

# ESG Report

2021

**wex**<sup>TM</sup>





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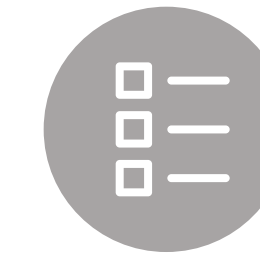
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# Introduction





# Letter from our CEO

Over the past two years, I've seen how WEX and the customers and partners we serve around the world adapted swiftly to changes in our economies, our businesses, and our communities. We have the ability to be a positive force in our world, allowing our actions to open up possibilities for others. That's why WEX is committed to deepening our impact—from helping our customers transition to cleaner energy, to enabling save and pay for healthcare services, to diversifying and empowering our talented employees.

We understand the importance of a robust environmental, social and governance (ESG) strategy. For this reason, we've established strong oversight from our Board of Directors and executive leadership team focused on where our unique assets and capabilities position WEX to be a successful, responsible leader, considering all of our stakeholders, including the environment and community. This requires both a purposeful plan for long-term, sustainable impact coupled with agility to respond rapidly to the unforeseen challenges that impact our lives every day. With these qualities in mind, WEX's purpose to "simplify the business of running a business" has never been more essential.

With a long-term vision for growth, we are carefully considering the effects of the expected low-carbon transition. As a driver of fleet efficiency, we are well positioned to help our customers as they roll out and manage new electric vehicles and participate in other forms of energy innovation. Accelerating electrification readiness is a strategic business imperative that is intertwined with our ESG commitments. We are focused on offering compelling solutions to help our customers navigate a more complex operating model and exceed their own ESG objectives.

As we tackle some of the greatest challenges of this decade, we've learned over the past two years that we must also remain nimble to address unanticipated issues that demand our action. For example, WEX's commitment to our customers and our situational awareness energized us to quickly launch a solution for employers in

accordance with a federal subsidy for COBRA insurance payments, helping individuals and families maintain healthcare insurance in the wake of COVID-19. Even more recently, as healthcare rights in the U.S. have come to the forefront, WEX has maintained our commitment to providing equitable access to healthcare for our U.S. employees and their families, including for reproductive services and travel expenses for healthcare services that cannot be accessed locally.

Each of these examples helped contribute to our success in 2021 and demonstrate the power of our talented workforce, more than half of which identifies as female. We are proud of our gender diversity and continue to build upon diversity and inclusion as an important part of creating diversity of thought which drives innovation. Our benefit offerings are thoughtfully crafted to support these concepts, and we conduct a pay equity analysis annually to ensure employees are compensated equitably for the work they perform. We believe this is an important foundation for inclusion.

As we move forward on our journey to simplify business for a sustainable future, I'm excited by the opportunities I see and look forward to working with our stakeholders and communities to create lasting change. In the pages that follow, we provide additional transparency and information on these important topics, including the results of our first comprehensive ESG assessment and our many activities to enhance our ESG capabilities.

Melissa Smith, Chair and Chief Executive Officer



# About WEX

WEX is the global commerce platform that simplifies the business of running a business. We have created a powerful ecosystem that offers seamlessly embedded, personalized solutions for our customers. Through our rich data and specialized expertise in simplifying benefits, reimagining mobility, and paying and getting paid, we make it easy for companies to overcome complexity and reach their full potential. WEX was founded in 1983, and our shares trade on the New York Stock Exchange (NYSE) under the ticker symbol: WEX.

## WEX Solution Ecosystem

**Pay & Get Paid**

- Expense Management
- Workflow Automation
- Acceptance

**Simplify Benefits**

- CDH Program Management
- Billing Solutions
- Benefits Administration

**Manage Mobility**

- Controls & Fraud Prevention
- Travel Booking
- EV & Mixed Fleets

**Intelligent Commerce Platform**

- Payments
- Access to Funds
- API Integration
- Flexible UIs
- Global Omnichannel Servicing
- Scalable Data, Analytics, AI
- Risk & Security

## WEX by the numbers, 2021

**5,622** global full-time employees

**\$1.851** billion annual revenue

**17** countries where WEX employees are located

**29** physical locations/offices

**2** acquisitions: HealthcareBank HSA assets and benefitexpress

# The WEX ESG journey



Our business has always been aligned with corporate and social responsibility because we believe that the world's best businesses will thrive over the long run by leveraging their people and the planet responsibly. In recent years we have expanded our commitment to incorporate a dedicated focus on environmental, social and governance (ESG) factors to understand the key risks and opportunities facing our business and key stakeholders. For customers, partners, employees, investors, prospective talent and our communities, as well as our planet, we are guided by doing the right thing, both for today and into the future.

We are pleased to report that 2021 was another strong growth year for WEX's business and ESG strategy. We completed the acquisition of benefitexpress and acquired certain HSA assets of HealthcareBank, all while producing overall revenue growth: We reported **\$1.851 billion in revenue** in 2021, a **19% increase from the year before**.





# Governance and oversight

We enhanced our ESG strategy and released our inaugural ESG report in the second quarter of 2021. We provided additional ESG training for our Board and strengthened the governance of our ESG activities, formalizing our Board of Directors' oversight of ESG and establishing a cross-functional ESG Management Committee that includes representatives from Commercial Business and Products, Corporate Communications, Finance, Human Resources, IT, Legal, Operations, Risk and Compliance and Strategy.

## Board of Directors



## Corporate Governance Committee



## ESG Management Committee

- Chief Legal Officer
- Chief Human Resources Officer
- Chief Risk and Compliance Officer
- Chief Technology Officer
- Chief Diversity and Inclusion Officer
- SVP, Investor Relations
- VP, Head of Corporate Strategy and Planning
- VP, Corporate Marketing and Communications
- Associate General Counsel, Corporate Governance

# Stakeholders and strategy

During the year, we expanded our shareholder engagement activities. We conducted investor outreach, with several members of the Board and management participating, to solicit investors' perspectives on our ESG program and of the importance of ESG initiatives in general. We also engaged outside experts to conduct an ESG assessment in order to identify the ESG topics that are most important to our business strategy, our bottom line and our stakeholders. Input on the ESG assessment was largely provided by internal stakeholders, including members of both management and the Board with views of our operations and business activities, as well as the organization as a whole.



This report reflects the findings of our ESG assessment. Our ESG strategy is organized around the following four pillars, alongside our key governance practices:

### People & Culture

Our dedication to simplifying the business of running a business demands a diverse, world-class talent base that can respond nimbly to our customers' needs, today and tomorrow. We foster a supportive, engaged culture and invite our employees to bring their whole selves to work every day.

- Culture and engagement
- Talent attraction, development and retention
- Diversity, equity and inclusion
- Employee health and safety
- Labor practices

### Environmental Stewardship

Like all organizations, we have a responsibility to minimize our own corporate environmental impact. We are driving operational and energy efficiency to do so.

- Carbon footprint
- Energy management
- Waste management
- Water management

### Environmental Innovation

We are building on our long history of innovation in fleet efficiency to help drive the anticipated electric vehicle transition, providing solutions that help our customers simplify this complex process.

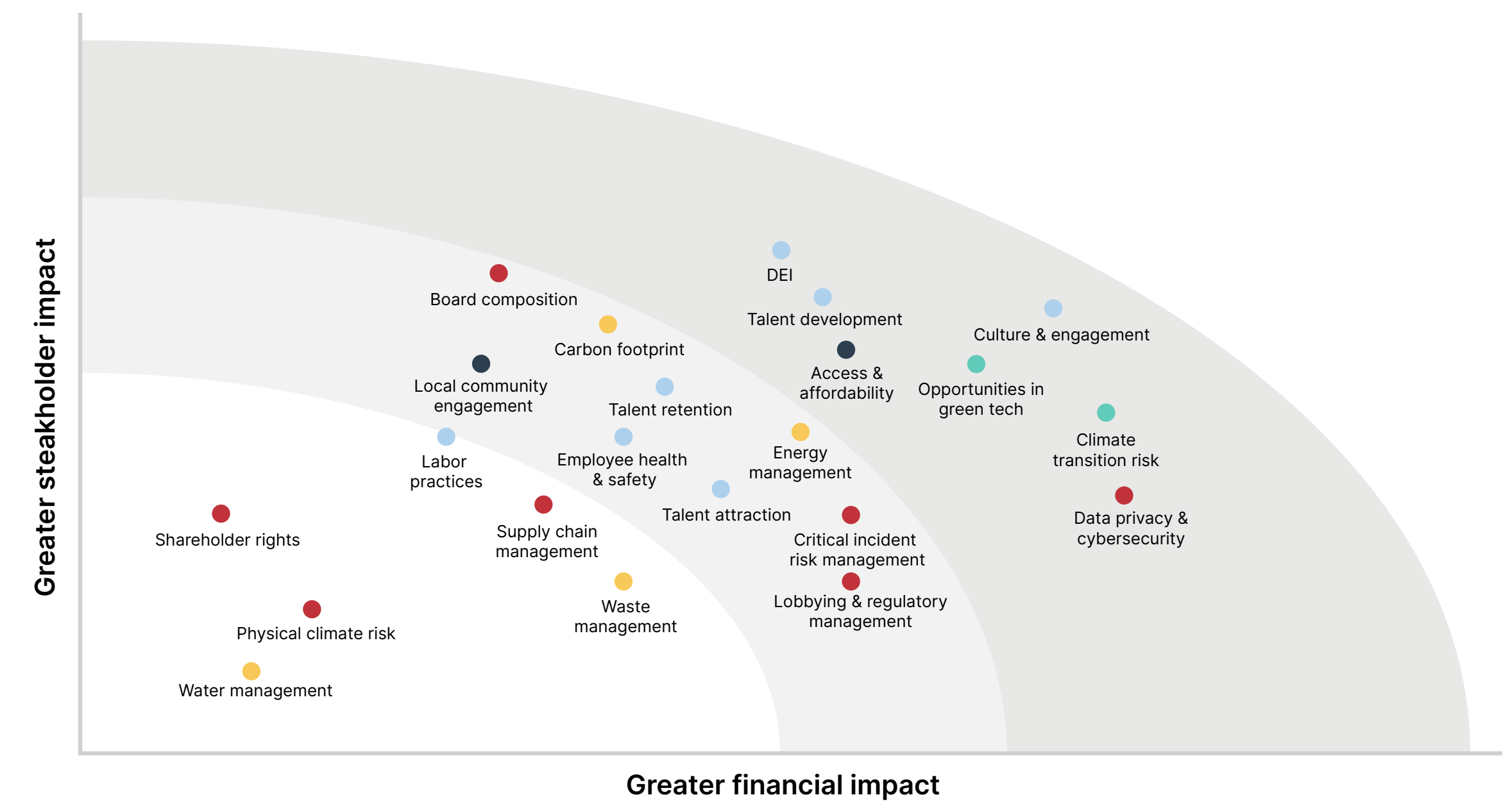
- Opportunities in green tech (sustainable solutions)
- Climate transition risk

### Social Impact

We work to enhance the health and well-being of our communities, customers and employees both through the products and services we offer and through our community involvement and philanthropy.

- Access and affordability
- Local community engagement

# ESG assessment matrix



### Governance

Our business is built on a foundation of ethics and integrity, and we have developed the frameworks, processes and tools necessary to uphold our responsibilities to our customers, our shareholders, our employees and our communities.

- Board composition
- Shareholder rights
- Data privacy and cybersecurity
- Risk management<sup>1</sup>
- Supply chain management
- Lobbying and regulatory management

<sup>1</sup> Risk management encapsulates the following topics captured in WEX's ESG Assessment Matrix: critical incident risk management and physical climate risk.



# Key ESG achievements



## Spring 2021

- Published our inaugural ESG report
- Nominated three new directors, that were elected by shareholders to our Board, strengthening its diversity and expertise
- Recommended the declassification of our Board of Directors, which was approved by shareholders with a phase-in of one year terms commencing in 2022
- Began to conduct employee pulse surveys, which continued throughout 2021. The surveys covered topics such as total rewards, engagement and remote working
- Created a performance benchmarking peer group to provide additional reference information relating to pay program practices and financial performance



## Summer and Fall 2021

- Conducted shareholder engagement, seeking feedback on our ESG program
- Conducted an ESG assessment to determine the ESG topics that are most strategically important to WEX
- Began the process of setting ESG-related goals and targets



## Winter 2021–2022

- Held training sessions with industry experts presented by third parties to further educate our Governance Committee and Board on current ESG and electric vehicle trends
- Conducted a companywide culture survey
- Hired our first chief diversity and inclusion officer
- Measured our Scopes 1 and 2 greenhouse gas (GHG) emissions data to determine baseline and help inform future climate strategies
- Closed an additional seven data centers in 2021



## Spring 2022 and Beyond

- Held a virtual **Investor Day** to discuss our business strategy, including strategic business efforts with embedded ESG considerations such as electric vehicles, benefits and Project Flume
- Published our **Diversity, Equity and Inclusion Special Report** and outlined our aspirational 2025 gender and U.S. employee of color goals
- Publicly released our EEO-1 report on our website for the first time

# Electric vehicle transition

Finally, we continued to strengthen our approach to support our customers' needs in a mixed-fleet environment that requires them to manage both traditional vehicles and electric vehicles (EVs) within their fleets. These changes create more complexity for businesses, and we are building on our deep experience in fleet and mobility to develop and provide solutions to address these specific customer needs, including charging, EV transition planning, and tools to successfully manage a mix of vehicle types ranging from connectivity to advanced route planning and carbon emissions reporting.



# About this report

This report is aligned to the Value Reporting Foundation's Sustainability Accounting Standards Board (SASB) standards for the software & IT services industry (see [Appendix](#)) and is further informed by the Global Reporting Initiative (GRI) Universal Standards.



## ESG disclosures

We are also enhancing our ESG-related disclosures. We are sharing our Scope 1 and Scope 2 GHG emissions in this report, and our most recently filed EEO-1 report can be found on our [website](#). Both serve as a baseline for further reporting.

Unless otherwise noted, this report covers calendar year 2021 activities.

## Preparing for Task Force on Climate-Related Financial Disclosures

We understand the critical importance of assessing and addressing global climate risk while considering and managing its impacts on our business and key stakeholders. Therefore, we are taking steps now to prepare WEX to align to Task Force on Climate-Related Financial Disclosures (TCFD) recommendations in future reporting efforts.



### Governance

We have formalized the Board's oversight of ESG across our organization and established a cross-functional ESG Management Committee. This oversight includes our two environmentally focused strategic pillars, Environmental Innovation and Environmental Stewardship. We are formalizing the Board's oversight of climate change-related matters as we continue to develop the strategies for each of these pillars.



### Strategy

We are actively making our business strategy flexible to incorporate forward-looking climate-positive business opportunities, such as the anticipated electric vehicle fleet transition, which is discussed in further detail on [page 23](#).



### Risk management

As we continue to integrate ESG into our risk management functions, we are also considering the potential physical and transition risks that climate imposes on our business. We will be well positioned to report on this topic in the future.



### Metrics and targets

Measuring our impacts has been an important first step in developing an ongoing reduction strategy. In 2021 we set out to measure and disclose our Scope 1 and 2 GHG emissions, which will inform our climate-related goals and targets moving forward. Our emissions data for calendar years 2019, 2020 and 2021 can be found [here](#).



# People & Culture

At WEX, our talented and driven employees are vital to our success. Our dedication to simplifying the business of running a business demands a diverse, world-class talent base that can respond nimbly to our customers' needs today—and anticipate what's coming tomorrow. In 2021, as we embraced a global flexible work environment, we focused on the strength of our culture—an essential ingredient in our success to date, and a key factor in our continued growth.



