navia shall reasonably cooperate with County to transition information to County or a new third party pursuant to the reasonable instructions of County, in accordance with the terms of this Agreement, as necessary to enable the new service provider to perform services without disruption to Covered Individuals. County is obligated to reimburse all reasonable costs and expenses incurred by Navia for continued administration during the transition process (including administration Fees during the claims run-out period) and transitioning any necessary information as set forth herein. Covered Individual claims submitted to Navia after termination of the Agreement or expiration of the claims run-out period, whichever is later, will be denied and Participants will be redirected to the County and Navia will have no further responsibility with respect to Covered Individual claims received after such time.
- (b) The rights and obligations of the Parties that by their nature must survive termination or expiration of this Agreement in order to achieve its fundamental purposes include, without limitation, Section 5.1 through Section 5.5, Article VI, Section 7.7, and the Business Associate Agreement in Exhibit A.
- (c) Termination of this Agreement shall not terminate the rights or obligations of either Party arising prior to the effective date of such termination. Notwithstanding anything to the contrary herein upon termination of this Agreement, all Fees, funding, and other amounts owed will become immediately due and payable.

## **ARTICLE III. FEES**

### **3.1 FEES FOR SERVICES**

The Fees that County must pay Navia for Services are set forth in the Fee section of each Schedule. To the extent that Navia sends a monthly invoice, all Fees are due upon receipt of the monthly invoice; however, there is a thirty (30) day period after which 1.5% interest per month will accrue with respect to any unpaid Fees to the extent Navia does not terminate the Agreement in accordance with Article III herein. If the invoice is mailed by Navia, the recipient is deemed to have received the invoice within three (3) Business Days after Navia mails the invoice. Failure to timely and completely pay such Fees may also result in suspension of all or part of the Services provided or, in Navia's discretion, termination of the Agreement.

### **3.2 FEES FOR ADDITIONAL SERVICES**

Additional Fees for additional Services not listed in the Schedules shall be as mutually agreed in writing between County and Navia prior to performance. Such Fees may result from County's specific requests for legal guidance provided by an outside firm, development time, or third-party audit Fees.

### **3.3 FEE TERMS AND CHANGES IN FEES**

- (a) Fees are effective beginning with the Effective Date unless otherwise provided herein.
- (b) Navia may change Fees to the extent that (i) changes are made in applicable law that materially affect the rights and obligations of Navia set forth herein, (ii) County amends the Benefit Plan in a manner that materially impacts the Services provided herein; or (iii) Navia provides written notice of a proposed Fee change to County. Fee changes shall only be effective upon execution of a mutually acceptable written amendment to this Agreement. If County does not agree with a proposed Fee change, County may terminate the Agreement.

## **ARTICLE IV. WARRANTIES AND REPRESENTATIONS**

### **4.1 MUTUAL WARRANTIES AND REPRESENTATIONS**

Each Party represents and warrants the following:

- (a) the Party's execution, delivery and performance of this Agreement: (i) have been authorized by all necessary corporate action, (ii) do not violate the terms of any law, regulation, or court order to which such Party is subject or the terms of any material agreement to which the Party or any of its assets may be subject and (iii) are not subject to the consent or approval of any third party;
- (b) This Agreement is the valid and binding obligation of the representing Party, enforceable against such Party in accordance with its terms;
- (c) Such Party is not subject to any pending or threatened litigation or governmental action which could interfere with such Party's performance of its obligations hereunder; and
- (d) Both Parties will perform their respective obligations under this Agreement in compliance with all laws, rules, regulations, and other legal requirements applicable to the Party.

### **4.2 NAVIA'S WARRANTIES AND REPRESENTATIONS**

- (a) Navia represents and warrants that the Services shall reasonably conform to the Schedules described herein.
- (b) Other than as specifically set forth herein, Navia makes no representation or warranty, express or implied, written or oral, and, to the full extent permitted by law, disclaims all other warranties including, but not limited to, the implied warranties of merchantability or fitness for a particular purpose.

### **4.3 COUNTY'S WARRANTIES AND REPRESENTATIONS**

County represents and warrants they are not subject to any pending or threatened litigation, governmental action, or investigation from the IRS, DOL, HHS, or otherwise with respect to any Benefit Plans. If County is subject to any litigation, action, or investigation, or becomes subject while this Agreement is in effect, County shall promptly notify Navia in writing in advance of the Effective Date of this agreement, or within 10 days of County becoming aware of such litigation, action, or investigation.

## **ARTICLE V: INFORMATION AND RECORDS**

### **5.1 RECORDS GENERALLY**

County and Navia shall retain records and supporting documentation sufficient to document its satisfaction of its obligations under this Agreement in accordance with laws and generally accepted accounting principles for at least seven (7) years from the date such record or documentation is created.

### **5.2 CONFIDENTIAL AND PROPRIETARY INFORMATION - GENERALLY**

- (a) The term "Confidential Information" shall mean this Agreement and all non-public data, trade secrets, business information and other information of any kind whatsoever that a Party ("Discloser") discloses, in writing, orally, visually or in any other medium, to the other Party ("Recipient") or to which Recipient obtains access and that relates to Discloser or, in the case of Navia, its customers. A "writing" shall include an electronic transfer of information by e-mail,

over the Internet or otherwise. Confidential Information shall not include Benefit Plan information (i.e. card swipe data, Benefit Plan reports, claims, explanation of benefits and other Protected Health Information). Such information will be protected under the Health Insurance Portability and Accountability Act of 1996 (“HIPAA”) Health Information Technology for Economic and Clinical Health Act (HITECH”), and/or other applicable privacy and security laws.

- (b) Each of the Parties, as Recipient, hereby agrees that it will not, and will cause its Representatives, Affiliates, vendors, Subcontractors, and third-parties not to disclose Confidential Information of the other Party, during or after the Term of this Agreement, other than on a “need to know” basis and then only: (a) for the purposes of providing, enhancing, optimizing, or auditing the Services or to satisfy a legal or contractual requirement; (b) provided that any Representatives, Affiliates, vendors, Subcontractors, and third-parties who receive Confidential Information are subject to a written confidentiality agreement that shall be no less restrictive than the provisions of this Section.
- (c) Recipient shall not use or disclose Confidential Information of the other Party for any purpose other than to carry out its obligations set forth herein.
- (d) Recipient shall treat Confidential Information of the other Party with no less care than it employs for its own Confidential Information of a similar nature that it does not wish to disclose, publish, or disseminate, but not less than a reasonable level of care.
- (e) Upon the Discloser’s written request following expiration or termination of this Agreement for any reason, the Recipient shall promptly return or destroy all Confidential Information in the possession of Recipient or Recipient’s Representatives, Affiliates, vendors, Subcontractors, and third-parties, provided that either Party may retain copies of such files as needed to administer the Benefit Plan(s) or to protect its interests. If it is determined that returning or destroying all Confidential Information of County is infeasible Navia shall extend the protections of this Agreement to such Confidential Information.
- (f) The obligations of confidentiality in this Section shall not apply to any information that (i) Recipient rightfully has in its possession when disclosed to it, free of obligation to Discloser to maintain its confidentiality; (ii) Recipient independently develops without access to Discloser’s Confidential Information; (iii) is or becomes known to the public other than by breach of this Section; (iv) is rightfully received by Recipient from a third party without the obligation of confidentiality; (v) or disclosures permitted under applicable law. Any combination of Confidential Information disclosed with information not so classified shall not be deemed to be within one of the foregoing exclusions merely because individual portions of such combination are free of any confidentiality obligation or are separately known in the public domain.
- (g) A Party’s Confidential Information and any results of processing Confidential Information or derived in any way therefrom shall at all times remain the property of that Party.
- (h) Provided, however, that Navia expressly acknowledges and agrees that County’s obligations under this section are only to the extent permitted by the Oregon Public Records Act. Each party is solely responsible for defending its position as to the confidentiality of any Confidential Information that may be requested by a third party.

### **5.3 MEDIA RELEASES AND PUBLIC ANNOUNCEMENTS**

County may not issue any media releases, public announcements and public disclosures, relating to this Agreement or use the name or logo of Navia, including, without limitation, in promotional or marketing material or on a list of vendors, provided that nothing in this paragraph shall restrict any disclosure required by legal, accounting or regulatory requirements beyond the reasonable control of the releasing Party.