# Culture and engagement

Culture and engagement are of utmost importance to our business. We foster a collaborative and supportive culture based on our core values:

-  **Community**
-  **Execution**
-  **Innovation**
-  **Integrity**
-  **Relationships**

Our workforce is composed of forward thinkers, problem solvers and lifelong learners. In order to foster a culture where all individuals can bring their best selves to work, we provide a variety of benefits and engagement opportunities to continuously develop our team and enhance our human capital strategy. Beyond offering competitive total compensation (see “**Talent attraction, development and retention**”), we also prioritize employee recognition, which helps build bonds across our workforce and acknowledges our staff for their contributions. In 2021, we introduced **Inspire & Celebrate**, a formal employee recognition program that gives all employees a way to celebrate their peers who consistently demonstrate and uphold our company values, drive company goals, and go above and beyond in their contributions to WEX’s success. The program allows WEX employees to give their colleagues real-time appreciation and offers global consistency in recognition. We believe Inspire & Celebrate, as part of our overall approach to talent management, will drive increased employee engagement and retention.

We also continue to present **President’s Club**, our annual award celebrating the significant achievements of WEX employees. Because we believe in recognizing leading performance at all levels of the organization, our colleagues remain eligible for this peer-nominated recognition until they reach senior leadership levels. Those who are awarded President’s Club recognition personify WEX’s values and leadership behaviors, and

are recognized for making a sustained, positive impact on the organization throughout the prior calendar year. Each year, employees nominate their peers for this highly sought-after award. In 2021, 55 employees were selected from across the organization as President’s Club members. These individuals typically have received an all-expense-paid trip together with their guests and the other recipients to locations throughout the world.

## Employee engagement

We regularly engage our employees in a variety of meaningful ways to better understand their perspectives—an essential piece of building a strong workplace culture. As part of our ongoing efforts to ensure we are supporting and developing our workforce, we regularly survey employees anonymously on their job satisfaction, engagement and other factors. Results from our most recent survey that was just completed in early-2022 indicate that we exceed industry benchmarks in several areas, including overall engagement and inclusion. We look forward to reporting the full results in our next ESG Report.



## WEX Week Off

At the end of December 2021, we closed our offices with pay for all employees other than essential personnel for the last week of the calendar year. The designated break was designed to encourage work-life balance by providing employees time to slow down and focus on their mental, emotional and physical health. This additional week of paid time off was just one way to demonstrate appreciation for employees’ hard work over the previous 18 months and recognize the impact COVID-19 had on their lives.

# Talent attraction, development and retention

Today's incredibly competitive market for talent, especially in the technology sector, makes it even more essential that we prioritize our workforce, including developing and retaining current employees while also recruiting top talent. In 2021, we implemented several strategies to ensure we remain competitive in the talent marketplace to support our future growth.

In response to shifting business demands and employee preferences, in 2021 we introduced a global flexible way of working—enhancing our ability to recruit top talent regardless of geographic location and entrusting our employees to flex their work responsibilities around other important obligations in their lives. As part of this commitment, we developed a series of Ways of Working workshops, aimed at facilitating our workforce's transition to the global flexible work environment. Separate sessions for leaders and employees provided tools and resources for navigating virtual, hybrid and on-site environments. We remain dedicated to intentionally bringing employees together to collaborate, learn and grow.





# Talent and leadership development

We prioritize opportunities for employees to learn and grow throughout their careers at WEX. Thus, we assess our talent development strategy on an ongoing basis to ensure employees have opportunities to grow in their roles and expand their skills. In 2021, we restructured our global talent development function with an eye to scalability and sustainability, ensuring we are built to support WEX's future growth. The new structure is based on five pillars of excellence to better support the business:

- ✓ Strategic excellence
- ✓ Learning excellence
- ✓ Leadership excellence
- ✓ Operational excellence
- ✓ Service/sales excellence

We are ever attentive to the skills and capabilities of our leaders. We modified leadership expectations to align with our global flexible work environment. These expectations are now codified to show progressive leadership behaviors and responsibilities as people move from individual contributors to team leads or managers to vice presidents and senior vice presidents. (See box to the right for more on our leadership development programming)

We continually explore innovative technologies and processes to accelerate our employees' development. In 2021, we piloted data-driven **artificial intelligence (AI) micro-coaching** to address the ongoing need for individual sales coaching. WEX coaches used a digital workplace to gather daily input from the employees they work with and leveraged AI algorithms to assess their

needs more accurately and expedite the achievement of their goals. We are also exploring the use of virtual reality and adaptive learning technologies.

To support our commitment to lifelong learning, employees have access to an array of education benefits to encourage skill acquisition and enhancement, including tuition reimbursement. One example of this is our partnership with the **Roux Institute** at Northeastern University, a graduate education and innovation hub that shares space in one of our Portland, Maine, offices, which includes a 20% scholarship for Maine-based WEX employees. Employees in other locations can also receive tuition reimbursement for virtual classes at the Roux Institute.

In 2021, we enhanced our performance management process, which is anchored by an annual review required for all employees in the fourth quarter. At this review, employees are evaluated on their progress toward their annual goals, which are set in alignment with business strategic objectives at the beginning of the year. We also offer employees tools such as Anytime Feedback to facilitate regular performance conversations throughout the year and encourage them to leverage the Thrive in My Career site and subsequent learning opportunities to support their career development.

Personal development is just as important as professional development, which is why we offer our employees the opportunity to participate in **Expedition**, our sabbatical program. Expedition is designed for employees who have been with us for six or more years. The program provides up to four consecutive weeks—20 consecutive working days—of 100% paid leave from WEX, during which selected employees may pursue special interests, personal or professional goals, volunteering, or other life-enhancing activities.

## Training, skill development and resources for people leaders

In 2021, we expanded our leadership development and training offerings, building on the momentum from and success of our 2020 efforts to modernize our comprehensive leadership continuum. Our programs and resources include:

**Leaders Unleashed**, a cohort-based, multi-modal, multi-month continuum that is differentiated by level, with programs for emerging leaders, team leaders, managers, directors, VPs, and SVPs. This portfolio is designed as a progressive continuum to help leaders lead themselves, their teams and the organization as they grow in their careers. More than 125 employees participated in Leaders Unleashed in 2021.

**Thrive as a People Leader Resource Center**, an online "how do I?" resource center that includes policies, procedures, practices and learning assets. The resource center was developed internally in 2021 and launched in early 2022.

**Thrive as a Manager Accelerated** addresses the changing ways of work due to both the pandemic and WEX's acquisitions and is designed to ensure that people leaders' capabilities are aligned, regardless of their level. We designed and implemented the five-session, 10-hour training for all people leaders up to the VP level. In 2021, more than 450 employees participated, and the remaining eligible participants are scheduled to complete the training in 2022. Going forward, Thrive as a Manager Accelerated will be offered to all new people leaders.

**Thrive as a VP**, a program we developed to provide additional support for people leaders and instill servant leadership principles and practices. The program imparts 12 distinctive leadership habits, including "Make active listening your superpower," "Embrace empathy" and "Foster inclusivity and community." It is delivered via an interactive guide, followed by VP-facilitated Fireside Chats on each habit, which give senior leaders an opportunity to share their experiences of practicing the habits with their peers.



# A comprehensive, competitive approach to employee benefits

We are dedicated to providing benefits that help our employees protect their health, families, and overall well-being. Our offerings include:

- Medical and pharmacy
- Dental
- Vision
- Health savings account
- Flexible spending account
- Life insurance
- Short- and long-term disability insurance
- Accident, critical illness and hospital indemnity insurance
- Pet insurance
- Legal plan
- Identity theft protection
- Auto & home insurance
- 401(k) retirement savings plan
- Best-in-class solutions for well-being
- Tuition reimbursement
- Backup child-, adult- and eldercare
- Parental leave
- Adoption assistance
- Sabbatical program
- Conception and reproductive health benefits
- Travel benefits for healthcare services that cannot be accessed locally or are better accessed at leading health centers



## Employee retention

We don't just invest in our employees; we also work to re-recruit and retain them. We regularly review talent retention across the organization, comparing the data to our expectations, trends over time and market standards. The Board of Directors and our management team regularly evaluate succession plans to ensure we have robust talent pipelines for our critical leadership positions.

## Benefits and compensation

We offer competitive total compensation packages to ensure we remain a valued employer. We conduct an annual survey to ensure our salary ranges are competitive in our industry, and we provide a comprehensive array of benefits. We also support our employees' overall wellness, offering dedicated well-being campaigns and personal financial counseling, as well as on-demand virtual fitness classes via Wellable, among other programming. Throughout the pandemic and into 2021, it was especially important to expand our mental health programming globally. We expanded the benefits available through our Employee Assistance Program, which offers access to unlimited confidential assistance with a vast array of personal matters, including legal consultations, identity theft recovery and daily living services. We also expanded our partnership with Bright Horizons, which arranges temporary backup childcare and eldercare as needed.

WEX's commitment to providing equitable access to healthcare for our employees and their families is steadfast. Our Total Rewards Program is designed to support employees in meeting their social, health, community, financial and career goals. For example, WEX sponsors a 401(k) program with an annual 6% employer match (after one year of service) and offers a level of tuition reimbursement for both undergraduate and graduate education. In addition, employees are eligible for short-term disability coverage after only one week of absence, which covers maternity leave.

In addition, we offer a short-term incentive plan designed to motivate employees and executives to drive profitable growth while diversifying revenues. Our long-term incentive plan provides annual equity-based incentives for our executive leadership team and other employees, which aims to reward stockholder value creation over a multiyear time horizon.



# Diversity, equity and inclusion

We are dedicated to cultivating a diverse, equitable and inclusive culture at WEX. This dedication is both part of strong corporate citizenship and an essential element in developing the innovative solutions our customers depend on. We are proud of our commitment to gender equity as it relates to our global workforce demographics — with more than 50% identifying as female — as well as pay equity and total rewards. We will continue to invest in our journey to cultivate diversity in its many forms, and our most meaningful actions are still ahead of us. We are currently focused on developing the systems and tools we need to make substantive progress. In addition to the information below, please see our [2021–2022 DEI Report](#) for details on our activities.

Our commitment to diversity, equity and inclusion (DEI) starts with our Board of Directors and executive leadership team, who recognize the business imperative of ensuring a diverse and equitable workforce and experience. Together with their leadership, we are working to build a strong foundation as we expand our DEI efforts. Recent examples of our Board's and leadership's focus on DEI include:

- Utilizing diversity and inclusion objectives as modifiers to executive leaders' STIP performance
- Signing the Chief Executive Officer (CEO) Action for Diversity and Inclusion Pledge
- Appointing our first chief diversity and inclusion officer, an internal promotion in early 2022
- Ensuring that senior leaders are active executive sponsors of our employee resource groups

## Measuring progress

We believe it is important to hold ourselves accountable and make progress on DEI. In early 2022, the Board approved our aspirational 2025 DEI goals:

- ✓ **Achieve gender parity in leadership roles**
- ✓ **Increase employees of color in the U.S. in leadership roles by 50% to be more representative of national demographics and the customers and partners we serve**

We are working across talent acquisition, talent management, learning and development, and leadership to drive a holistic strategy to meet these goals. Our Board of Directors and Leadership Development and Compensation Committee receive regular updates from management regarding our progress toward our 2025 aspirational goals.

As we work toward those goals, we are committed to transparently sharing our progress. To that end, we have publicly disclosed our most recently filed EEO-1 report on our [website](#).

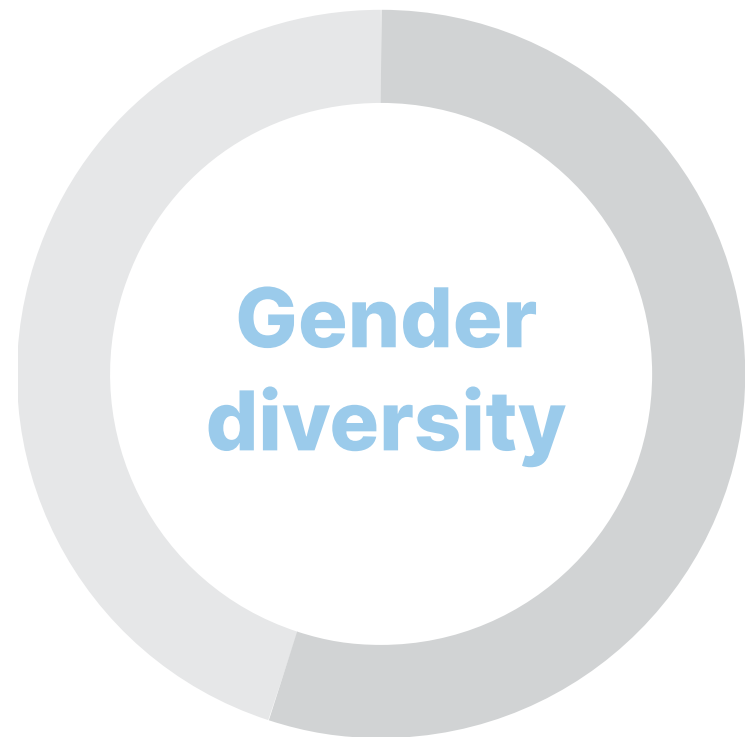
In addition to measuring workforce diversity, we also measure progress on inclusion through our annual employee survey and employee listening strategy. We are committed to equity in the workplace through our annual pay equity analyses as well as through internal audits of our processes and programs.





# Employee demographics

Everything we do is dependent on the talent and culture of our company. By leveraging our winning, inclusive and values-based culture, we will mine, grow and maximize talent that adapts to our future business. We strive to achieve a fully inclusive workplace that unifies and celebrates the diversity of our people.



(Total global employees)

55% Female      45% Male



(Total U.S. employees)

0.5% American Indian/Alaska Native      0.1% Pacific Islander  
 4.4% Asian      2.9% Two or More Races  
 5.5% Black      81.5% White  
 4.9% Hispanic



## Hiring military veterans and their families

Our approach to DEI goes beyond gender, race and ethnicity to consider other populations that enhance the range of perspectives our employees bring to work. We are proud to employ a number of U.S. military veterans and veterans' spouses, and in 2021 we increased that population by 56%. Furthermore, as described on [page 20](#) our WEX Vets employee resource group (ERG) provides a space for our veteran professionals and military families to engage, mentor and empower one another. We attribute these figures in part to our efforts to recruit military spouses: In 2021, WEX partnered with VirtForce, which cultivates virtual career paths for active-duty military spouses. In late 2021, we hired 77 military spouses from across the United States.

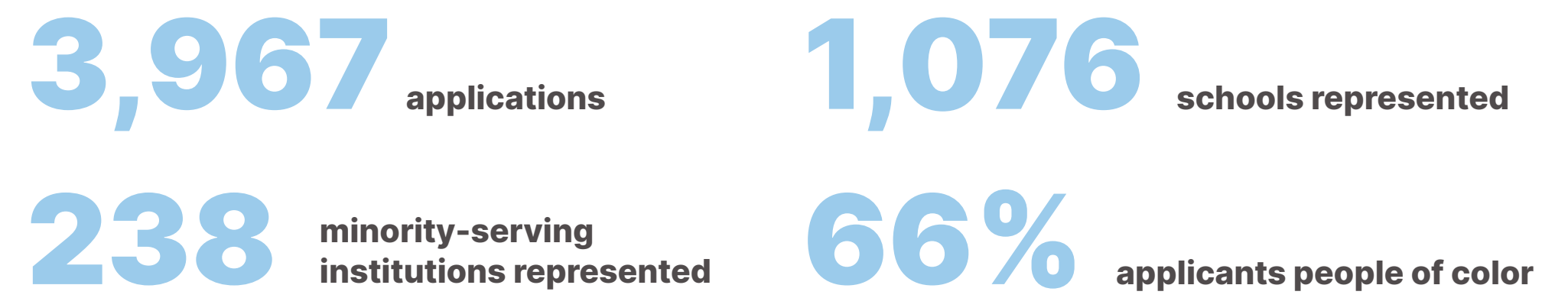


## DEI in talent acquisition

As we continue to grow and employ a more distributed workforce, we aim to create a global team that is representative of the communities where we live and the customers and partners we serve. We use inclusive hiring practices, and our Talent Acquisition Team and hiring managers continue to increase our pool for talent. We are currently piloting diverse candidate slates as one of many levers in a diverse hiring process. In 2022, we plan to roll out hiring manager training to support this program.

Our efforts to build a diverse talent pipeline include a focus on summer internships. Since 2018, we have partnered with WayUp, a sourcing platform for diverse candidates, to help us recruit a diverse class of summer interns.

Through our partnership with WayUp, in 2021, we received applications from individuals representing 1,076 colleges and universities as part of our intern recruitment efforts, up 115% from 2019. Our 2021 internship recruiting also included:



The quality of our internship program has been recognized by multiple organizations. We were named among:

- Vault Top Internship 2021, Top 100 overall, and 15th in Best Tech & Engineering Internship
- WayUp Top 100 Internship Programs 2021 (third consecutive year)

In addition, in 2021 WEX was a founding member of the **Maine Diversity Summer Associate Program**, known as D1L. The program is a competitive 10-week paid internship for first-year law students with a demonstrated commitment to diversity and inclusion, as well as strong academic performance. We are hosting our second D1L summer associate in 2022.



# DEI in our benefits and compensation

Our commitment to diversity, equity and inclusion is woven throughout our human resources strategy. To ensure all our employees have access to our benefits programs, we offer an inclusive total rewards program. In 2021, we expanded that package to include conception benefits, which went into effect in 2022.

We are committed to pay equity and conduct global pay equity analyses on an annual basis. We strive to ensure that, regardless of gender, race or ethnicity, employees across our businesses earn the same pay for the same work.



## Disrupting unconscious bias training

More than 99% of our employees completed a disrupting unconscious bias training in 2021. The session provided an awareness of and introduction to the different types of bias encountered in corporate settings along with tips to disrupt or overcome them.



# Championing DEI: WEX's employee resource groups

Through our **nine employee resource groups**—up from just three in 2019—we are committed to helping each of our employees find a community, as well as opportunities to grow personally and professionally. According to self-reported 2021 year-end results from the ERGs

**1,000+** members participated across ERGs **2,350** employees attended 76 ERG events



## Our ERGs include:



**Black Growth Council** fosters an empowering atmosphere that encourages relationship building, collaboration and advancement opportunities for Black employees and others.



**LatinX** embraces members' culture and Latin heritage as the group aims to achieve social change through education, mentorship and cultural understanding.



**NexGen** is a community of early-career professionals at WEX focused on connecting and empowering leadership skills through programming that enables personal and professional growth.



**WEX Pride** provides an open and safe network of peers for the LGBTQIA+ community at WEX, while supporting all employees in fostering an environment where diversity and inclusion thrive.



**Parents@WEX** offers moms and dads support, resources and education, recognizing that family is a top priority for many of our employees who want both professional and parental success for themselves.



**WEXaccessibility** gives employees with disabilities, and anyone who joins in support of their colleagues with disabilities, a sense of community and commonality as they partake in education, advocacy and awareness building.



**Women in Tech** realizes the strength that's built through diversity in tech, helping women—and everyone—pave meaningful career paths at WEX.



**Women of WEX** is a community of female-identifying employees and allies fostering the continued success of women at WEX through enriching programs and events.



**WEX Vets** convenes the WEX community of veteran professionals and military family members to engage, mentor and empower one another through interactions with leaders, recruitment, and social and professional development programming.



# Employee health and safety

We are committed to the health, safety and well-being of our employees, contractors and visitors and to ensuring compliance with the health and safety regulations in every location where we operate. Our Health and Safety Policy provides a framework designed to prevent work-related accidents, injuries and illnesses. We also provide local emergency evacuation awareness training and periodic review of safety topics.

Our Emergency Response Action Plan includes emergency evacuation procedures and protocols for reporting various types of emergencies, and we review and update it annually. Our Organizational Resilience Team enlists and trains our authorized Emergency Response Team, who help oversee our actions in the event of a crisis.

Our Incident or Injury Investigation Guidelines establish when, how and by whom incident and injury investigations are processed. We strive to understand why the incident occurred and respond within 24 hours of any incident.

We know that proper ergonomics are central to employee health and have implemented an ergonomics program that applies to all operations, facilities and workstations. A focus on ergonomics supports the well-being of our employees, as well as reducing absences and associated employee compensation costs. Beginning in 2021, as part of our commitment to a global flexible work environment, we partnered with our workers' compensation insurer to offer virtual ergonomic evaluations and support for employees' remote workstations, including direct shipping of recommended equipment.

Our Employee Relations Center of Excellence takes an employee-centric approach that aligns with our commitment to be a great place to work, foster a community of trust and meet the business's needs. In these efforts, Employee Relations works in close partnership with our Legal and Compliance Departments. Employee Relations also provides training and manager toolkits and consults with human resources business partners.



# Environmental Innovation

Moving toward a low-carbon future requires widespread adoption of emerging technologies, as well as the development of new resources that both enable this transition and track the progress of organizations to help drive transparency and the ability to make data-driven plans and decisions. At WEX, we have a long history of supporting customers' efforts to boost fleet efficiency with better data and tools. We're now building on this legacy of innovation to help drive the anticipated electric vehicle transition, building and launching solutions that help our customers simplify this complex process. Mindful of the effects that climate change may pose across industries that we serve, we are also always assessing the effects that climate change may in turn pose for WEX.





# Sustainable solutions

## Roadmap to simplify the complexities of electrification

Business has an important role to play in addressing the climate crisis. At WEX, our contribution is twofold: We are working to reduce our operational emissions (see “**Environmental Stewardship**”), and we are using our business model to support sustainable fleet solutions.

Optimizing fleet fuel consumption is one of our business’s foundational strengths. We provide a range of products and resources to help improve our customers’ fuel economy and give them access to controls, business insights and data, in addition to tools such as freight management, route optimization and idle-time monitoring.

In 2021, we turned our attention to electrification as one of the most effective ways that we can help move the needle on emissions: The transportation sector contributes to nearly a quarter (23%) of global carbon dioxide (CO2) emissions, the majority from road traffic.<sup>2</sup> We are uniquely positioned to help fleet operators make the transition to EVs or other forms of efficient transport—and to simplify the business of mixed-fleet operation from end to end.

### End-to-End Charging

### Core Services



#### On-Route & Destination

- **Card and mobile app** for fueling and charging
- **Charger location finder**



#### Depot & At-Work

- **Integrated reporting**
- **Mixed-use authentication**
- **Charging & energy management** via partners



#### Home

- Employee authentication and data capture
- **Reimbursement of employee energy costs**
- **Chargers and installation** via partners



#### Fleet Services

- **Integrated billing** and payment solutions
- **Consultative services** and EV transition
- **Aggregated reporting and insights**



Expanding solutions are expected to drive **continued market growth**

<sup>2</sup> International Energy Agency, 2021.



The potential impact is considerable: The federal government fleet alone (excluding the U.S. Postal Service) includes 315,000 buses and light-duty vehicles, 97% of which could be replaced by EVs by 2030 at a cost savings to taxpayers. Doing so could reduce greenhouse gas emissions by as much as 7.6 megatons.<sup>3</sup>

Electric vehicles are expected to make up 31% of the global light-duty vehicle fleet by 2050, up from less than 0.7% in 2020.<sup>4</sup> The complexity of this transition requires new solutions for customers, ranging from connectivity to advanced route planning and carbon emissions reporting. WEX is well suited to provide these solutions, and our efforts to do so are a top priority for our Board of Directors

and executive leadership team. Our electrification strategy is overseen by both our Chief Operating Officer, Americas and Chief Operating Officer, International, with a dedicated team focused on execution and delivery. The Board receives frequent updates on our progress and direction.

As part of our commitment to execute on our roadmap to simplify the complexities of electrification, we are working with partners to create an expanded EV charging network. Since 2019, WEX has supported capabilities that allow customers to use their WEX accounts to pay for and track EV charging done within the ChargePoint network via ChargePoint's fleet programs. At the end of 2021, we expanded our relationship with ChargePoint,

an EV charging network operating in North America and Europe, under which we expect to provide more seamless integration of EV charging for mixed fleets that include internal combustion engine vehicles. This global partnership builds on our longstanding collaboration and aims to provide customers access to expansive and convenient public EV charging networks for on-route charging needs and to enable fleets to deploy and manage commercial charging at workplaces and at employee homes, along with the tools to facilitate employee reimbursement, streamlined payments and reporting.

We are currently in the process of testing a more integrated and intuitive solution for on-route EV charging and

payment for fleets enabled by this partnership expansion, which allows customers to manage, track, and pay for EV charging done at public and destination locations alongside their existing fuel management program. We are developing and launching pilot programs in both the U.S. and Europe to capture lead customer feedback on this integrated solution, which includes aggregated billing and reporting, as well as driver access to mobile applications to locate in-network EV charging locations. We will continue to refine and scale these pilot programs and execute on our roadmap in order to ensure we are in a position to provide comprehensive solutions for our customers and their future mixed fleet needs.



“Our expanded partnership with WEX is a major step in helping fleets prepare for the future of electric mobility with convenient and cost-effective expense management and wide payment acceptance.”

–Rich Mohr, Global Vice President of Fleet at ChargePoint.

<sup>3</sup> “Federal Fleet Electrification Assessment,” The Electrification Coalition and Atlas Public Policy, Aug. 18, 2021. <sup>4</sup> “EIA projects global conventional vehicle fleet will peak in 2038,” U.S. Energy Information Administration, Oct. 26, 2021.



# Climate transition risk

We integrate climate transition considerations into our risk management framework to proactively address emerging risks to our operations. These considerations present both opportunity, as discussed above, and risk for WEX. We continue to assess the potential impacts on our business and our customers and partners, and are thinking critically about the role we play. To understand how we are incorporating best practices and considerations from the Task Force on Climate-related Financial Disclosures (TCFD), click [here](#).





# Environmental Stewardship

Like all organizations, we have a responsibility to minimize our own corporate environmental impact. We are driving operational and energy efficiency to do so, starting with measuring our carbon footprint.



# Our carbon footprint

## Encouraging low-carbon commutes

While we believe the environmental footprint of our operations is relatively small, we are focused on reducing it. Many of our employees currently work from home, and the bulk of our operations consist of office space where energy use is limited to lighting, heating and cooling. We are taking steps to measure our owned and vendor owned cloud-based data center emissions and energy consumption and intend to disclose our emissions and energy use footprint in the future.

In 2021, we began right-sizing our real estate portfolio to reflect our commitment to a global flexible work environment. While this exercise is reducing our office square footage, we expect future business and staffing growth to slow further reduction.

Also in 2021, we took an important step to better assess our environmental impact by hiring a third-party firm to measure our Scope 1 and 2 emissions, including those from our internal data centers, from 2019 through the present (see tables). We intend to use this data to inform future strategies to make meaningful reductions. While

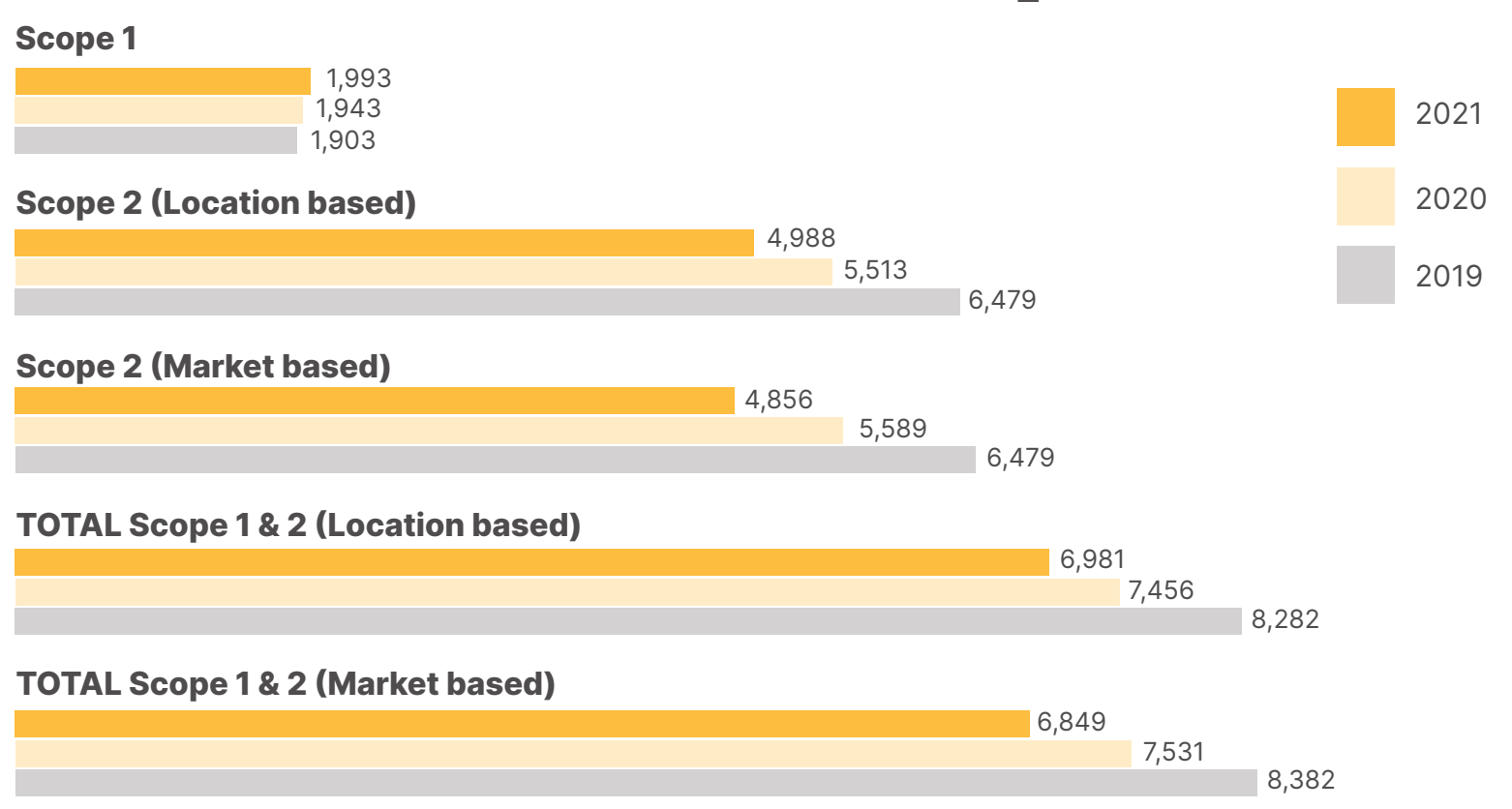
our Scope 1 and Scope 2 emissions are relatively minimal compared to many companies of our size, we are committed to measuring and assessing them, and identifying opportunities to minimize our impact.