#### **5.4 PROTECTED HEALTH INFORMATION**

Protected Health Information (“PHI”), as defined by 45 C.F.R. 160.103, if any, that is used or disclosed by the Parties in accordance with this Agreement, will be governed by the terms and conditions set forth in the Business Associate Agreement between the Parties. County agrees that Navia may communicate confidential, PHI or otherwise sensitive information to County and, subject to the limits of the Oregon Constitution and the Oregon Tort Claim Act, hold Navia harmless in the event County misroutes or improperly uses or discloses such information where such information was used or disclosed by Navia for purposes of administration of the Benefit Plan(s) or used or disclosed for the purposes of carrying out Navia’s duties and responsibilities under this Agreement.

#### **5.5 INTELLECTUAL PROPERTY RIGHTS**

Each Party shall retain all rights in and/or title to its respective Intellectual Property Rights. Other than as expressly provided in this Agreement, (a) nothing contained herein shall be construed as granting a Party any license, right, title, or interest in or to any of other Party’s Intellectual Property Rights and (b) neither Party is developing any work product for the other.

#### **5.6 ONLINE SERVICES**

- (a) Navia may provide access to a password-protected website maintained by Navia or Navia’s Subcontractor(s) in connection with the Services (the “Website”). Navia may unilaterally make reasonable adjustments and improvements to the Website at any time and without prior notice. Neither Navia nor Navia’s Subcontractor is under any obligation to make any adjustments to the Website that are requested by County or any other third party.
- (b) The Website may include information related to Navia’s other services and/or links to other websites to the extent permitted by law. Navia neither grants a license for nor is responsible for any external links to third party websites provided on the Website.
- (c) County acknowledges that County and the Covered Individuals are solely responsible for maintaining the hardware and/or software necessary to access the Website.

### **ARTICLE VI: LIABILITY AND INDEMNIFICATION**

#### **6.1 LIMITATION ON LIABILITY**

- (a) NEITHER PARTY SHALL BE LIABLE TO THE OTHER FOR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS, LOSS OF DATA, OR COST OF SUBSTITUTE SERVICES ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES PERFORMED HEREUNDER UNDER ANY THEORY OF LIABILITY EVEN IF SUCH PARTY ALLEGED TO BE LIABLE HAS KNOWLEDGE OF THE POSSIBILITY OF SUCH DAMAGES, PROVIDED, HOWEVER, THAT THE LIMITATIONS SET FORTH IN THIS SECTION SHALL NOT APPLY TO OR IN ANY WAY LIMIT THE OBLIGATIONS OF THE SECTIONS ENTITLED “INDEMNITY,” AND “CONFIDENTIALITY AND PROPRIETARY INFORMATION”. IF NAVIA IS FOUND LIABLE TO COUNTY FOR ANY DIRECT DAMAGES, SUCH DAMAGES SHALL NOT EXCEED AN AMOUNT EQUAL TO ACTUAL DAMAGES OR THE FEES PAID FOR SERVICES GIVING RISE TO THE CLAIM WITHIN THE TWELVE (12) MONTHS PRECEDING THE CLAIM, WHICHEVER IS LESS. THIS LIMITATION OF LIABILITY EXCLUDES CLAIMS ARISING FROM PERSONAL INJURY, PROPERTY DAMAGE, GROSS NEGLIGENCE, OR A BREACH OF A PARTY’S CONFIDENTIALITY OBLIGATIONS UNDER THIS AGREEMENT.

- (b) Navia is not liable for the acts or omissions of a prior administrator or the acts or omissions of County if prior administration was conducted by County.
- (c) Navia shall not be liable for any action, conduct, or activity taken by Navia, or any failure to act, at the request of County.
- (d) Neither party will be liable for and will be excused from any failure or delay in satisfying its obligations set forth herein if such failure or delay is caused by circumstances beyond its control, including but not limited to any natural disaster (such as earthquakes, hurricanes or floods), emergency conditions (such as war, riot, fire, theft, severe inclement weather, or labor dispute), outages, legal constraint or governmental action or inaction, breakdown or failure of equipment not due directly to the negligence of the Party maintaining the equipment, or the act, omission, negligence or fault of the other party.
- (e) Navia neither assumes nor underwrites any liability of County under the Benefit Plans, and acts only as provider of the services specifically described herein. Navia shall not be responsible for any over disbursed benefits, including but not limited to over disbursements due to insurance claim adjustments after benefits have been reimbursed. The Services performed shall be ministerial in nature and shall be performed in accordance with the direction, guidance, framework, and interpretation of the Benefit Plan(s) established and communicated by County. Navia shall have no discretionary authority or control over the Benefit Plan(s), funds, and Covered Individuals. Specifically, the County has the absolute authority with respect to the control, management, investment, or disposition and utilization of all plan assets, if any; and Navia shall neither have nor be deemed to exercise any discretion, control, or authority with respect to the disposition of any plan assets.

## **6.2 INDEMNITY**

- (a) Each Party (“Indemnitor”) shall indemnify, defend, and hold harmless the other Party, its Representatives, successors and permitted assigns (collectively, the “Indemnitee”) from and against any and all claims made or threatened by any third party and all related losses, expenses, damages, costs and liabilities, including reasonable attorneys' Fees and expenses incurred in investigation or defense (“Damages”), to the extent such Damages arise out of or relate to the following:
  - i. Any negligent act or omission or willful misconduct by an Indemnitor, its Representatives or its Subcontractor; or
  - ii. Any material breach in a representation, covenant, or obligation of the Indemnitor contained in this Agreement.
- (b) Indemnitee shall give Indemnitor reasonably prompt notice of, and the Parties shall cooperate in, the defense of any such claim, suit or proceeding, including appeals, negotiations and any settlement or compromise thereof, provided that Indemnitee must approve the terms of any settlement or compromise that may impose any un-indemnified or nonmonetary liability on Indemnitee.
- (c) Navia shall not be liable to County for mistakes of judgment or other actions taken in good faith unless such error results directly from an intentionally wrongful or negligent act of Navia.

## **6.3 REMEDIES**

The remedies under this Agreement shall be cumulative and are not exclusive. Election of one remedy shall not preclude pursuit of other remedies available under this Agreement or at law or in equity.

## **6.4 STATUTE OF LIMITATIONS**

[RESERVED]

## **ARTICLE VII: MISCELLANEOUS**

### **7.1 SECTION HEADINGS**

Section headings are included for convenience or reference only and are not intended to define or limit the scope of any provision of this Agreement and should not be used to construe or interpret this Agreement.

### **7.2 WAIVER OF RIGHTS**

No delay, failure, or waiver of either Party's exercise or partial exercise of any right or remedy under this Agreement shall operate to limit, impair, preclude, cancel, waive, or otherwise affect such right or remedy. Any waiver by either Party of any provision of this Agreement shall not imply a subsequent waiver of that or any other provision of this Agreement.

### **7.3 INVALID/ILLEGAL/UNENFORCEABLE PROVISIONS**

If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality, or enforceability of the remaining provisions shall in no way be affected or impaired thereby.

### **7.4 AMENDMENT**

Except as otherwise set forth herein, no amendments of any provision of this Agreement shall be valid unless made by an instrument in writing signed by both Parties specifically referencing this Agreement.

### **7.5 AGREEMENT**

- (a) This Agreement, the Government Addendum as Exhibit C, the Schedules, and any Exhibits reflect the final, full and exclusive expression of the agreement of the Parties and supersedes all prior agreements, understandings, writings, proposals, representations and communications, oral or written, of either Party with respect to the subject matter hereof and the transactions contemplated hereby.
- (b) This Agreement may be executed by the Parties in one or more counterparts, and each of which when so executed shall be an original but all such counterparts shall constitute one and the same instrument. The Parties agree to accept a digital image of this Agreement, as executed, as a true and correct original and admissible as best evidence to the extent permitted by a court with proper jurisdiction
- (c) Notwithstanding the general rules of construction, both County and Navia acknowledge that both Parties were given an equal opportunity to negotiate the terms and conditions contained in this Agreement and agree that the identity of the drafter of this Agreement is not relevant to any interpretation of the terms and conditions of this Agreement.

### **7.6 NOTICES**

- (a) All legal notices required to be sent by one Party to the other Party under this Agreement shall be given to the Parties in writing to the addresses identified on the Contract Information Page or to such other addresses as the Parties may substitute by written notice given in the manner prescribed in this Section as follows:
  - i. By first class, registered or certified United States mail, return receipt requested and postage prepaid,
  - ii. Over-night express courier,
  - iii. By hand delivery to such addresses, or
  - iv. Electronic mail with return receipt.
- (b) Such notices shall be deemed to have been duly given (i) five (5) Business Days after the date of



mailing as described above, (ii) one (1) Business Day after being received by an express courier during business hours, or (iii) the same day if by hand delivery or by email

#### **7.7 CONSENT**

Wherever this Agreement requires either Party's approval or consent such approval or consent shall not be unreasonably withheld or delayed.

#### **7.8 THIRD PARTY BENEFICIARIES**

Except as expressly set forth in this Agreement, the Parties do not intend the benefits of this Agreement to inure to any third party, including but not limited to Covered Individuals and Eligible Employees, and nothing contained herein shall be construed as creating any right, claim or cause of action in favor of any such other third party, against either of the Parties hereto.

#### **7.9 ADVERTISING**

Navia may indicate in its marketing materials and proposals to other prospective customers that this Agreement has been awarded and may describe the nature and objective(s) of this engagement. No such statements by, or materials of, Navia will disclose any County Confidential Information.

#### **7.10 INSURANCE**

Navia agrees throughout the term of the Agreement to maintain in full force and effect commercial general liability, umbrella liability, error and omissions liability, and professional liability insurance coverage in the amounts set forth in the Government Addendum executed contemporaneously herewith, and workers' compensation insurance in the amount required by law, at its own expense. Upon request, Navia shall furnish to County a certificate of insurance evidencing the same.

## **BENEFIT PLAN SERVICE SCHEDULE(S) AND FEES**

County has established one or more of the following Benefit Plans (the “Plan” or “Plans”) for purposes of providing benefits administration and/or reimbursement of certain eligible expenses incurred by Covered Individuals:

- Cafeteria Plan Document and Forms
- Health and Dependent Care Flexible Spending Arrangements
- Health Reimbursement Arrangements
- Section 132 Transportation and Parking Plan
- Code Section 223 Health Savings Account

In addition, County may offer one or more of the following other Plans for purposes of complying with applicable laws or providing additional benefits.

- Wellness Plan
- Federal COBRA Administration
- Direct Billing or Direct Billing Administration

County has asked Navia to assist it with its administrative obligations under one or more of the Plans identified above. The specific Plan-related Services are described in each Schedule. Only those Services chosen by County pursuant to an Application and for which the applicable Fee is paid as set forth in the Fee section of each Schedule (or, as set forth below with respect to additional requested Services), will be provided by Navia.

## **ARTICLE I. STANDARD BENEFIT PLAN SERVICES**

- 1.1. County is solely responsible for the operation and maintenance of the Plans. It is County’s sole responsibility and duty to ensure that each Plan complies with the applicable laws and regulations, and Navia’s provision of Services under this Agreement does not relieve County of this obligation.
- 1.2. If applicable to the particular Plan, Navia will provide Navia’s standard plan document, summary plan description, and forms to be used by County as a template for creating the governing documents for the Plan(s). Such standard documents and forms have been prepared in accordance with the standard of care set forth in the Agreement but are general in nature and do not take into consideration facts and circumstances specific to County and County’s Plans. Consequently, Navia makes no warranties and representations that such documents and forms will comply with applicable law as they relate to the Plan(s). Navia is not responsible for making any changes or amending the documents. It is County’s responsibility to review the documents and ensure they conform to the facts and circumstances specific to County and the Plans, and ensure the documents comply with applicable laws. County shall also make such documents available to Covered Individuals as required by law.
- 1.3. County will provide to Navia timely, accurate and complete information relating to the Covered Individuals and the Plans as is necessary for Navia to satisfy its obligations hereunder. County shall provide information in the format and method approved by Navia (consolidated spec file) In the event such information (i.e. data reports and files) requires manual processing or requires a method not in Navia’s business process, such processing shall be subject to Fees (Noncompliant File Processing Fee) as provided in the applicable Schedule. In the event that the

information is not timely reported or verified, and in the event that there are disbursements made by Navia that would not have been made if the occurrence had been reported on the same day of each such occurrence, then County shall be responsible for such disbursements and shall reimburse Navia therefore upon request by Navia. County shall be responsible for accurate Participant payroll deductions, reporting of deductions, and W-2 reporting and shall ensure that any terminated employer contacts (human resources, payroll, broker contacts, or other County contacts with access to the Website) are immediately reported to Navia on the same day of the occurrence. County shall be responsible for any consequences of failing to report such terminations on the same day of the occurrence, including but not limited to the unauthorized disclosure of information to former County contacts. Navia is not “a person” who is responsible for administering or providing benefits under the COBRA benefit within the meaning of Internal Revenue Code section 4980B (e)(1)(B). Navia is not responsible for the payment of excise taxes imposed under Internal Revenue Code section 4980B and is not responsible for the preparation or filing of Internal Revenue Service Form 8928. Navia shall provide such information as County reasonably requests in order to calculate excise taxes imposed under Internal Revenue Code section 4980B or to prepare IRS Form 8928. With respect to COBRA services, Navia is merely a collection agent for the employer and any amounts collected belong to the County. County agrees to reimburse Navia for any taxes, or other similar charges, in connection with COBRA administration, assessed against Navia.

County understands and agrees that Navia may rely on all information provided to it by Covered Individuals and/or County in accordance with this Agreement as true and accurate without further verification or investigation by Navia. Navia shall not be responsible and shall be held harmless for the receipt of inaccurate and/or incomplete information or data files. Navia shall not be responsible for any delays in providing services under this Agreement and any financial or adverse consequences due to the receipt of the inaccurate and/or incomplete information or data files or for County’s failure to send data files.

- 14 If applicable to the Plan(s), Navia will send education and engagement materials in the form of electronic mail campaigns direct to Employees and make enrollment kits (describing the benefit), enrollment forms, online enrollment specification files, and claim forms available on the Website and/or to County for distribution to Covered Individuals. Navia is only obligated to process claims submitted to Navia in accordance with the instructions set forth on Navia’s claim forms. Navia will process claims in accordance with applicable law, its standard operating procedures, and the terms of the Plan to the extent that such terms are provided to Navia and are consistent with Navia’s standard operating procedures. Navia may also provide claims submission capabilities via online and through a smart phone application for certain Plans. If Navia denies a request for reimbursement, Navia will review the 1st level appeal. If the Plan provides for 2 levels of appeal County will be responsible for the final determination. County shall be the fiduciary and Plan Administrator of the Benefits Plans and shall be responsible for interpreting the Plans, its provisions, terms and conditions and make any and all determinations as to eligibility, appeal, and change in status events, as applicable.
- 15 In the event that a Covered Employee is reimbursed less than is otherwise required by the Plans, Navia will promptly adjust the underpayment to the extent that County has satisfied its funding obligations as set forth herein. If it is discovered that a Covered Employee was overpaid, or the Covered Employee fails to substantiate an Electronic Payment Card Transaction as required by applicable rules and regulations, Navia will make reasonable attempts to request repayment of overpaid or unsubstantiated Electronic Payment Card claims or offset the ineligible payment against any claims for future eligible expenses in accordance with applicable rules and regulations. If the Covered Employee fails to repay or offset, Navia will notify County upon County’s written request for such report or data. County is responsible for taking any additional action permitted or required by law (e.g., including such amounts in income or garnishing wages consistent with applicable laws). Navia shall have no obligation to request repayment or offset to the extent such

overpayment is a result of County's acts or omissions, such payments were authorized by County or County has failed to satisfy its funding obligations.