In 2021, Scope 1 emissions increased slightly due to increased staff commuting. Scope 2 emissions decreased from 2020 to 2021 due to decarbonization of the global electric grid.

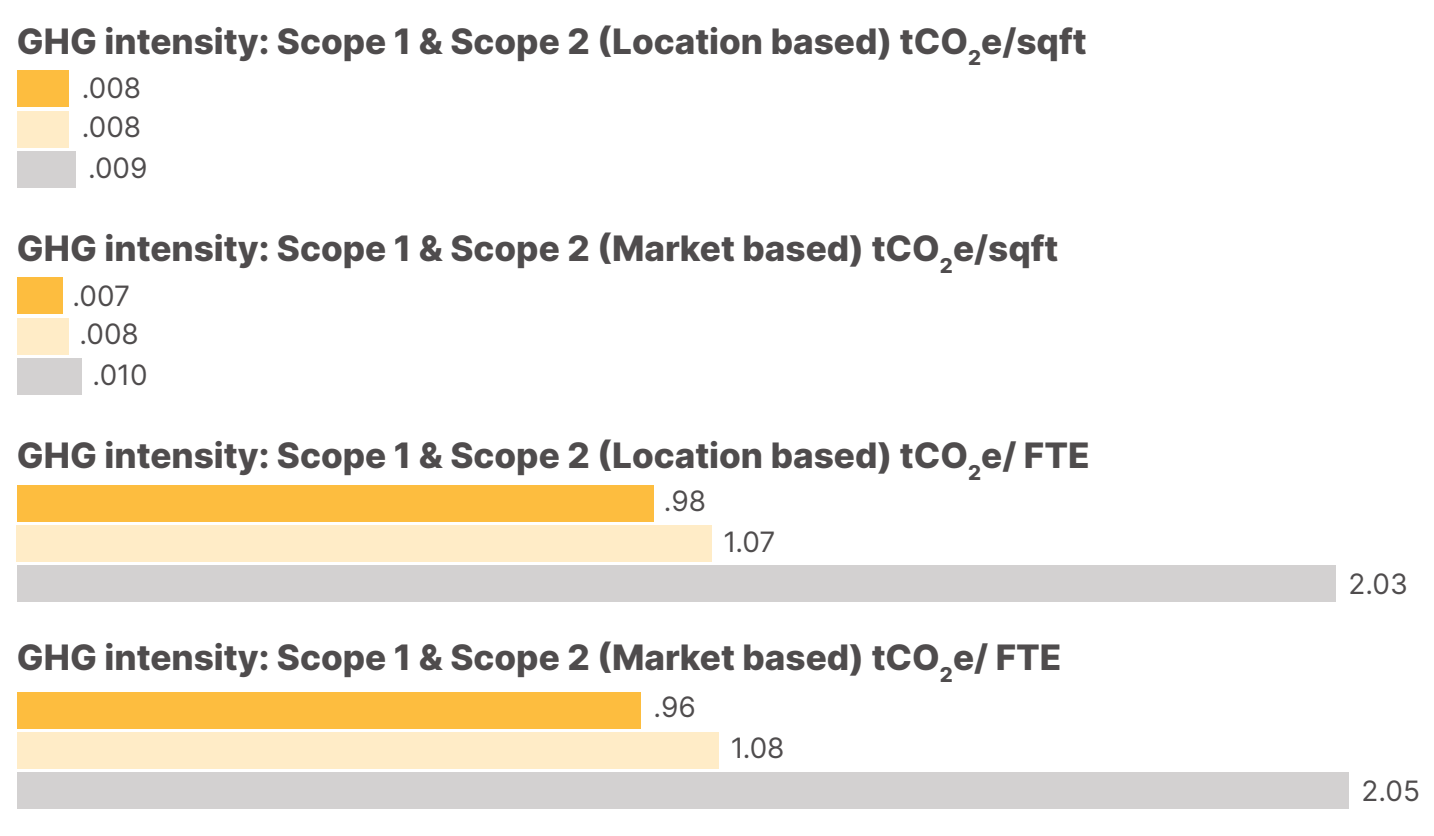
Like many companies today, we recognize the need to reduce the environmental impact of our operations. Now that we have taken a first step in measuring emissions, we are well positioned to better assess strategies to reduce them over time. This includes assessing targets for reducing our emissions, exploring the use of renewable energy sources and transitioning our own small fleet to hybrid or electric vehicles as their leases renew.

WEX embraces a flexible way of working model in which many employees take advantage of the opportunity to work remotely or in a hybrid capacity. As a result, we have phased out our carpooling and public transportation incentives. For employees who do travel to our offices and are able to make low-impact commuting choices, we provide bike rooms and bike racks.

### Our GHG emissions<sup>5</sup> in tCO<sub>2</sub>e



### GHG intensity



<sup>5</sup> Scope 1 emissions are the direct emissions that occur from sources a company owns or controls, such as fuel combustion in boilers, furnaces and vehicles. Scope 2 emissions are indirect GHG emissions from purchased electricity, steam, heat or cooling.

# Energy management



Our operations rely on data centers, which we have been migrating to public cloud service providers rather than in-house managed data centers whenever practical. Migration has several benefits, including improved data security, infrastructure resiliency, system availability, and operational effectiveness, as well as a significant reduction in the amount of power we consume. To that end, our cloud computing partners' servers currently run or are working toward running on 100% renewable energy.

In 2019, we set a goal to consolidate our data centers. Through 2021, we closed 19 data centers, putting us 90% of the way toward achieving our original goal. These changes have led to an estimated 58% reduction in our internal data center energy use since 2019. We also added 10 data centers through acquisitions. We now aim to consolidate to seven data centers by 2023.

Our main offices use LED lighting throughout, and we adopt best practices including daylight harvesting to minimize our energy use where possible.

**58%**

**reduction in our internal data center energy use**



# Waste and water management

We recognize that our role as a responsible business requires good stewardship of natural resources. Our employees play an important role in helping us reduce our environmental impacts.

All of our facilities participate in office waste recycling programs using single-stream recycling. We contract with a third party for electronic waste recycling. We also offer environmentally friendly water bottle refilling stations to reduce single-use plastic waste.





# Social Impact

We work to enhance the health and well-being of our communities, customers, partners and employees through both our operations and our community engagement. These efforts span our solutions ecosystem, as well as our community involvement and philanthropy. Beyond the basics of good corporate citizenship, we are in the business of providing products and services that positively impact stakeholders around the world.



# Healthcare access and affordability

health savings account (HSA), one mobile app, debit card and online account is all they need to manage these accounts and many more. These accounts include:

- HSAs
- FSAs, including dependent care FSAs
- Health reimbursement arrangements (HRAs)
- Commuter benefits
- Lifestyle spending accounts (LSAs)

HSAs, in particular, are booming. HSAs, which held \$98 billion in assets in more than 32 million accounts nationwide in 2021, provide employees with a triple tax-advantaged way to save for current and future medical expenses.<sup>6</sup> HSA participants can also invest the funds in their account, allowing them to set money aside for their future needs as HSAs are not subject to the “use-it-or-lose-it” rule that governs flexible spending accounts. Employers can also contribute to an employee’s HSA.

We help companies in the U.S. simplify the complex business of administering their benefits. As a healthcare benefits leader, we have a responsibility to help businesses and individuals navigate a complex healthcare system while minimizing cost. We support our customers in educating their employees about how to access and maximize those benefits.

These efforts are particularly critical today due to the COVID-19 pandemic, which created a massive need for mental and physical health and financial wellness, and the “Great Resignation,” which showed the impact pay and benefits can have on employee satisfaction.

Our benefits technology makes it easy for employers to offer a multi-account solution that can meet the needs of a diverse group of employees. Whether it’s an employee who chooses a traditional health plan with a general-purpose medical flexible spending account (FSA) or a high-deductible health plan and a



<sup>6</sup> “2021 Year-End HSA Market Statistics and Trends,” Devenir Research, March 2022.

Our 2021 acquisition of the benefitexpress business allows us to serve benefits administration customers from end to end, giving us further insight into employers' benefits usage and creating opportunities to help them expand access to their offerings.

Our human resources and benefits platform gives employers streamlined access to important analytics on benefits usage, including how their employees are using their existing benefits and how their usage patterns compare to those across companies on WEX's platform. These data-driven insights help employers target their education and communications efforts to the areas of greatest need, expanding access and adoption throughout their employee base. Employers can also customize their

portals, tailoring the employee experience based on what they learn about their engagement levels.






We regularly seek feedback from our stakeholders via surveys, periodic business reviews and the advisory boards we have created for partners, consultants, employers and participants. This feedback allows us to tailor both our product offerings and our education materials (see "[Benefits literacy](#)") to meet employees' needs.

We continue to evaluate our suite of offerings to ensure it supports partners and employers in making healthcare and other benefits broadly accessible to employees.

## Supporting COBRA subsidies for employees in need

On March 11, 2021, a COVID-19 stimulus package known as the American Rescue Plan Act (ARPA) was signed into law. Its provisions included a temporary subsidy for employees who had been involuntarily terminated or had their hours reduced and were using COBRA for their health insurance: From April 1, 2021, through September 30, 2021, employers were required to cover 100% of an employee's cost to continue group health coverage via COBRA. The federal government reimbursed the employer or insurer (for fully insured plans) for the cost of the subsidy, including COBRA administrative fees.

This was a massive change for employers, who needed to quickly understand the extent of ARPA's coverage, as well as how to administer and document the subsidies. We received more than 14,000 questions from employers after ARPA was announced. Just 33 days after the announcement, WEX launched a COBRA solution for employers as part of our mission to simplify benefits for everyone. In addition, we created a full suite of educational and support materials with respect to COBRA to assist employers, consultants and partners, including:

-  **40 notification emails**
-  **9 webinars**
-  **5 blog posts**
-  **2 podcast episodes**
-  **How-to videos, articles, and FAQs**





# Benefits literacy

The more thoroughly our partners, employers and participants understand their benefits, the better chance we have to make a difference. We have developed robust education for participants, which includes:

- ✓ A knowledge base of help articles for participants
- ✓ The Benefits Buzz blog, which shares employee benefits news, trends and insights
- ✓ The Benefits Buzz podcast, which provides thought leadership for human resources teams and benefits professionals
- ✓ A variety of tools, including My HSA Planner, which gives employees personalized insight into how to get the most out of their HSA
- ✓ A data-driven, personalized experience that guides decisions and helps plan participants get the most from their benefits

## HSA Day 2021

While HSAs are healthy and growing, their versatility can often lead to confusion on how to best communicate their benefits. We launched National HSA Awareness Day in 2019. Occurring annually on October 15, the day aims to increase understanding of how these important tools can help manage out-of-pocket health expenses, prepare for unexpected healthcare costs, and plan and save for retirement. In 2021, our HSA Day programming focused on what type of HSA education can increase employee understanding and utilization.

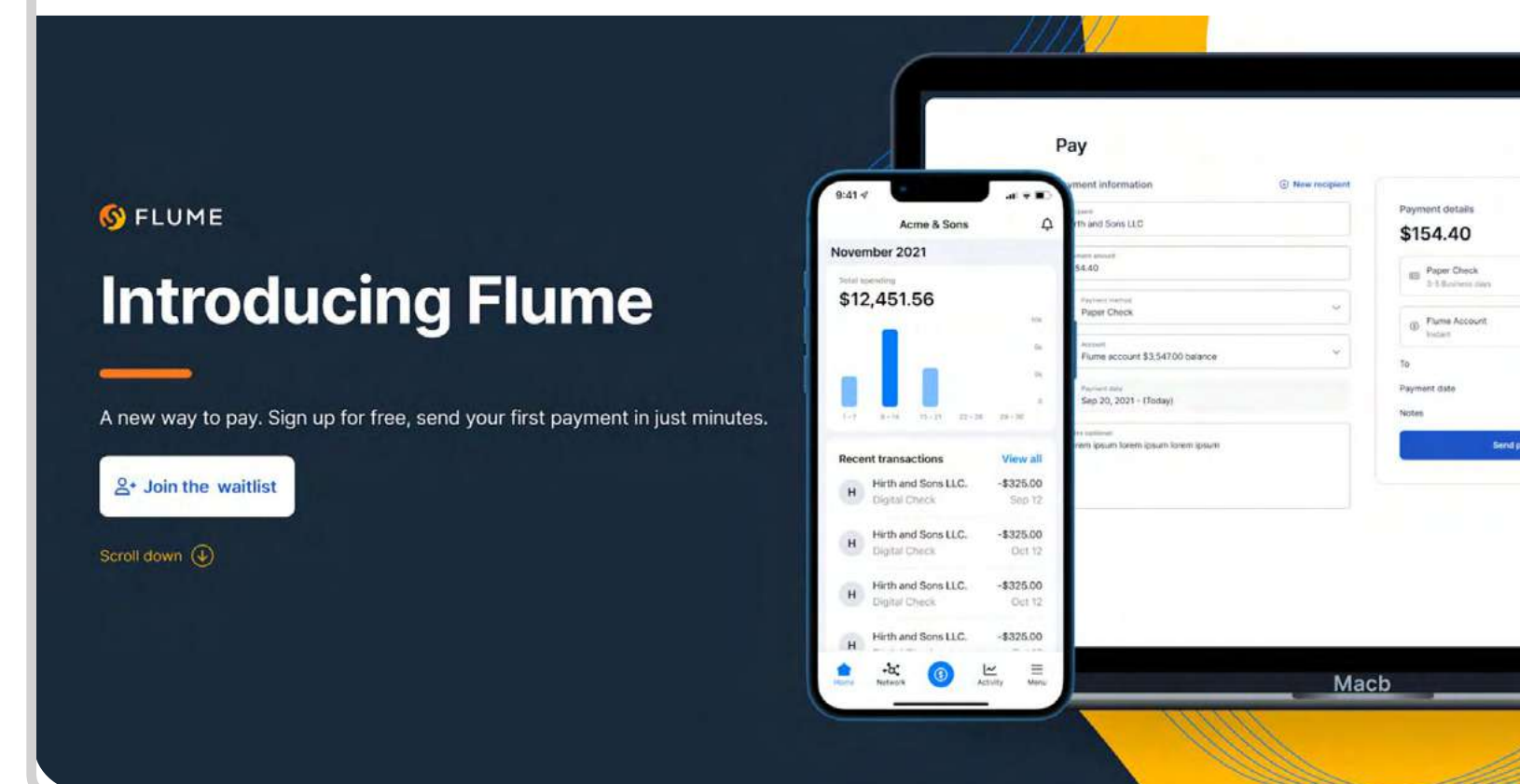
HSA Day 2021 included a live, in-person recording of our Benefits Buzz podcast, featuring a discussion with three HSA experts. We also hosted a pair of HSA webinars and created educational resources for our partners, as well as social media content for employers and employees. All of these efforts are part of our strategy to increase access to savings, health products and financial wellness.



## Financial access and affordability

Many small businesses have been underserved by payments processors—at a cost to their business. Specifically, businesses in the trades with less than \$15 million in annual revenue typically rely on paper checks and have limited resources to devote to accounts payable and accounts receivable. As a result, they lack visibility into cash flow and availability of funds, which can hamper their ability to scale.

In 2021, we started addressing this challenge by developing a product to support small businesses through WEX Ventures. An internal program to incubate and test revenue-accelerating innovations, WEX Ventures allows our employees to experiment with new value propositions, products, and business models. Recognizing how critical fast, simple, secure payments are for small businesses, a small team developed Flume, a Federal Deposit Insurance Corporation (FDIC)-insured digital wallet that allows small business customers to send, store and receive payments securely. We premiered Flume—the first WEX Ventures product to launch—at our Investor Day in March 2022.



# Community engagement

Community involvement and philanthropic giving are integral to WEX's culture. We believe that thoughtful corporate philanthropy strengthens our communities, engages our employees, enhances our brand, and helps address social issues. Community is one of our core values, and community engagement helps us attract and retain talent while reinforcing a key element of our culture.

## Corporate philanthropy

Our global funding strategy prioritizes social equality, based on the importance of access to opportunities for all. In response to the ongoing racial and social unrest in 2021, we reevaluated our community funding pillars (see box to the right for more on our funding pillars) and reframed the ways in which we both fund and communicate about our funding. We focus on funding for social equality both across the board and as a strategic pillar.

While our commitment to social equality is reflected in nearly all of our philanthropic efforts, our support in this space includes providing funds to and partnerships with organizations that work to ensure equal social capital and access to all families and organizations that serve, are led by or primarily benefit people of color or underrepresented minorities.


In addition, we are right-sizing our philanthropic efforts to help support increased need outside of the U.S. and


to be responsive to employee passions and interests through global charitable budget allocations and funding mechanisms through our employee resource groups. As part of these efforts, we are also evaluating the methods we use to track and report our corporate philanthropic efforts.


Our giving program includes corporate charitable giving, employee fundraising campaigns, a matching gift program and the WEX Compassion Fund. The WEX Compassion Fund, which offers relief for employees with critical financial needs caused by a qualified disaster or other hardship, is funded entirely through employee, Board and company contributions, and is administered via the WEX Cares Foundation Inc., a 501(c)(3) organization registered in Maine. In 2020 and 2021, the WEX Compassion Fund **provided grants to 143 employees who were impacted by COVID-19 and other qualified disasters or hardships.**


## The WEX giving program

Our giving program focuses on four strategic areas:

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**The arts.** We believe the arts are a fundamental building block to thriving, creative communities. Art serves as a catalyst for creativity, innovation and growth, and should be accessible to all. We support organizations, including the Portland Museum of Art and Indigo Arts Alliance, that provide access for underserved populations and bring exceptional arts programs to our communities.
- 

**Education.** We believe education offers the keys to professional success and guides the way into the future. We are committed to supporting organizations that address educational needs from pre-K to post-grad, with a focus on STEM education and ensuring equity in access to education in our communities. These organizations include Boys & Girls Clubs, Educate Maine and The Telling Room.
- 

**Social equality.** Though our commitment to social equality is reflected in all of our philanthropic efforts, our support in this space focuses on funding that ensures equal access to basic needs such as shelter, food and healthcare to all families, regardless of socioeconomic status. We are also focused on supporting organizations that are led by or primarily serve people of color and other underrepresented minorities. In 2021, we supported organizations including the Opportunity Alliance, Equality Maine Foundation, Avesta Housing, Milestone Recovery, Prosperity Maine, Wayside Food Programs, YMCA of Southern Maine and Preble Street.
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**Well-being.** Healthy communities mean healthy citizens and families. That's why it's important for us to invest in organizations such as the Maine Cancer Foundation, the Center for Grieving Children, the American Heart Association and Maine Medical Center that promote healthy lifestyles, offer access to mental health care, and work to ensure that all citizens can access these resources regardless of financial means.

# Employee volunteerism

We encourage employees to support their local communities through volunteerism and civic engagement. To demonstrate our commitment to this concept, our global Volunteer Time Off Program offers employees 16 hours of paid time off every year, specifically to give back to their community in a way that is meaningful to them—without having to use their vacation time. We also encourage employees to develop leadership skills through service on nonprofit boards, and we organize group volunteer opportunities across our locations.

For example, in early 2021 **more than 100 WEX volunteers helped staff a COVID-19 clinic** run by Maine’s largest health system. WEX and other corporate partners provided valuable volunteer infrastructure to handle clinic administration, freeing the health system’s staff to concentrate on vaccine administration. This combined community effort resulted in **the reported administration of more than 87,000 COVID-19 vaccine doses.**

As part of our annual “Month of Caring,” employees at our offices around the globe are encouraged to engage with local nonprofits and give back to their local communities by participating in hands-on volunteer activities during the month of May. In 2021, we coordinated with the United Way Worldwide to pivot our traditional Month of Caring to a virtual campaign, in which employees wrote letters of support to first responders, teachers and the elderly. Employees were also able to answer academic and career questions submitted by students across the country.





# Governance

Our business is built on a foundation of ethics and integrity. We have developed the frameworks, processes and tools necessary to uphold our responsibilities to our customers, our shareholders, our employees and our communities. We regularly monitor all these frameworks, processes and tools, updating and adjusting them as necessary to ensure our foundation remains strong and positions us well in the future.



# Board composition



Throughout WEX, we are committed to diversity and the benefits it brings to our organization. This commitment extends to Board diversity, as our Board believes that having among its members individuals with a diverse set of skills, experiences and backgrounds can provide valuable insight and guidance on our overall business strategy, as well as our ESG strategy. To that end, 11 of our 12 directors are considered independent, based on our guidelines and NYSE corporate governance standards. Our Board intends to continue to be mindful of diversity with respect to gender, race, national origin, and age, in connection with future nominations of directors not presently serving on the Board.

Also in 2021, shareholders approved an amendment to our certificate of incorporation in order to declassify the Board, a measure the Board submitted as a proposal and supported as being in the best interest of the company and its shareholders. Furthermore, many investors believe that the election of directors is the primary means for stockholders to influence corporate governance policies and to increase accountability for implementing those policies, and therefore an annual election cycle increases said accountability. We began phasing in the declassification process in 2022, when directors standing for election were elected for one-year terms.

More information on our Board can be found in our [2022 Proxy Statement](#).

In 2021, we enhanced our onboarding process for new directors, creating a two-month series of sessions with the executive leadership team, the chairs of all Board committees and other WEX employees as appropriate. This process allows new directors to familiarize themselves with our business quickly, helping them build relationships and understand processes that will help them guide WEX into the future.



WEX Board of Directors

# Ethics and integrity

Our commitment to acting with integrity and honesty begins at the very top of the organization, with our executive leadership team and Board of Directors, and is inherent in our corporate values.

The principles outlined in our Code of Business Conduct and Ethics describe the behaviors that help us put our values into action. Our code includes our expectations for maintaining a safe and respectful workplace, diversity and nondiscrimination, avoiding conflicts of interest and interacting with clients and business partners in a fair and honest way. It also includes clear guidelines on following the letter and the spirit of the law with regard to topics including but not limited to anti-bribery and corruption, money laundering, fair competition and insider trading. Our code also emphasizes how we respect and protect the human and legal rights of individuals and communities wherever we operate, as well as how we protect information and assets belonging to WEX and our employees, customers and partners.

Employees at WEX are trained on our code as part of our onboarding process and are required to acknowledge the code as part of our annual compliance training. The code applies to directors, officers and employees of WEX Inc., as well as directors, officers and employees of affiliates and subsidiaries controlled by WEX. Certain business partners, such as vendors, consultants, contract workers and temporary employees, serve as an extension of WEX and are expected to follow the spirit of the code.

If employees or others have ethics or compliance concerns, they can contact our confidential Integrity HelpLine, which is available 24/7. The HelpLine is staffed with trained specialists from an independent third party. HelpLine reports may be submitted anonymously, where allowed by local law. In addition, WEX maintains a strict nonretaliation policy, which is described in our code.



# Employee compliance training

We deliver mandatory compliance training to our employees across the enterprise in order to comply with legal, regulatory and audit requirements, meet customer and partner obligations, and reduce risk. Our compliance trainings cover topics including but not limited to our Code of Conduct, the Health Insurance Portability and Accountability Act (HIPAA), Bank Secrecy Act/anti-money laundering, the European Union’s General Data Protection Regulation (GDPR), anti-harassment, anti-discrimination, cybersecurity, the Payment Card Industry (PCI), HSAs, and conflicts of interest. We strive to deploy high-quality, relevant and timely training through a consistent and standardized approach. Our focus is on ensuring that we meet regulatory compliance and best practice standards by providing consistent, transparent and accurate evidence for audits and other reporting.

Our enterprise Compliance Team oversees the compliance training curriculum and approves the annual calendar, including specific trainings related to our bank and health divisions, as well as our other regulated entities. Our Human Resources function assigns compliance training several times a year to ensure that appropriate information is delivered to the right audiences on a regular basis. Contract workers are also assigned compliance training as appropriate for their roles. Human Resources tracks the training completion rate and reports it to Compliance.

Across WEX, more than **49,550 individual compliance course assignments were deployed** in 2021, with **99% or higher completion rates across all topics.**



# Ethical selling practices

Our operations are primarily business to business, with a small fraction of our marketing and sales efforts targeting consumers. Regardless of which market we are addressing, our **Code of Business Conduct and Ethics** requires that the marketing of our products and services be truthful and accurate. False claims about competitors' products and services are never acceptable. Our distributors and partners are subject to our due diligence process to ensure they meet our standards.

We have policies and governance processes and controls in place to evaluate and mitigate risks for our sales compensation plans.

# Human rights and freedom of association

We respect and protect the human rights of individuals and communities wherever we operate. We do business all over the world. People are at the core of who we are and what we do. Treating people with dignity and respect helps cultivate a reliable and productive workforce. Protecting human rights enhances our reputation and helps ensure our long-term success. Furthermore, we provide proper working conditions, hours, and compensation and respect workers' rights to associate freely. These obligations and expectations are written in our Code of Business Conduct and Ethics.







# Intellectual property and competitive behavior

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Protecting the proprietary information and technology used in our business is of critical importance. We rely on a combination of patent, copyright, trade secret and trademark laws, in addition to confidentiality procedures, contractual provisions and other similar measures, to do so. When we enter into agreements with clients, consultants, service providers and other partners, the agreements generally contain provisions restricting the use and disclosure of our proprietary information and technology.

Our patent policy aims to protect and safeguard company inventions and recognize the importance of patents in

these efforts. It also states our objective of not knowingly infringing on any valid third-party patent claims. Historically, we have sought to register and maintain patents and trademarks for defensive purposes. We are prepared to aggressively defend our intellectual property as necessary.

Our Code of Business Conduct and Ethics requires employees to protect our intellectual property and observe our rules on not entering into agreements with competitors to our detriment or engaging in any anti-competitive behavior.

# Shareholders' rights and engagement

As a general practice, we prioritize ongoing communications with our shareholders. In 2021, we expanded our shareholder engagement efforts, seeking to communicate proactively with our investors on issues including our compensation philosophy and strategy practices, our ESG strategy and our corporate governance structure, among other topics. In addition, in early 2022 we held an Investor Day, during which we shared our business results, strategy and vision, including our ESG commitment.

In addition to direct engagement, we have also adopted certain shareholder rights provisions, including proxy access. The Corporate Governance Committee of our Board regularly evaluates our governance practices and assesses how they compare to current and developing best practices across the market. For more information on shareholder rights and engagement, please see our [2022 Proxy Statement](#).



# Cybersecurity and data privacy



Data protection is an essential aspect of our operations and is critical to our ability to do business. Our comprehensive Information Security Program is intended to safeguard the confidentiality, integrity and availability of WEX's physical and electronic information assets. The program's objectives include:

- ✓ Managing controls to safeguard WEX's information assets against unauthorized use, access or disclosure
- ✓ Managing a controlled environment consistent with commonly accepted industry standards and frameworks including ISO 27001, Payment Card Industry Data Security Standard, Sarbanes-Oxley Act (SOX) Section 404, System and Organization Controls (SOC) 1/SOC2 reporting, Health Information Trust Alliance (HITRUST) and National Institute of Standards and Technology
- ✓ Managing the risks related to the use of external service providers and related third parties
- ✓ Maintaining business resiliency in the event of a disaster scenario or security incident

Our chief information security officer (CISO) administers our Global Information Security Program, reporting to the chief technology officer, the WEX Bank Board of Directors and the WEX Board of Directors via the Technology Committee. The CISO regularly presents a threat matrix, an analysis of our cyber health, and an update on any recent threat activity to the Technology Committee. The Technology Committee then, in turn, regularly reports out to the Board and/or the Audit Committee as necessary during succeeding meetings.

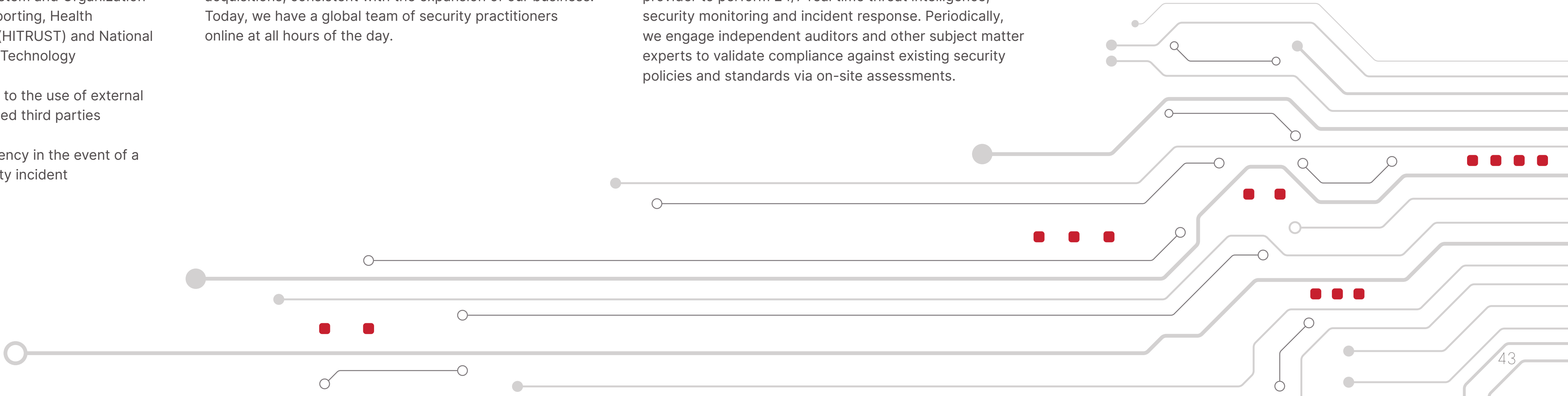
Our Global Security Team serves to mirror WEX as an organization. As we continue to grow and do business around the world, it is imperative that we have security visibility and resources in the regions in which we conduct business. We have grown our team through our 2021 acquisitions, consistent with the expansion of our business. Today, we have a global team of security practitioners online at all hours of the day.

We review and update both the security framework and all security policies at least annually to respond to the rapidly evolving threat landscape and meet all applicable federal and state regulations. We maintain PCI and HIPAA compliance, and we are subject to external audits, including by the FDIC.

We have a comprehensive strategy to manage risk to organizational operations and assets, individuals and other organizations associated with the operation and use of our information systems. We actively monitor new risks, evaluate them through a risk management process, and produce a risk register.

We have contracted with a managed security service provider to perform 24/7 real time threat intelligence, security monitoring and incident response. Periodically, we engage independent auditors and other subject matter experts to validate compliance against existing security policies and standards via on-site assessments.

All employees are trained on and acknowledge our data security policies when they are hired, and they renew this acknowledgement annually. We hold cybersecurity awareness training programs to educate employees about emerging threats and security trends, and to reinforce the role they can play in protecting against them. We also train employees to understand the risks associated with electronic communications and run quarterly phishing awareness campaigns. Developers receive job-specific data security training based on their role.