- 1.6 The specific funding requirements are set forth in each Schedule. Generally, County shall make sufficient employer funds from its general assets available to pay benefits under the Plan(s). These employer funds shall not be deemed employee salary reductions or plan assets. County shall grant Navia withdrawal authority over the account sufficient to enable it to pay benefits. If at any time the amount of benefits payable under the Plan exceeds the amount received County shall transfer an amount necessary to fulfill its funding obligations under the applicable Plan(s). Navia will deposit these County funds into a Navia owned account to facilitate the payment of claims. Any interest generated by County funds deposited into the Navia owned account shall belong to Navia as reasonable compensation under this Agreement. Navia may use such funds for any legal purpose including, but not limited to, to offset any fees of the financial institution with respect to such account. To the extent that such interest (after deducting applicable fees) is not in excess of LIBOR plus 2-percent, Navia shall be entitled to retain such interest. Navia will return interest in excess of these permissible amounts to the County and the County agrees that it will use such amounts in accordance with applicable laws, including but not limited to ERISA when applicable.

Navia may suspend processing all benefit payments, electronic payment cards, and any other reimbursements, and distributions in the event County fails make sufficient funds available to pay benefits under the Plan(s) and/or fails to fund the Plan(s) according to the relevant Schedule. Navia shall not be responsible or liable for the funding of claims for benefits under any Plan. If at any time Navia has paid out more in benefits than received in funding (based upon either individual Covered Employee accounts or the Plan(s) aggregate balance) County shall deliver to Navia an amount equal to that deficit upon Navia's written request. If such funding is not received within two (2) days Navia may suspend all Services including but not limited to suspension of Electronic Payment Cards and benefit reimbursements.

- 1.7 If relevant to the Plan(s), Navia shall provide on-site enrollment meetings and attendance at benefits fairs, as reasonably requested by County, for the Fee and costs set forth in the Schedule.
- 1.8 Navia shall provide customer support weekdays, 5 a.m. to 5 p.m. Pacific Time, excluding holidays.
- 1.9 Navia will conduct Nondiscrimination Testing ("NDT") required under the Code for the attached Schedules. Navia will provide County with a Request for Information ("RFI") form requesting the data necessary to complete the NDT or provide an online version of the RFI. Within a reasonable amount of time after receipt of the requested information, Navia will provide test results, which will be based solely on the information provided by County and/or information maintained by Navia in accordance with the Schedule. Such test results are not intended as legal or tax advice and shall not be relied upon as legal or tax advice. Navia is under no obligation to advise County regarding specific corrective measures beyond providing the test results.
- 1.10 County may review reports summarizing the Plan via the Website. County is responsible for reviewing the reports submitted by Navia and notifying Navia of any errors of which it is aware within a reasonable period of time after reviewing them.

## **ARTICLE II. ELECTRONIC PAYMENT CARD SERVICES**

21. If applicable to the Plan(s) selected in the attached Schedule(s), at County's request and payment of all applicable Fees, the Card Services Provider may make an Electronic Payment Card available to Covered Individuals through which eligible expenses may be paid in accordance with the following terms:
22. Covered Employees or County shall provide to Navia a valid email address for each Covered Employee requesting an Electronic Payment Card.
  221. The Card Services Provider will issue an Electronic Payment Card to each Card Recipient within thirty (30) days of Navia's receipt of the Covered Employee's enrollment data or the Covered Employee's online, electronic mail or form request. County understands and acknowledges that the Card Services Provider issues Electronic Payment Cards based solely on the information provided by County. Navia and the Card Services Provider have no obligation to verify or confirm that Card Recipients are Covered Individuals.
  222. Card Recipients must agree to use the Electronic Payment Card in accordance with the terms of the Cardholder Agreement that accompanies the Electronic Payment Card. The Electronic Payment Card will be deactivated if the Covered Individual fails to use the Electronic Payment Card in accordance with the Cardholder Agreement or as otherwise required by applicable law.
  223. The Electronic Payment Card may be used by Card Recipients to pay for eligible expenses (as defined by applicable law and the applicable Plan to the extent consistent with Navia's standard operating procedures) in accordance with the applicable rules and regulations.
  224. Navia will require substantiation of expenses paid with the Electronic Payment Card in accordance with the requirements set forth in the Code and/or other applicable guidance. The Electronic Payment Card will be deactivated if the Card Recipient fails to provide the requested substantiation in a timely manner as determined by Navia in accordance with Federal guidelines.
  225. All Cards will be deactivated on the date this Agreement is terminated, the date that County fails to satisfy its funding obligations as set forth herein, the date County files for bankruptcy and/or as necessary to prevent fraud or abuse (as determined by Navia).

## **CAFETERIA PLAN SERVICE SCHEDULE**

County has established a Code Section 125 Plan to allow eligible employees to pay for their share of certain Benefit Plan coverage with pre-tax salary reductions (including but not limited to County contributions).

This Schedule is incorporated into and made a part of the Agreement. The responsibilities of the Parties set forth in this Schedule are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Schedule and any other part of the Agreement with respect to the subject matter of this Schedule, the Schedule will control. In all other conflicts, the Agreement controls. Capitalized terms not otherwise defined herein are defined as set forth in the Agreement.

### **ARTICLE III. STANDARD SERVICES**

1. Navia will provide a sample Code Section 125 plan document, summary plan description, and forms for review by County and County's legal counsel. Such standard documents and forms have been prepared in accordance with the standard of care set forth in the Agreement but are general in nature and do not take into consideration facts and circumstances specific to County and the Benefit Plans. Consequently, Navia makes no warranties and representations that such documents and forms will comply with applicable law as they relate to the Benefit Plans. Navia is not responsible for making changes or amending the documents.
2. All Benefit Plan elections and changes to elections will be processed as instructed by County and in accordance with the terms of the sample plan document referenced in 1.1 above and applicable law. County will provide Eligible Employees with election and change of election forms provided by Navia. If necessary for Navia to administer the other Services provided under this Agreement, County will collect and submit the completed election forms and/or change of election forms to Navia as soon as possible after receipt of such forms but no later than the effective date of such elections or change of elections. County is responsible for determining who is eligible for the Benefit Plan and who has satisfied the requirements to become a Covered Individual in the Benefit Plan. In addition, County is ultimately responsible for determining whether a requested change in election is permitted.

#### **HEALTH FLEXIBLE SPENDING ARRANGEMENT ("HEALTH FSA") AND DEPENDENT CARE FLEXIBLE SPENDING ARRANGEMENT ("DAY CARE FSA") SCHEDULE BENEFIT PLAN SERVICE SCHEDULE(S) AND FEES**

This Schedule is incorporated into and made a part of the Agreement. The responsibilities of the Parties set forth in this Schedule are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Schedule and any other part of the Agreement with respect to the subject matter of this Schedule, the Schedule will control. In all other conflicts, the Agreement controls. Capitalized terms not otherwise defined herein are defined as set forth in the Agreement.

As part of the Services, County has asked Navia to assist it with Flexible Spending Arrangement ("FSA") administration as more particularly described in this Schedule below.

#### **1. RESPONSIBILITIES OF NAVIA**

- 1.1. **IMPLEMENTATION**  
Navia shall implement the Plan subject to the Plan Application and the direction and approval of County.
- 1.2. **PLAN PROCESSING AND ADMINISTRATION** Navia shall:
  - 1.2.1. Provide claim reimbursements by check or direct deposit. Such claim reimbursements will be issued within two (2) Business Days after the later of: (1) the scheduled processing date; (2) the date County reconciles the Eligibility and Payroll Deduction Report ("EDR") or submits an approved payroll report; or (3) the receipt of funds as required in the funding section.
  - 1.2.2. Provide notification of online availability of the EDR, Disbursement, and Year-to-Date report.
  - 1.2.3. Provide annual year-end report within ninety (90) days after the claims Run-Out Period has expired.

- 1.2.4. Perform claims adjudication, including verification of date, service, and cost of service.

### 1.3. PLAN DESIGN OPTIONS

- 1.3.1. If County provides for the Grace Period under IRS Notice 2005-42 (the “Grace Period”) Navia shall process claims against the prior Plan Year for services incurred through the 15th day of the third month following the end of the Plan Year. If applicable, apply any residual balance of Grace Period claims against the current Plan Year benefit.