# Customer privacy

The privacy of our customers and their data is a top priority, and we apply global best practices for data privacy. Since our operations are primarily business to business, we gather and maintain very limited consumer data. We maintain compliance with the European Union’s GDPR and other applicable privacy laws in the countries where we operate. For example, in the U.S. we have a comprehensive privacy policy outlining how data is collected, used and shared. It also outlines the options for accessing, correcting or deleting personal information.

We allow our users to choose how we use their personal information for advertising and marketing purposes.

All our employees complete customer privacy training on topics such as cybersecurity and data privacy. We also complete an annual privacy risk assessment across our operations. This internal audit examines the likelihood and impact of a risk event and assesses the effectiveness of tactics to mitigate various privacy risks.

# Vendor data security

All new vendors are assessed for risk relevant to the services being provided as part of our Vendor Risk Management onboarding process. An important part of this process includes a cybersecurity risk assessment performed by our Information Security Team, which includes continuous monitoring and updating of risk profiles regularly. This assessment includes a set of questions for vendors to answer, including whether they access our information and data, whether they handle personal identifiable information (PII) or personal health information (PHI) and what level of business criticality

they have. Depending on the vendor’s risk profile, we also formally request a SOC1/SSAE18, SOC2/TSC or PCI attestation of compliance (AOC), as applicable.

Our third-party risk management solution continuously monitors vendor risk, and the Information Security Team regularly receives updated documentation from these reviews. In this documentation, they look for solutions to previously noted deficiencies, and check to ensure no new deficiencies have been discovered.



# Risk management

Our business continuity and resilience framework is based on a straightforward philosophy: We seek to foster a proactively resilient organization that can respond nimbly as events occur, rather than merely recovering after the fact. This is especially true as our business grows and expands.

Our chief risk and compliance officer, who oversees our risk and compliance program, reports directly to the CEO and has direct access to the Board as needed. Our corporate risk management framework incorporates both systemic risk management and organizational resilience. Furthermore, as part of our broader enterprise risk management program, we consider business risks, risks from climate change and volatile weather, technology risks and vendor or third-party risks.



## Systemic risk management

Our approach to systemic risk management largely centers on our use of technology. The Technology Committee of the Board reviews and oversees our overall strategic direction, including details such as the investments we make in information technology and any perceived risks that new innovations present. The committee also studies emerging products and new ways to engage in processes that could have a significant impact on our operations. The committee assists the board and the Audit Committee in overseeing risk management regarding technology, data security, disaster recovery and business continuity. This effort includes risks related to hardware, organizational structure, innovation and research and development.

Our chief information officer, who reports to our chief technology officer, has global responsibility

for infrastructure, internal applications and business systems, as well as all end user services.

We use a combination of cloud and physical infrastructure, which enables the resilience and recoverability of our operations across the globe. We use high-availability architecture within each data center and duplicate systems across multiple cloud zones to ensure the resilience of our production systems. We also have a comprehensive disaster recovery solution in place to ensure recoverability of production systems in the event that our front-line means of defense are incapacitated.

In addition to our focus on technology-related risk, we also view ESG as a lens for assessing potential risk. As we continue to mature our ESG governance and strategy, we intend to enhance this aspect of risk assessment.

# Organizational resilience

We take all appropriate measures to ensure our business can anticipate, prevent, mitigate and respond to disruptive events. Our Organizational Resilience Program is overseen by the Enterprise Risk Management (ERM) Executive Committee and guided by our Business Continuity Plan (BCP). The director of organizational resilience provides quarterly status reports to the chief technology officer, who is a member of the ERM Executive Committee. Our Board of Directors, which oversees the BCP, receives updates on its status at least annually. The Board's Audit Committee also receives periodic reports.

Our BCP aims to provide a comprehensive and systematic process of prevention, mitigation, preparedness, response, continuity and recovery. The BCP outlines a dynamic, interactive process for before, during and after a disruptive event. It includes business unit, technology and emergency response plans covering physical security, emergency response and recovery responsibilities, tasks and procedures. In addition, we use multiple automated resiliency tools and services to ensure global situational awareness, effective preparation, communication and collaboration across the enterprise related to resiliency planning, testing and incident management.

The BCP's emergency response plans address the safety of our employees, customers and partners, as well as the protection of physical and information assets. It applies an all-hazards approach, meaning it is designed to address a full range of threats and risks, as well as the overarching impact they may have on our organization.

Our BCP is aligned with the ISO 22301 framework and is integrated with our physical, information security and

risk management systems. The program is SOX compliant and follows FDIC regulations and guidance. In addition, we maintain PCI certification on five of our platforms, as well as a HITRUST certification for our health division.

All BCP components are tested before implementation. We regularly run BCP exercises to ensure the plan's viability and continued improvement. In addition to consistently evaluating our organizational resilience plans, procedures and capabilities, we also regularly monitor and measure parts of our operations, such as partnership and supply chain relationships, that have a material impact on our performance.

We continuously evaluate our organizational resilience program's compliance with all applicable legal and regulatory requirements and stay apprised of industry best practices.



## Responding in real time to volatile weather

Some of our Nashville call center employees were impacted by the 2021 tornados that affected the area. Thanks to our geographic diversity and our cross-training program, we were able to absorb their responsibilities without affecting our customers, giving our employees the time they needed to attend to the damage. We continue to monitor volatile weather events associated with climate change as we consider broader climate risks to our business.

For information on how we support our employees through life-changing events, including our EAP program, see "[Benefits and compensation](#)".





# Supply chain management

As a technology company, our supply chain management needs are relatively minimal. As applicable, vendors are assessed through Coupa's third-party risk assessment, and they must agree to our Code of Business Conduct and Ethics.

We continue to evaluate our approach to supplier management and engagement, including supplier diversity, and expect our practices to evolve in the years to come.

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# Political engagement

Our lobbying activities, which are overseen by our Legal Team, are limited. We occasionally engage policymakers and legislators on matters of interest to our healthcare, banking and payments businesses and comply with all applicable laws and regulations when we do so.

As an organization, WEX does not make significant political contributions.

# Thank you for reading our 2021 ESG Report.

We welcome any input from our stakeholders as we continue to develop and enhance our ESG strategy and performance in years to come.

For more information, please visit our [ESG website](#) or please reach us at [ESG@wexinc.com](mailto:ESG@wexinc.com).







# Appendix





# SASB INDEX

In developing this report, we have referenced the IFRS Foundation's SASB standards for the Software and IT Services industries. According to the SASB Industry Level Materiality Map, the following categories are most relevant to companies in our industry. To find more information about our efforts in a specific area, the below table was created to identify the specific section in the report relevant to the stated metrics.

Topic	Accounting Metric	SASB Code	Report Section and Page Numbers
Environmental Footprint of Hardware Infrastructure	(1) Total energy consumed, (2) percentage grid electricity, (3) percentage renewable	TC-SI-130a.1	Please see the Environmental Stewardship; Energy Management section for a description of our effort to reduce our hardware infrastructure energy consumption <b>Page 28</b>
	(1) Total water withdrawn, (2) total water consumed, percentage of each in regions with High or Extremely High Baseline Water Stress	TC-SI-130a.2	WEX does not currently track this data. We do not consider this information to be material given material amounts of water are not consumed as part of our operations and our current transition to public cloud service providers.
	Discussion of the integration of environmental considerations into strategic planning for data center needs	TC-SI-130a.3	Environmental Stewardship; Energy Management <b>Page 28</b>
Data Privacy & Freedom of Expression	Description of policies and practices relating to behavioral advertising and user privacy	TC-SI-220a.1	Governance; Cybersecurity and Data Privacy; Customer Privacy <b>Page 44</b>
	Customer Privacy Number of users whose information is used for secondary purposes	TC-SI-220a.2	Not reported. Please see the Governance; Cybersecurity and Data Privacy; Customer Privacy for more information regarding our customer privacy practices. <b>Page 44</b>
	Total amount of monetary losses as a result of legal proceedings associated with user privacy	TC-SI-220a.3	In 2021, WEX had no material monetary losses as a result of legal proceedings associated with user privacy.
	(1) Number of law enforcement requests for user information, (2) number of users whose information was requested, (3) percentage resulting in disclosure	TC-SI-220a.4	Not reported. Please see the Governance; Cybersecurity and Data Privacy; Customer Privacy for more information regarding our customer privacy practices. <b>Page 44</b>
	List of countries where core products or services are subject to government-required monitoring, blocking, content filtering, or censoring	TC-SI-220a.5	This is not applicable to WEX provided services.



# SASB INDEX (cont.)

Topic	Accounting Metric	SASB Code	Report Section and Page Numbers
Data Security	(1) Number of data breaches, (2) percentage involving personally identifiable information (PII), (3) number of users affected	TC-SI-230a.1	Please reference our reports filed with the SEC for further information on our cyber security risks. See the Governance; Cybersecurity and Data Privacy section of this report for additional information on our data security programs. <b><u>Page 43</u></b>
	Description of approach to identifying and addressing data security risks, including use of third-party cybersecurity standards	TC-SI-230a.2	Governance; Cybersecurity and Data Privacy. <b><u>Page 43</u></b>
Employee Engagement, Diversity & Inclusion	Percentage of employees that are (1) foreign nationals and (2) located offshore	TC-SI-330a.1	Introduction <b><u>Page 5</u></b>
	Employee engagement as a percentage	TC-SI-330a.2	The results of our engagement survey fall outside of the reporting period of this report. See the People and Culture; Culture and Engagement; Employee Engagement for more information on how we measure and manage employee engagement. <b><u>Page 12</u></b>
	Percentage of gender and racial/ethnic group representation for (1) management, (2) technical staff, and (3) all other employees	TC-SI-330a.3	People and Culture; Diversity, Equity, and Inclusion; employee demographics. <b><u>Page 17</u></b> Our 2021 EEO-1 Report can be found <a href="#">here</a> .
Intellectual Property Protection & Competitive Behavior	Total amount of monetary losses as a result of legal proceedings associated with anti-competitive behavior regulations	TC-SI-520a.1	In 2021, WEX had no material monetary losses as a result of legal proceedings associated with anti-competitive and when we have material losses, they will be reported in our public SEC filings.
Managing Systemic Risks from Technology Disruptions	Number of (1) performance issues and (2) service disruptions; (3) total customer downtime	TC-SI-550a.1	Not reported. Please see the Governance; Risk Management; Systemic Risk Management and Organizational Resilience for more information regarding our management of systemic risks. <b><u>Pages 45-46</u></b>
	Description of business continuity risks related to disruptions of operations	TC-SI-550a.2	Governance; Risk Management; Systemic Risk Management and Organizational Resilience <b><u>Pages 45-46</u></b>

# FSA Insights

Flexible spending accounts are one of the most popular benefit accounts, with 68% of employers offering the benefit to help employees cover healthcare costs.<sup>1</sup>



## › Smart spending

In a recent study, **17% of Americans have had to skimp on essentials, like food, to pay for healthcare.**<sup>2</sup> FSAs allow employees to set aside money pre-tax to pay for healthcare related products and services.

## › Types of healthcare FSAs



### Medical FSA

(covers doctor copays, dental exams, vision exams, and more)



### Limited medical FSA

(covers dental, vision, and preventative expenses like prenatal visits)



### Combination FSA

(covers expenses under the limited FSA until the deductible is met. Then covers medical FSA expenses)

## › FSA industry benchmarking

**Average 2021 employee contribution: \$1,282**

**Percentage of plans offering an employer contribution:**

**3%**

of medical FSAs

**30%**

of limited FSAs<sup>3</sup>

## Benefits for employers

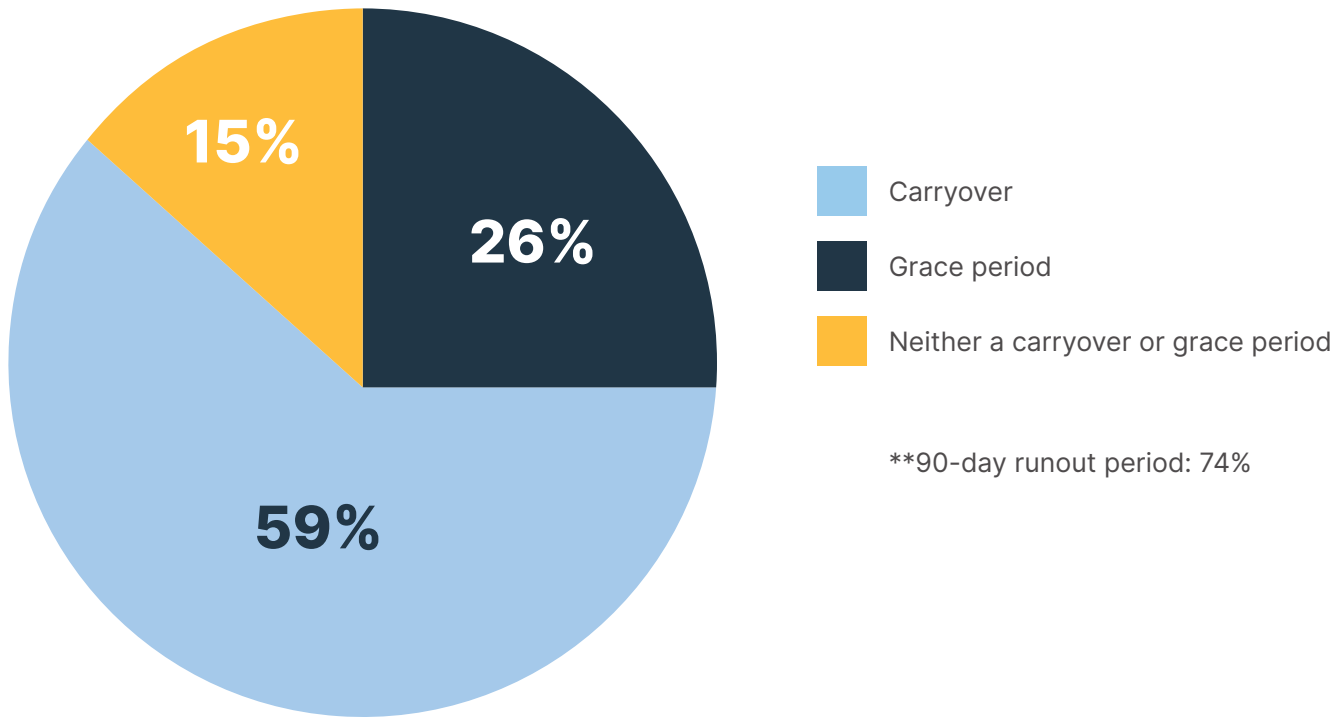
- Your employees' contributions reduce your payroll taxes.
- You own the plan and have the flexibility to design your plan, including if you want to offer a carryover or grace period.
- They're an attractive benefit that can help with recruitment and retention.

## Benefits for employees

- Funds are contributed tax-free, which could mean significant tax savings.
- Funds are available on the first day of the plan year to help employees pay for healthcare expenses.
- Limited and combination FSAs can be paired with an HSA.

## › FSA industry benchmarking (cont.)

Percentage of WEX plans offering:



### Did you know?

**57% of limited FSAs and 42% of medical FSAs** had some amount of forfeiture at the end of the plan year.<sup>3</sup> **Employers can offer a carryover of up to \$570 (in 2022) of unused funds** into the next plan year to help reduce forfeitures.