- 1.3.2. If County provides for Carryover Administration under IRS Notice 2013-71 (the “Carryover”) Navia shall:

- 1.3.2.1. Carry over the lesser of the balance in the Health FSA as of the Carryover Date or \$500, from the previous year into the immediately following Health FSA Plan Year. The “Carryover Date” shall mean the date on or about the 15th day after the last day of the Run-Out Period. The “Balance” shall mean Health FSA Plan Year election less disbursements of the Health FSA.

- 1.3.2.2. Reduce the prior year Health FSA election according to the amount of the Carryover.

- 1.3.2.3. Establish a Health FSA election for Covered Employees with Carryover amounts that failed to enroll in the Health FSA in the immediately following Health FSA Plan Year. Monthly participant Fees shall apply as of the Carryover Date.

- 1.3.2.4. Adjudicate and process claims against the carryover amount after the Carryover Date. Upon request, Navia shall apply claims incurred in the immediately following year against unused amounts in the prior year before the Carryover Date. Such adjustments shall be subject to a Fee of \$65.00 per adjustment.

## 2. RESPONSIBILITIES OF COUNTY

### 2.1. IMPLEMENTATION

County shall timely provide the Plan Application and any other information reasonably necessary for Navia to satisfy its obligations hereunder.

### 2.2. REPORTING

County shall submit an approved payroll file or reconcile the EDR against payroll deductions for each processing date through the Website. If County cannot or does not perform this responsibility, Navia may charge \$65.00 per reconciled report. If County fails to provide the approved payroll file or reconcile the EDR for more than forty-five (45) days from the pay date deduction Navia may suspend claim processing.

### 2.3. FUNDING

For the initial term, County shall remit to Navia within 30 days after the commencement of the FSA Plan Year an County deposit equal to ten percent (10%) of the projected annual elections for the Plan (the “Deposit”) or \$2,500, whichever is greater. At the beginning of each subsequent Plan Year Navia reserves the right to recalculate the Deposit for that Plan Year to be paid by County within 30 days after the commencement

of such Plan Year. Said sum, or the portion thereof not utilized, shall then be reimbursed to County one-hundred and eighty days (180) after the end of the final Plan Year.

### 3. FEES

- 3.1. Plan Year Fees:  
  
WAIVED
- 3.2. Monthly Processing and Administration Fees:
  - 3.2.1. \$5.00 per month per FSA Covered Employee (\$100 Monthly minimum)
- 3.3. Enrollment form processing: \$4.00 per enrollment for received and processed.
- 3.4. Summary Plan Description Fee: \$3.50 per Summary Plan description printed and mailed to County or Covered Employees. Provided only upon County request.
- 3.5. Electronic Funds Transfer: \$10.00 per returned item, from attempted deposit in Covered Employee account.
- 3.6. Electronic Funds Transfer: \$10.00 per failed direct debit from County account.
- 3.7. Enrollment Meetings and Benefit Fairs: For on-site enrollment meetings and attendance at benefit fairs by Navia:
  - 3.7.1. County shall pay to Navia \$75.00 per hour, or \$300.00 per eight-hour day, whichever is less;
  - 3.7.2. County will reimburse Navia for Travel Related expenses per Clackamas County's Contractor Travel Reimbursement Policy for the associated calendar year as listed here: <https://www.clackamas.us/finance/terms.html>
- 3.8. Ad Hoc Reporting: \$75 per hour for manual reports not part of the Navia reporting suite.
- 3.9. Noncompliant File Processing Fee: \$150 per month
- 3.10. Mailing Fee: \$1.10 per mailing.



**EXHIBIT A  
BUSINESS ASSOCIATE AGREEMENT**

This Business Associate Agreement is entered into as of **January 1, 2020**, and executing signature to this Agreement (“Effective Date”) by and between **Clackamas County** (“Covered Entity”) and **Navia Benefit Solutions, Inc.** (“Business Associate”) in conformance with the Health Insurance Portability and Accountability Act of 1996, and its regulations (“HIPAA”).

**RECITALS**

**Whereas**, the Covered Entity has engaged the services of the Business Associate, as defined under 45 CFR §160.103, for or on behalf of the Covered Entity;

**Whereas**, the Covered Entity may wish to disclose Individually Identifiable Health Information to the Business Associate in the performance of services for or on behalf of the Covered Entity as described in a Services Agreement (“Agreement”);

**Whereas**, such information may be Protected Health Information (“PHI”) as defined by the HIPAA Rules promulgated in accordance with the Administrative Simplification provisions of HIPAA;

**Whereas**, the Parties agree to establish safeguards for the protection of such information;

**Whereas**, the Covered Entity and Business Associate desire to enter into this Business Associate Agreement to address certain requirements under the HIPAA Rules;

**Now, Therefore**, the parties hereby agree as follows:

**SECTION I – DEFINITIONS**

- 1.1 “Breach” is defined as any unauthorized acquisition, access, use or disclosure of Unsecured PHI, unless the Covered Entity demonstrates that there is a low probability that the PHI has been compromised. The definition of Breach excludes the following uses and disclosures:
  - 1.1.1 Unintentional access by a Covered Entity or Business Associate in good faith and within an Workforce member’s course and scope of employment or placement;
  - 1.1.2 Inadvertent one time disclosure between Covered Entity or Business Associate Work force members; and
  - 1.1.3 The Covered Entity or Business Associate has a good faith belief that an unauthorized person to whom the disclosure was made would not reasonably have been able to retain the information.
- 1.2 “Covered Entity” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §160.103.
- 1.3 “Designated Record Set” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §164.501.
- 1.4 “Effective Date” shall be the Effective Date of this Business Associate Agreement.
- 1.5 "Electronic Protected Health Information" or "Electronic PHI" shall have the meaning given to such term at 45 CFR §160.103, limited to information of the Covered Entity that the Business Associate creates, receives, accesses, maintains or transmits in electronic media on behalf of the Covered Entity under the terms and conditions of this Business Associate Agreement.
- 1.6 “Health Care Operations” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to, 45 CFR §164.501.
- 1.7 “HIPAA Rules” shall mean the Privacy, Security, Breach Notification, and Enforcement Rules codified at 45 CFR Part 160 and Part 164.

- 1.8 “Individual” shall have the meaning given to such term in 45 CFR §160.103 and shall include a person who qualifies as a personal representative in accordance with 45 CFR §164.502(g).
- 1.9 “Individually Identifiable Health Information” shall have the meaning given to such term under the HIPAA Rules, including, but not limited to 45 CFR §160.103.
- 1.10 “Protected Health Information” or “PHI” means any information, whether oral or recorded in any form or medium: (i) that relates to the past, present or future physical or mental condition of an Individual; the provision of health care to an Individual; or the past, present or future payment for the provision of health care to an Individual; and (ii) that 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 shall have the meaning given to such term under the HIPAA Rules, 45 CFR §160.103 and §164.501.
- 1.11 “Protected Information” shall mean PHI provided by the Covered Entity to Business Associate or created, maintained, transmitted or received by Business Associate on Covered Entity’s behalf.
- 1.12 “Required by Law” shall have the meaning given to such phrase in 45 CFR §164.103.
- 1.13 “Secretary” shall mean the Secretary of the Department of Health and Human Services or his or her designee.
- 1.14 “Security Incident” shall have the meaning given to such phrase in 45 CFR §164.304.
- 1.15 “Unsecured Protected Health Information” shall mean protected health information that is not rendered unusable, unreadable, or indecipherable to unauthorized individuals through the use of a technology or methodology specified by the Secretary in accordance with 45 CFR §164.402.
- 1.16 Workforce means employees, volunteers, trainees, and other persons whose conduct, in the performance of work for a Covered Entity or Business Associate, is under the direct control of such Covered Entity or Business Associate, whether or not they are paid by the Covered Entity or Business Associate.

**SECTION II – OBLIGATIONS AND ACTIVITIES OF THE BUSINESS ASSOCIATE**

The Business Associate agrees to the following:

- 2.1 Not to use or further disclose PHI other than as permitted or required by this Business Associate Agreement or as Required by Law;
- 2.2 To use appropriate safeguards, and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI, to prevent use or disclosure of PHI other than as provided for by this Business Associate Agreement;
- 2.3 To mitigate, to the extent practicable, any harmful effect that is known to the Business Associate of a use or disclosure of PHI by the Business Associate in violation of the requirements of this Business Associate Agreement;
- 2.4 To immediately report to the Covered Entity any use or disclosure of PHI not provided for by this Business Associate Agreement of which it becomes aware, including any Security Incident of which it becomes aware;
- 2.5 In accordance with 45 CFR §§164.502(e)(1)(ii) and 164.308(b)(2), if applicable, ensure that any agent, including a subcontractor, that creates, receives, maintains, or transmits PHI on behalf of the Business Associate agrees in writing to the same restrictions, conditions and requirements that apply to the Business Associate with respect to such PHI;
- 2.6 To provide access, at the request of the Covered Entity, and in the time and manner designated by the Covered Entity, to PHI in a Designated Record Set, to the Covered Entity or, as directed by the Covered Entity, to the Individual or the Individual’s designee as necessary to meet the Covered Entity’s obligations under 45 CFR §164.524; provided, however, that this Section 2.6 is applicable

- only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
- 2.7 To make any amendment(s) to PHI in a Designated Record Set that the Covered Entity directs or agrees to pursuant to 45 CFR §164.526 at the request of the Covered Entity or an Individual, and in the time and manner designated by the Covered Entity; provided, however, that this Section 2.7 is applicable only to the extent the Designated Record Set is maintained by the Business Associate for the Covered Entity;
  - 2.8 To make internal practices, books and records, including policies and procedures on PHI, relating to the use and disclosure of PHI received from, or created or received by the Business Associate on behalf of, the Covered Entity available to the Covered Entity, or at the request of the Covered Entity to the Secretary, in a time and manner designated by the Covered Entity or the Secretary, for purposes of the Secretary's determining the Covered Entity's and the Business Associate's compliance with the HIPAA Rules;
  - 2.9 To document such disclosures of PHI and information related to such disclosures as would be required for the Covered Entity to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.10 To provide to the Covered Entity or an Individual, in a time and manner designated by the Covered Entity, information collected in accordance with Section 2.9 of this Business Associate Agreement, to permit the Covered Entity to respond to a request by an accounting of disclosures of PHI in accordance with 45 CFR §164.528;
  - 2.11 That if it creates, receives, maintains, or transmits any Electronic PHI on behalf of the Covered Entity, it will implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic PHI, and it will ensure that any agents (including subcontractors) to whom it provides such Electronic PHI agrees to implement reasonable and appropriate security measures to protect the information. The Business Associate will report to the Covered Entity any Security Incident of which it becomes aware;
  - 2.12 To retain records related to the PHI hereunder for a period of six (6) years unless the Business Associate Agreement is terminated prior thereto. In the event of termination of this Business Associate Agreement, the provisions of Section V of this Business Associate Agreement shall govern record retention, return or destruction;
  - 2.13 To promptly notify the Covered Entity of a Breach of Unsecured PHI as soon as practicable, but in no case later than 10 calendar days, after the discovery of such Breach in accordance with 45 CFR §164.410. A Breach shall be treated as discovered as of the first day on which such Breach is known, or by exercising reasonable diligence would have been known, to any person, other than the person committing the Breach, who is an employee, officer, or agent of Business Associate. The notification shall include, to the extent possible, the identification of each Individual whose Unsecured PHI has been, or is reasonably believed by Business Associate to have been, accessed, acquired, used, or disclosed during the Breach in addition to the information required in Section V. In addition, Business Associate shall provide the Covered Entity with any other available information that the Covered Entity is required to include in the notification to the individual under 45 CFR §164.404(c); and
  - 2.14 To the extent Business Associate is to carry out one or more of the Covered Entity's obligations under Subpart E of 45 CFR Part 164, comply with the requirements of Subpart E that apply to the Covered Entity in the performance of such obligations.

**SECTION III – THE PARTIES AGREE TO THE FOLLOWING PERMITTED USES AND DISCLOSURES BY THE BUSINESS ASSOCIATE:**

- 3.1 Business Associate agrees to make uses and disclosures and requests for PHI consistent with the Covered Entity’s minimum necessary policies and procedures.
- 3.2 Except as otherwise limited in this Business Associate Agreement, the Business Associate may use or disclose PHI to perform functions, activities or services for, or on behalf of, the Covered Entity as specified in the Services Agreement, provided that such use or disclosure would not violate the HIPAA Rules if done by the Covered Entity; and,
- 3.3 Except as otherwise limited in this Business Associate Agreement, the Business Associate may:
  - a. **Use for management and administration.** Use PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate; and,
  - b. **Disclose for management and administration.** Disclose PHI for the proper management and administration of the Business Associate or to carry out the legal responsibilities of the Business Associate, provided that disclosures are Required by Law, or the Business Associate obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and will be used or further disclosed only as Required by Law or for the purposes for which it was disclosed to the person, and the person notifies the Business Associate of any instances of which it is aware in which the confidentiality of the information has been breached.

**SECTION IV – NOTICE OF PRIVACY PRACTICES**

- 4.1 If requested, the Covered Entity shall provide the Business Associate with the notice of privacy practices that the Covered Entity produces in accordance with 45 CFR §164.520, as well as any changes to such notice. Covered Entity shall (a) provide the Business Associate with any changes in, or revocation of, permission by an Individual to use or disclose PHI, if such changes affect the Business Associate’s permitted or required uses and disclosures; (b) notify the Business Associate of any restriction to the use or disclosure of PHI that the Covered Entity has agreed to in accordance with 45 CFR §164.522, to the extent that such restrictions may affect the Business Associate’s use or disclosure of PHI; and (c) not request the Business Associate to use or disclose PHI in any manner that would not be permissible under the Privacy Standards if done by the Covered Entity, except as set forth in Section 3.2 above.

**SECTION V – BREACH NOTIFICATION REQUIREMENTS**

- 5.1 With respect to any Breach, the Covered Entity shall notify each individual whose Unsecured PHI has been, or is reasonably believed by the Covered Entity to have been, accessed, acquired, used, or disclosed as a result of such Breach, except when law enforcement requires a delay pursuant to 45 CFR §164.412. This notice shall be:
  - a. Without unreasonable delay and in no case later than 60 calendar days after discovery of a Breach.
  - b. In plain language including and to the extent possible:
    - 1) A brief description of what happened, including the date of the Breach and the date of the discovery of the Breach, if known;
    - 2) A description of the types of Unsecured PHI that were involved in the Breach (such as whether full name, social security number, date of birth, home address, account number, diagnosis, disability code, or other types of information were involved);
    - 3) Any steps Individuals should take to protect themselves from potential harm resulting from the Breach;

- 4) A brief description of what the Covered Entity and/or Business Associate is doing to investigate the Breach, to mitigate harm to Individuals, and to protect against any further Breaches; and,
  - 5) Contact procedures for Individuals to ask questions or learn additional information, which shall include a toll-free telephone number, an e-mail address, web site, or postal address.
- c. By a method of notification that meets the requirements of 45 CFR §164.404(d).
  - d. Provided to the media when required under 45 CFR §164.406 and to the Secretary pursuant to 45 CFR §164.408.
- 5.2. Business Associate shall promptly provide any information requested by Covered Entity to provide the information described in Section 5.1.

## SECTION VI – TERM AND TERMINATION

- 6.1 **Term.** The term of this Business Associate Agreement shall be effective as of the date set forth above in the first paragraph and shall terminate when all of the PHI created, maintained, transmitted or received by the Business Associate on behalf of the Covered Entity, is destroyed or returned to the Covered Entity, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.
- 6.2 **Termination for Cause.** Upon the Covered Entity’s knowledge of a material breach of this Business Associate Agreement by the Business Associate, the Covered Entity shall provide an opportunity for the Business Associate to cure the breach or end the violation. The Covered Entity shall terminate this Business Associate Agreement and the Services Agreement if the Business Associate does not cure the breach or end the violation within the time specified by the Covered Entity, or immediately terminate this Business Associate Agreement if cure is not reasonably possible.