#### Sources:

<sup>1</sup> <https://www.benefitnews.com/list/the-most-popular-employee-benefits>

<sup>2</sup> <https://www.fool.com/the-ascent/personal-finance/articles/17-of-americans-have-had-to-skimp-on-food-to-pay-for-healthcare/>

<sup>3</sup> [https://www.ebri.org/docs/default-source/fast-facts/ff-391-fsas2-25mar21.pdf?sfvrsn=82ea3a2f\\_4](https://www.ebri.org/docs/default-source/fast-facts/ff-391-fsas2-25mar21.pdf?sfvrsn=82ea3a2f_4)

Learn more about the power of FSAs at

[www.wexinc.com/products/benefits/flexible-spending-account-fsa/](http://www.wexinc.com/products/benefits/flexible-spending-account-fsa/)



# Commuter Benefits

from **WEX**

Simplified payment and administration with minimal hassle for partners and employers (no matter how employees get to work).



## What Are Commuter Benefits?

Tax-free commuter benefits, also known as qualified transportation fringes or accounts (QTA), are employer-provided voluntary benefits that allow employees to reduce their monthly commuting expenses for mass transit and work-related parking costs.



### Mass Transit

Whether your employees take the train, bus, subway, ferries, UberX Share, Lyft Shared, or a combination of these transit options to get to work, these costs are eligible commuter benefits expenses (which means that no matter how they get to work, they can save \$\$ by using their commuter benefits).



### Parking

If employees commute using their own vehicle, they can take advantage of their commuter benefits by using them to pay for parking at or near their regular place of employment, use SpotHero to reserve or pre-pay parking spots in select cities, or take advantage of park-and-ride facilities (if available).

## Rising Popularity of Mass Transit

The growing popularity of mass transit, parking, and ridesharing options such as UberX Share, Via, and Lyft Shared make these benefits an enticing recruitment and retention tool for employees.

Plus, certain metropolitan areas mandate businesses offer transit benefits to their employees (San Francisco, New York City, New Jersey, Washington, D.C., Seattle).

## Perks of Commuter Benefits

➤ **For Employers:** Employers save money on FICA taxes (7.65% savings against the pre-tax contributions).

➤ **For Employees:** Employees save money by using pre-tax dollars to pay for transit to-and-from work\*

*\*Mass transit & parking*

## Experience the Future of Commuter Benefits

### Paperless, Streamlined Payment Solutions

Our solutions mean less work for partners and employers while providing enhanced, high-tech payment options for employees (that cover all methods of transit).



#### Pre-Paid Debit Card

An IRS-compliant payment method for transit and parking plans that is accepted at any U.S. terminal. Employees can use their pre-paid debit card for transit, ridesharing, parking, and vanpooling.



#### Cash Reimbursement

Employees can easily submit for reimbursement of their commuter expenses\* through the online account or mobile app.

*\*Cash reimbursement is allowed for parking plans, vanpool expenses and any post-tax expenses related to an employee's commute.*



#### Smart Commute

Employees can use a smart card (or similar account-based technology provided by the transit authority) to directly load their commuter benefits funds for specific pass and fare fees.

*\*Available in four cities (Atlanta, Washington, D.C., San Francisco, and Chicago).*

### Minimal Hassle For Employers

Employers can easily manage their commuter benefits through their online account. And, with paper pass fulfillment\* as a thing of the past, employers simply have to track and manage payroll deductions.

\*If employees prefer paper pass fulfillment, we can do that too!

### ONE Platform For Employees to Access Commuter and Health Benefits

Employees can quickly access their commuter (and health) benefits account from ONE platform. This means less confusion and more utilization. Plus, when they are on-the-go, they can quickly access their account using their mobile app.

#### Want to learn more about commuter?

Visit [www.wexinc.com/products/benefits/commuter/](http://www.wexinc.com/products/benefits/commuter/). Already a WEX partner? Contact your Partner Account Executive for more details.



# COBRA Implementation Timeline

SOLD DATE



Employer attends kickoff call and provides the name and email of their contract signer.



Plan setup is completed; employer receives access to benefits employer online account.



Takeover notices with new coupons are sent to COBRA members. Currently enrolled COBRA members will receive access to their online account and COBRA mobile app.



Employer receives welcome email and provides availability for a kickoff call to help get their implementation started.



Employer submits plan design guide through leap and financial documents to WEX.



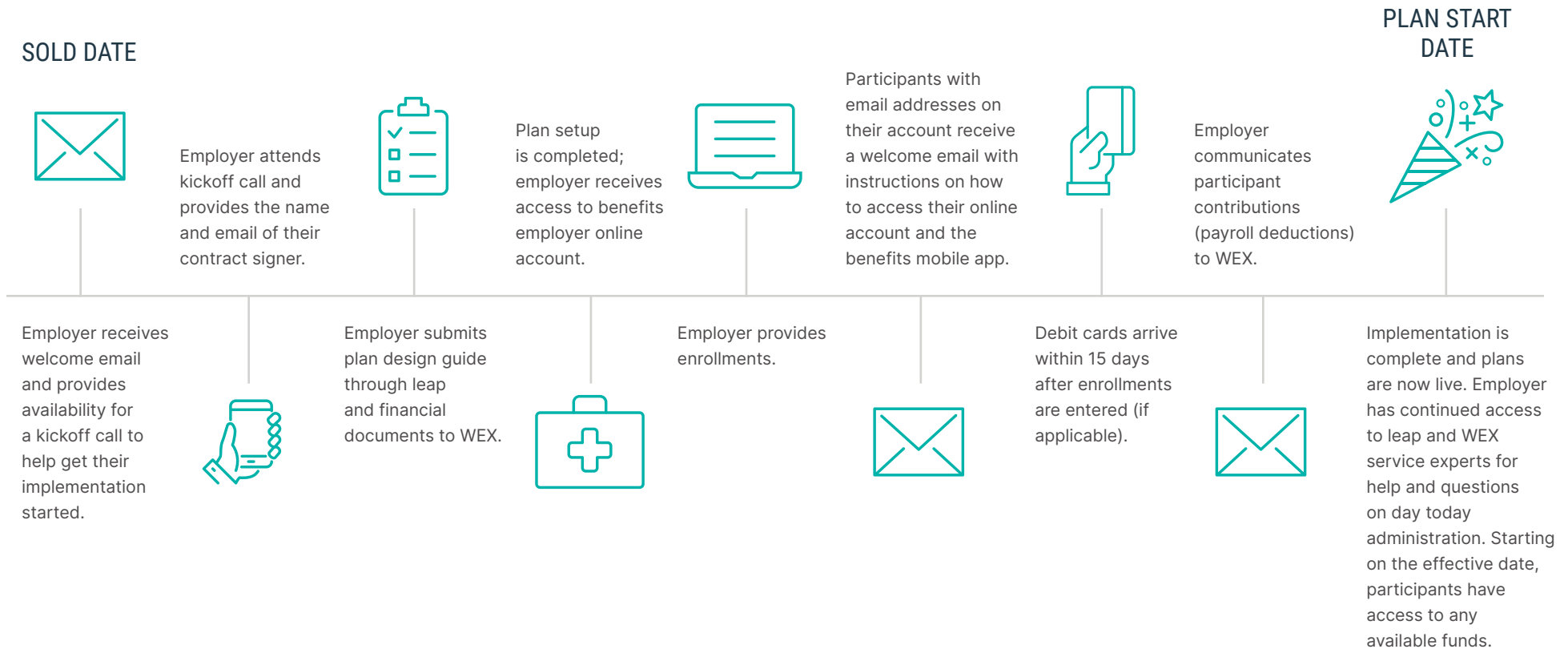
Employer provides current COBRA member enrollment information.



Implementation is complete. Employer has continued access to leap and WEX service experts for help and questions on day-to-day administration.



# Benefits implementation timeline



# > Benefits Mobile App

## Access your benefits anytime, anywhere

Access your benefits on the go 24/7 with the WEX benefits mobile app. Our free app gives you convenient, real-time access to all your benefits accounts in one spot. This makes it easy to use your hard-earned dollars and view recent account activity without ever needing to call in.

The benefits mobile app keeps your benefits always within reach. Want to know the status of a recent claim or easily check the balance of your accounts? Log in to our secure app to get answers to those questions and so many more — wherever and whenever you want.

### With our benefits mobile app, you can:



Check your balance, view account activity, and get instant updates on your claims



File a claim and upload documentation in seconds using your phone's camera.



Report a card as lost or stolen, which cancels the card and ships you a new one.



Log in through face recognition or fingerprint (depending on your phone).



Use Smart Scan to automatically file a claim from your Explanation of Benefits



Use your benefits debit card directly from your mobile phone with Apple Pay or Samsung Pay.



Scan an item's bar code to determine if it's an IRS code section 213(d) eligible expense.



Reset login credentials.



### Security on the go

Our mobile apps use encryption and won't store photos, keeping your documentation safe and secure.

Download the app for free on Apple and Android smartphones and tablets



# COBRA + direct bill from WEX

WEX simplifies COBRA + direct bill for clients through online elections and open enrollment, real-time payments, mailing required notices, robust reporting, seamless integrations, and more.



## Automated, compliant, seamless

With decades of experience navigating the compliance and business of COBRA + direct bill, you can count on us to streamline your workflow and simplify the participant experience.

### Our experience

You can depend on our decades of experience navigating the compliance and business of COBRA + direct bill.

### Our technology

Our solution is time-tested, innovative, and trusted in the industry to help clients handle complex regulations and carrier needs.

### Our scale

WEX supports more than 34 million American families.

## Streamline your workflow



### Save time, reduce manual processing, and stay in compliance.

From financial reporting for tracking premium disbursements and settlements, automatically monitoring terminations and elections, 834 file transformation and mapping, to managing employee questions and issues, you can do it all (and view real-time updates) in the COBRA employer portal.



### Access robust, on-demand reporting.

No more waiting for reports! Employers can quickly run reports on-demand in a variety of formats and/or take advantage of custom reporting solutions.



### Customize the participant experience.

Extend your brand and style through colors, your logo, fonts, and via letters so your participants know they are working with you.



### Drive efficiency with integrations.

With more than 350+ payroll/HRIS/benefit administration partners and more than 225 insurance carriers, you save time (and money) when leveraging our integrations.



### View real-time data.

With us, you get complete transparency with access to all communications and reporting in real-time.

# Simplify the participant experience

## Access their account information online.

Our intuitive platform makes it easy for participants to make elections, submit payments, view their statuses, make open enrollment elections, and get help when they need it (24/7).

## Stay connected via mobile app.

Nearly everyone has a smartphone (even if they don't have a computer), which means that participants can maintain access to their COBRA and direct bill account when they leave your company (or are simply on-the-go).

## View real-time payments.

Some systems take days to update after a participant makes a payment (which increases call volumes). But with WEX, participants get real-time, immediate updates to their account after making a payment.

## Make open enrollment elections online.

When life changes, often times benefits need to change, too. With WEX, COBRA and direct bill participants can make open enrollment elections online and choose different plans, add or drop dependents, and more.

## Receive automated, clear communications.

With WEX, our COBRA and direct bill letters are editable and separate (so you can make sure every letter is clear to avoid confusing calls from participants). Plus, letters and notifications are fully automated to save time and stay in compliance.

## More than software

We offer integrated services, such as payment processing and mail fulfillment, to reduce processing errors and keep you compliant.



### Payment processing

Billing/payment processing integrated into one system, and includes the industry's only post-mark date aware lockbox service integrated directly for settlement.



### Mail fulfillment

Fully automated and compliant solution that is highly scalable (which makes it easy to manage erratic volume), and is completely hands-off with bar code technology.



### Fast Fact:

#### Seamless navigation for employers

When using WEX for both CDH and COBRA, employers only need one login to access both of their consumer-driven health and COBRA offerings.

## Get started with COBRA and direct bill from WEX

To learn more about how WEX can simplify your COBRA administration visit [www.wexinc.com/solutions/benefits/](http://www.wexinc.com/solutions/benefits/).



# Automated COBRA that saves you time

You can save yourself time and stress while preserving accuracy when you choose a third-party COBRA administrator that's developed automation to reduce the need for manual intervention. An automated COBRA experience improves your administration a number of ways, including:

## › Sending General Rights Notices And Specific Rights Notices

### What is needed?

Within 14 days of receiving notice of a qualifying event, your plan administrator must mail a Specific Rights Notice (SRN) to your qualified beneficiary. Meanwhile, new plan members must be provided a General Rights Notice (GRN) within 90 days of group health plan coverage beginning.

### What can automation do for you?

We generate these notices within 24 hours of processing the new hire or eligible COBRA member, so you can focus on other responsibilities knowing that these notices are taken care of.

## › Election Timeframes

### What is needed?

Your COBRA members need deadlines communicated to them on when they need to make elections and submit premium payments.

### What can automation do for you?

Our system automatically processes these timelines based on the dates of their qualifying events and produces reporting so you don't have to track elections and payments.

## › Automatic Member Payments

### What is needed?

Your COBRA members need to make payments by certain monthly deadlines in order to maintain coverage.

### What can automation do for you?

We offer recurring ACH so they don't have to mail a check for their premium payment each month, which gives them options and reduces the potential for questions and disruptions.

## › Carrier Updates

### What is needed?

Carrier must be notified when premium payments for COBRA members have been received in order for their coverage to be active.

### What can automation do for you?

We have over 330 different carrier integrations using an EDI 834 file. These integrations allow us to update carriers automatically, which takes that process out of your hands.

# Why Have Your HSA With WEX?



## 1 in 5 HSAs are on the WEX Platform

Insight drawn from the country's largest HSA data set to help you make strategic decisions and influence positive employee behavior.



## HSA Bulk Transfer Options

Solutions for a challenge employers face when moving HSA custodians. WEX offers transfer options to support even the most complex organizations.



## HSA Advanced Funding

Accelerate contributions to your employees' HSAs providing a valuable safety net, encouraging enrollment. They'll pay you back any spent dollars through future payroll deductions.



## Interactive and Customizable Consumer Dashboards

Stay on top of healthcare spending and savings for future expenses.



## Benefits Consolidation

- One point of access for you to manage FSA, HSA, HRA and commuter benefits.
- One debit card (with mobile pay technology), online account, and mobile app for participants to achieve a simplified benefits experience.
- One HSA summary page for participants to keep track of all their investment balances.



## Robust HSA Investment Options

- More than 8,500 mutual funds and investment options through our self-directed brokerage account to give employees more diversity when investing.
- Online My HSA Planner tool allows participants to forecast their future balance based on their financial goals and life situation.



## Mobile Superiority

- Consistent experience between online and mobile, including complete HSA investment management functionality, with ability to manage/transact across all account types.
- Quickly determine an expense's eligibility by scanning the barcode of a potential purchase.



## Health Plan Agnostic Solution

- HSAs are lifetime accounts and not a plan year decision for your employees. Should you switch health plan providers in the future, there is no disruption for your employees enrolled in the HSA.