If the Business Associate fails to cure a breach for which cure is reasonably possible, the Covered Entity may take action to cure the breach, including but not limited to obtaining an injunction that will prevent further improper use or disclosure of PHI. Should such action be taken, the Business Associate agrees to indemnify the Covered Entity for any costs, including court costs and attorneys' fees, associated with curing the breach.

Upon the Business Associate's knowledge of a material breach of this Business Associate Agreement by the Covered Entity, the Business Associate shall provide an opportunity for the Covered Entity to cure the breach or end the violation. The Business Associate shall terminate this Business Associate Agreement and the Services Agreement if the Covered Entity does not cure the breach or end the violation within the time specified by the Business Associate, or immediately terminate this Business Associate Agreement if the Covered Entity has breached a material term of this Business Associate Agreement if cure is not reasonably possible.

- 6.3 **Effect of Termination.**
- a. **Return or Destruction of PHI.** Except as provided in Section 6.3(b), upon termination of this Business Associate Agreement, for any reason, the Business Associate shall return, or if agreed to by the Covered Entity, destroy all PHI received from the Covered Entity, or created, maintained or received by the Business Associate on behalf of the Covered Entity and retain no copies. This provision shall apply to PHI that is in the possession of subcontractors or agents of the Business Associate.
  - b. **Return or Destruction of PHI Infeasible.** In the event that the Business Associate determines that returning or destroying PHI is infeasible, the Business Associate shall provide

to the Covered Entity notification of the conditions that make return or destruction infeasible. Upon mutual agreement of the parties that return or destruction of the PHI is infeasible, the Business Associate shall extend the protections of this Business Associate Agreement to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as the Business Associate maintains such PHI. In addition, the Business Associate shall continue to use appropriate safeguards and comply with Subpart C of 45 CFR Part 164 with respect to Electronic PHI to prevent use or disclosure of the PHI, for as long as the Business Associate retains the PHI.

## **SECTION VII – GENERAL PROVISIONS**

- 7.1 **Regulatory references.** A reference in this Business Associate Agreement to the HIPAA Rules or a section in the HIPAA Rules means that Rule or Section as in effect or as amended from time to time.
- 7.2 **Compliance with law.** In connection with its performance under this Business Associate Agreement, Business Associate shall comply with all applicable laws, including but not limited to laws protecting the privacy of personal information about Individuals.
- 7.3 **Amendment.** The Parties agree to take such action as is necessary to amend this Business Associate Agreement from time to time. All amendments must be in writing and signed by both Parties.
- 7.4 **Indemnification.** Each Party agrees to indemnify, defend and hold harmless the other Party and its commissioners, employees, directors, officers, subcontractors, agents or other members of its workforce, each of the foregoing hereinafter referred to as “Indemnified Party,” against all actual and direct losses suffered by the Indemnified Party and all liability to third parties arising from or in connection with Business Associate’s breach of Sections II and III of this Business Associate Agreement. Accordingly, on demand, the Indemnifying Party shall reimburse any Indemnified Party for any and all actual and direct losses, liabilities, fines, penalties, costs or expenses (including reasonable attorneys’ fees) which may for any reason be imposed upon any Indemnified Party by reason of any suit, claim, action, proceeding or demand by any third party which results from the Indemnifying Party’s breach hereunder. The obligation to indemnify any Indemnified Party shall survive the expiration or termination of this Agreement for any reason.
- 7.5 **Survival.** The respective rights and obligations of Business Associate under Section II of this Business Associate Agreement shall survive the termination of the Services Agreement and this Business Associate Agreement.
- 7.6 **Interpretation.** Any ambiguity in this Business Associate Agreement shall be resolved to permit Covered Entity to comply with the HIPAA Rules.

*Signature Page Follows*

**SIGNATURE PAGE FOR BUSINESS ASSOCIATE AGREEMENT**

The Parties hereto have duly executed this Agreement as of the Effective Date as defined here above.

**Business Associate**  
*Navia Benefit Solutions, Inc.*

**Covered Entity**  
*Clackamas County*

By: \_\_\_\_\_  
Signature Authority

By: \_\_\_\_\_  
Evelyn Minor-Lawrence

Title: \_\_\_\_\_

Title: Human Resources Director

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **EXHIBIT B COUNTY CERTIFICATION**

This Exhibit is incorporated into and made part of the Agreement. The responsibilities of the Parties set forth in this Exhibit are in addition to any responsibilities set forth in the Agreement. If there is a conflict between this Exhibit and any other part of the Agreement with respect to the subject matter of this Exhibit, this Exhibit will control. In all other conflicts, the Agreement controls.

County sponsors a Benefit Plan or Benefit Plans where certain members of County's workforce perform services in connection with administration of the Benefit Plan(s). County acknowledges and agrees that the Standards for Privacy of Individually Identified Health Information (45 CFR Part 164, the "Privacy Standards"), prohibit the Benefit Plan(s) or its Business Associates from disclosing Protected Health Information (as defined in Section 164.501 of the Privacy Standards) to members of County's workforce unless County agrees to the conditions and restrictions set out below. To induce the Benefit Plan(s) to disclose Protected Health Information to members of County's workforce as necessary for them to perform administrative functions for the Benefit Plan(s), County hereby accepts these conditions and restrictions and certifies that the Benefit Plan(s) documents have been amended to reflect these conditions and restrictions. County agrees to:

1. Not use or further disclose the information other than as permitted or required by the Plan Document or as required by law;
2. Ensure that any agent or subcontractor, to whom it provides Protected Health Information received from the Benefit Plan(s), agrees to the same restrictions and conditions that apply to County with respect to such information;
3. Not use or disclose Protected Health Information for employment-related actions and decisions or in connection with any other benefit or employee Benefit Plan of County;
4. Report to the Benefit Plan(s) any use or disclosure of the Protected Health Information of which it becomes aware that is inconsistent with the uses or disclosures permitted by the Benefit Plan(s) or required by law;
5. Make available Protected Health Information to individuals in accordance with Section 164.524 of the Privacy Standards;
6. Make available Protected Health Information for amendment by Covered Individuals and incorporate any amendments to Protected Health Information in accordance with Section 164.526 of the Privacy Standards;
7. Make available the Protected Health Information required to provide an accounting of disclosures to Covered Individuals in accordance with Section 164.528 of the Privacy Standards;
8. Make its internal practices, books, and records relating to the use and disclosure of Protected Health Information received from the Benefit Plan(s) available to the Department of Health and Human Services for purposes of determining compliance by the Benefit Plan(s) with the Privacy Standards;



9. If feasible, return or destroy all Protected Health Information received from the Benefit Plan(s) that County still maintains in any form, and retain no copies of such Information when no longer needed for the purpose for which disclosure was made, except that, if such return or destruction is not feasible, limit further uses and disclosures to those purposes that make the return or destruction of the information infeasible; and
10. [RESERVED]

**EXHIBIT C**

**CLACKAMAS COUNTY  
GOVERNMENTAL CONTRACTING ADDENDUM  
Contract #2738**

This Oregon Governmental Contracting Addendum (“Addendum”) is entered into by Clackamas County, a political subdivision of the State of Oregon (“County”), on behalf of its Human Resources department and **Navia Benefit Solutions, Inc.** (“Contractor”). This Addendum shall be attached to, and incorporated into, the Flexible Spending Agreement (FSA) for County Employees (“Vendor Agreement”). As used below, "Contract" means this Addendum and the Vendor Agreement. To the extent there is any conflict between the Addendum and the Vendor Agreement, the terms of this Addendum shall control.

- A. Term.** This Contract shall become effective **January 1, 2020** and upon signature of both parties. Unless earlier terminated or extended, this Contract shall expire on **December 31, 2024**.
- B. Consideration.** The County agrees to pay Contractor, from available and authorized funds, a sum not to exceed one hundred eighty six thousand, five hundred and two dollars (**\$186,502.00**), for accomplishing the work required by this Contract. The estimated fees per Contract year are listed below in the table:

<b>Fiscal Year</b>	<b>Contract Year</b>	<b>Current Enrollment 1/1/20</b>	<b>Monthly Cost 1/1/20</b>	<b>April 2020 Employee Roll-Over Enrollment</b>	<b>Monthly Cost (\$5 PEPM)</b>	<b>Annual Cost Estimate</b>
FY 19-20	2020	523	\$ 2,615.00	600	\$ 3,000.00	\$ 31,337.26
FY 20-21	2021			600	\$ 3,000.00	\$ 36,000.00
FY 21-22	2022			630	\$ 3,150.00	\$ 37,800.00
FY 22-23	2023			662	\$ 3,307.50	\$ 39,690.00
FY 23-24	2024			695	\$ 3,472.88	\$ 41,674.50
<b>Total Contract Value</b>						<b>\$ 186,501.76</b>

- C. County Contract Administrator.** The County Contract Administrator for this Contract is **Kristine Durham**, 503-742-5470 or email [kdurham@clackamas.us](mailto:kdurham@clackamas.us).

- D. Invoices and Payments.** Invoices shall be submitted to: **Tamra Dickinson**, 503-742-5486 or email [tamradic@clackamas.us](mailto:tamradic@clackamas.us).

Payment and late fees shall only be in accordance with ORS 293.462. If Contractor fails to present invoices in proper form within sixty (60) calendar days after the end of the month in which the services were rendered, Contractor waives any rights to present such invoice thereafter and to receive payment therefor.

- E. Insurance.** Contractor shall secure at its own expense and keep in effect during the term of the performance under this Contract the insurance required and minimum coverage indicated below. Contractor shall provide proof of said insurance and name the County as an additional insured on

all required liability policies. Proof of insurance and notice of any material change should be submitted to the following address: Clackamas County Procurement Division, 2051 Kaen Road, Oregon City, OR 97045 or [procurement@clackamas.us](mailto:procurement@clackamas.us). \_

Required - Workers Compensation: Contractor shall comply with the workers' compensation requirements in ORS 656.017, unless exempt under ORS 656.126.
<input checked="" type="checkbox"/> Required – Professional Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for damages caused by error, omission or negligent acts.
<input checked="" type="checkbox"/> Required – Commercial General Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence, with an annual aggregate limit of \$2,000,000 for Bodily Injury and Property Damage.
<input checked="" type="checkbox"/> Required – Automobile Liability: combined single limit, or the equivalent, of not less than \$1,000,000 per occurrence for Bodily Injury and Property Damage.

The insurance described in this section shall not be cancelled or materially changed without Contractor providing at least sixty (60) days written notice to the County. This policy(s) shall be primary insurance as respects to the County. Any insurance or self-insurance maintained by the County shall be excess and shall not contribute to it. Any obligation that County agree to a waiver of subrogation is hereby stricken.

**F. Debt Limitation.** The Contract is expressly subject to the debt limitation of Oregon counties set forth in Article XI, Section 10, of the Oregon Constitution, and is contingent upon funds being appropriated therefore. Any provisions herein which would conflict with law are deemed inoperative to that extent.

**G. Public Contracting Requirements.** Pursuant to the public contracting requirements contained in Oregon Revised Statutes (“ORS”) Chapter 279B.220 through 279B.235, Contractor shall:

1. Make payments promptly, as due, to all persons supplying to Contractor labor or materials for the prosecution of the work provided for in the Contract.
2. Pay all contributions or amounts due the Industrial Accident Fund from such Contractor or subcontractor incurred in the performance of the Contract.
3. Not permit any lien or claim to be filed or prosecuted against County on account of any labor or material furnished by the Department of Revenue all sums withheld from employees pursuant to ORS 316.167.
4. As applicable, Contractor shall pay employees for work in accordance with ORS 279B.235, which is incorporated herein by this reference. The Contractor shall comply with the prohibitions set forth in ORS 652.220, compliance of which is a material element of this Contract, and failure to comply is a breach entitling County to terminate this Contract for cause.

**H. Governing Laws; Venue.** [RESERVED]

**I. Termination.** This Contract may be terminated by mutual agreement of the parties or by the County for one of the following reasons: (i) for convenience upon thirty (30) days written notice to Contractor and, upon receipt of the written notice, Contractor shall stop performance, and County shall pay Contractor for the goods or services delivered and accepted; (ii) at any time the County fails to receive funding, appropriations, or other expenditure authority as solely determined by the County; (iii) if Contractor breaches any Contract provision or is declared insolvent, County may terminate after thirty (30) days written notice with an opportunity to cure.

- J. Compliance.** Contractor shall comply with all applicable federal, state and local laws, regulations, executive orders, and ordinances, as such may be amended from time to time. This includes, but is not limited to: (i) Titles VI and VII of Civil Rights Act of 1964; (ii) Sections 503 and 504 of the Rehabilitation Act of 1973; (iii) the Americans with Disabilities Act of 1990; (iv) Executive Order 11246; (v) The Age Discrimination in Employment Act of 1967; (vi) the Health Insurance Portability and Accountability Act of 1996; the Age Discrimination Acts of 1967 and 1975; (vii) The Vietnam Era Veterans' Readjustment Assistance Act of 1974; (viii) ORS Chapter 659; (ix) all other applicable requirements of federal and state civil rights and rehabilitation statutes, rules and regulations; (x) all federal and state laws governing the handling, processing, packaging, storage, labeling, and delivery of food products; (xi) all regulations and administrative rules established pursuant to the foregoing laws; and (xii) County Local Contract Review Board Rules, containing language required to be in all public contracts, which is specifically incorporated by reference as if set forth herein.
- K. Tax Compliance.** Contractor represents and warrants that it has complied, and will continue to comply throughout the duration of this Contract and any extensions, with all tax laws of this state or any political subdivision of this state, including but not limited to ORS 305.620 and ORS chapters 316, 317, and 318. Any violation of this section shall constitute a material breach of this Contract and shall entitle County to terminate this Contract, to pursue and recover any and all damages that arise from the breach and the termination of this Contract, and to pursue any or all of the remedies available under this Contract or applicable law.
- L. Indemnification.** Each Party agrees to indemnify, hold harmless and defend the other Party, its officers, elected officials (if applicable), agents and employees from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based upon damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the Indemnifying Party or Indemnifying Party's employees or agents. Any obligation of the County to indemnify, hold harmless and defend Contractor, its officers, elected officials, agents and employees, or any other indemnitee, shall only be to the extent provided by Article XI, Section 10 of the Oregon Constitution and the Oregon Tort Claims Act (ORS 30.260 through 30.300) from and against all claims and actions, and all expenses incidental to the investigation and defense thereof, arising out of or based on damage or injuries to persons or property caused by the errors, omissions, fault or negligence of the County or the County's employee or agents.
- M. Dispute Resolution.** No attorney fees shall be paid for or awarded to either party in the course of any dispute, indemnification, or other recovery. It is the intent of the parties that each shall bear the costs of its own legal counsel. Any requirements contained in this Contract waiving a right to a jury trial or requiring binding arbitration are void.
- N. Records.** Contractor shall maintain all accounting records relating to this Contract according to GAAP and any other records relating to Contractor's performance ("Records") for six (6) years from termination or as otherwise required. Contractor shall grant County, the federal government, and their duly authorized representatives access to the Records, including reviewing, auditing, copying, and making transcripts. Any documents that are requested to be maintained as confidential by either party shall only be maintained as confidential to the extent permitted by the Oregon Public Records Law ORS 192.
- O. Subcontractors.** Contractor shall ensure that its subcontractors, if any, comply with the requirements of this Addendum.
- P. Counterparts.** This Addendum may be executed in several counterparts, each of which shall be an original, all of which shall constitute but one and the same instrument.

**Q. Waiver.** The failure of County to enforce any provision of this Contract shall not constitute a waiver by County of that or any other provision.

By their signatures below, the parties to this Addendum agree to the terms, conditions, and content expressed herein.

**Navia Benefits Solutions, Inc.**

**Clackamas County**

\_\_\_\_\_  
Authorized Signature                      Date

\_\_\_\_\_  
Chair

\_\_\_\_\_  
Name / Title (Printed)

\_\_\_\_\_  
Recording Secretary

\_\_\_\_\_  
Date

**Approved as to Form:**

\_\_\_\_\_  
County Counsel                                      Date