# Simplifying benefits for everyone.



HSA



FSA



HRA



LSA



Commuter  
Benefits



COBRA

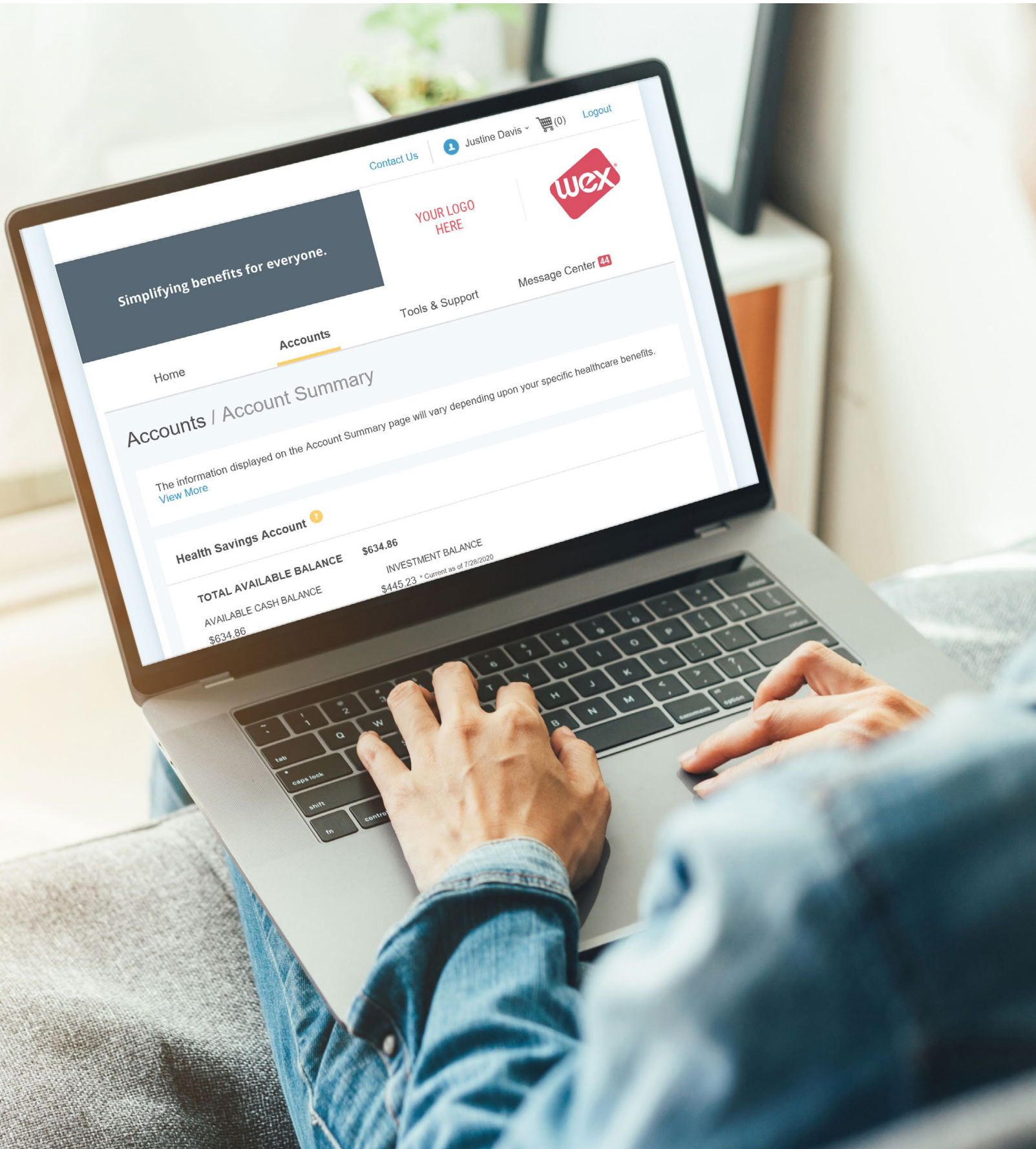


Direct Bill

Simplifying benefits for everyone.



# Custom Online Account



Simplifying benefits for everyone.

Contact Us

Justine Davis

(0)

Logout

YOUR LOGO  
HERE



Message Center **44**

Tools & Support

Home

Accounts

## Accounts / Account Summary

The information displayed on the Account Summary page will vary depending upon your specific healthcare benefits.  
[View More](#)

### Health Savings Account **1**

TOTAL AVAILABLE BALANCE	\$634.86
AVAILABLE CASH BALANCE	\$634.86
INVESTMENT BALANCE	\$445.23 * Current as of 7/28/2020



# Custom Open Enrollment Materials

## HSA Health Savings Account

### Why should I choose a health savings account (HSA)?

An HSA is a benefit that allows you to choose how much of your paycheck you'd like to set aside, before taxes are taken out, for healthcare expenses or use as a retirement savings tool. This plan offers more tax savings than a traditional and Roth 401(k) and IRA, making it a powerful option for diversifying your retirement portfolio.

#### It's yours

Think of your HSA as a personal savings account. Any unspent money in your HSA remains yours, allowing you to grow your balance over time. When you reach age 65, you can withdraw money (without penalty) and use it for anything, including non-healthcare expenses.

#### Flexibility

Save for a rainy day. Invest for your future retirement. Or spend your funds on qualified expenses, penalty free.

#### Easy to use

Swipe your benefits debit card at the point of purchase. There is no requirement to verify any of your purchases. We recommend keeping any receipts in case of an IRS audit.

#### Smart savings

The HSA's unique, triple-tax savings means the money you contribute, earnings from investments and withdrawals for eligible expenses are all tax-free, making it a savvy savings and retirement tool.

#### Investment options

You can invest your HSA funds in an interest-bearing account or our standard mutual fund lineup. Savvy investors may opt for a Health Savings Brokerage Account powered by Charles Schwab, giving you access to more than 8,500 mutual funds, stocks and bonds.

#### What does it cover?

There are thousands of eligible items. The list includes but is not limited to:

- Copays, coinsurance, insurance premiums
- Doctor visits and surgeries
- Over-the-counter medications (first aid, allergy, asthma, cold/flu, heartburn, etc.)
- Prescription drugs
- Birthing and lamaze classes
- Dental and orthodontia
- Vision expenses, such as frames, contacts, prescription sunglasses, etc.

View our searchable list of eligible expenses at [www.DiscoveryBenefits.com/eligibleexpenses](http://www.DiscoveryBenefits.com/eligibleexpenses)

#### Can I enroll?

You must be enrolled in a high-deductible health plan (HDHP) in order to enroll in the HSA. You're not eligible for an HSA if:

- You're claimed as a dependent on someone else's taxes.
- You're covered by another plan that conflicts with the HDHP, such as Medicare, a medical flexible spending account (FSA) or select health reimbursement arrangements (HRAs).
- You or your spouse are contributing to a medical FSA.



**Benefit**  
The benefits card is



**Know**  
Once you know the known employee logging



**Benefit**  
There is a list of



**Benefit**  
Access and of

#### With our Benefit

- Get instant up
- File a claim at using your phone
- Scan an item's Code Section

Don't forget to visit [www](http://www)

#### Have questions

Contact our Participant Services team is Monday - Friday 9:00 p.m. Central

**Access your benefits**  
Access your benefits conveniently, real-time dollars and view

The Benefits Mobile app easily check the balance — wherever

**Get instant updates**

**File a claim**  
File a claim on your phone

**Report your expenses**

**Log in**  
Log in on your phone

**Check your balance**

**Use your Apple**

**Scan a 213(d)**

**Reset**

Simplifying benefits for everyone.

YOUR LOGO  
HERE



013C

Simplifying benefits for everyone.

YOUR LOGO  
HERE



002C

Simplifying benefits for everyone.

YOUR LOGO  
HERE



003C

# Custom Communications

**From:** Auto\_Reply@mailier.wex.com  
**Sent:** Thursday, January 28, 2021 4:25 PM  
**To:** Sara Sample  
**Subject:** Your WEX enrollment confirmation



YOUR LOGO  
HERE



You have a new enrollment or had an update to your reimbursement account election(s) for the 01/01/2019-12/31/2019 plan year with WEX. Log in to your online account at [www.wexinc.com/benefitslogin](http://www.wexinc.com/benefitslogin) to view your enrollment details and manage your account.

**Need to set up your online account?** From the [login screen](#), click "Create your new username and password" and complete the required fields. You'll receive an email with a one-time password to continue account setup.

You received this email because you have an account with WEX.

Note: This is a system-generated email. Please do not reply. If you have questions, please use the contact information provided below.

#### WEX

Log in to your [online account](#) | Send us an [email](#)  
Download the Benefits Mobile App by WEX for [Apple](#) or [Android](#)



# Custom Marketing

**Welcome!**  
**We're so glad**  
**you're here.**



YOUR LOGO  
HERE

what now?

## WEX Benefits Card

You'll receive two debit cards the first time you enroll in a WEX reimbursement or spending account.

- Pay for eligible expenses at major and local retailers
- Request additional cards for your spouse or dependents (over the age of 18) in your online account



### Live chat

Log in to your online account  
to start a conversation

# Custom Debit Card



**These samples are just a few ways we can customize our participant communications to fit your needs.**

**See more of our available employee educational resources on our [Open Enrollment Toolkit >>](#)**



Simplifying benefits for everyone.



# VEBA

## Support employees long-term healthcare needs

The Voluntary Employees' Beneficiary Association (VEBA) HRA plan is a tax-free benefit funded by employer contributions with the goal of supporting employees' long-term healthcare needs.



## When the need is now.

Based on your plan design, VEBAs may allow employees to pay for out-of-pocket healthcare costs while employed and/or when they leave the organization. Eligible expenses include:

- Over-the-counter medications
- Prescription drugs
- Copayments
- Coinsurance
- Dental care costs
- Vision care costs
- Some feminine hygiene products
- Medical Insurance and Medicare Premiums (in retirement)



## When saving for retirement is the goal.

### VEBAs are the answer.

- Triple-tax advantage – no tax on contributions, earnings (through interest or investment), or withdrawals on eligible expenses.
- Participants can invest from day one. No investment threshold.
- Access to 30+ mutual funds or direct investments manually.
- High quality investing options, including the Lincoln Stable Value Fund that offers a guaranteed rate of return even when the market fluctuates.
- Single sign-on into trustee investment portal to manage and direct investments.



## Ready for a quiet office?

The more employees understand their benefits, the more quiet time for you. Benefits education is your ticket to fewer emails, IMs, and knocks at your door.

With a VEBA by WEX, employees will be able to:

- Learn about their benefits through videos, articles, and how-tos found in our knowledgebase.
- Sign up for text alerts to stay informed and get the most from their benefits.
- Leverage one online account, mobile app, and debit card for any benefits with WEX.
- Access our expert service team when questions do arise.











Our proactive approach to education has resulted in a decline in questions **three years in a row**, despite an increase in participants on the platform.

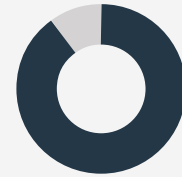
# The **Power** of One

The administration of health savings accounts (HSAs), flexible spending accounts (FSAs), health reimbursement arrangements (HRAs), commuter benefits, COBRA and direct bill is even easier when you choose WEX as your one partner for all of these plans.

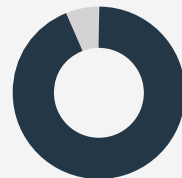


## > Benefits for you

-  Money saved through bundled pricing.
-  Time saved by working in one technology platform, LEAP.
-  One partner with flexible support options for all of your service needs.
-  Simplified exchange of data by using one file for all benefits.
-  Easier implementation, renewal and open enrollment by working with one trusted partner.
-  Less risk sending your employees' personal information to one partner.
-  Experienced oversight and guidance to ensure compliance when your benefits are viewed holistically.
-  Reporting and analytics for all your plans in one place.



**90%** of our clients choose us because they're looking for a better service experience for themselves and their employees.



**94%** of our clients continue to partner with us during renewal because of the experience and support we provide them and their employees.

## > Benefits for employees



**Consistent experience** whether on mobile or online for all their benefits.



**One source** for all questions, including options such as phone, email, chat, and a 24/7 knowledgebase.



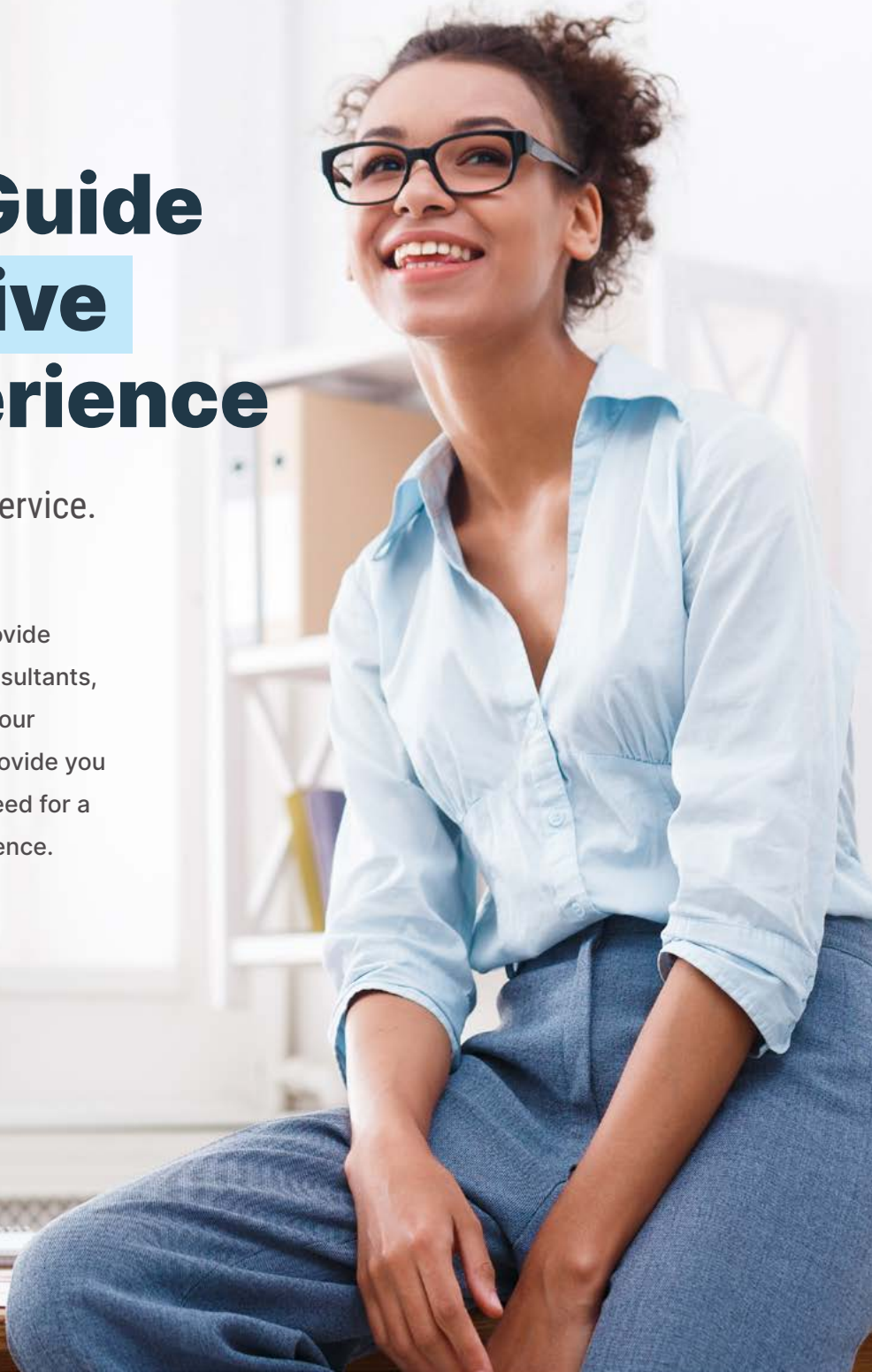
**Avoid confusion** and easily spend funds with one, smart debit card for all benefits. Or pay on mobile through Apple Pay or Samsung Pay.

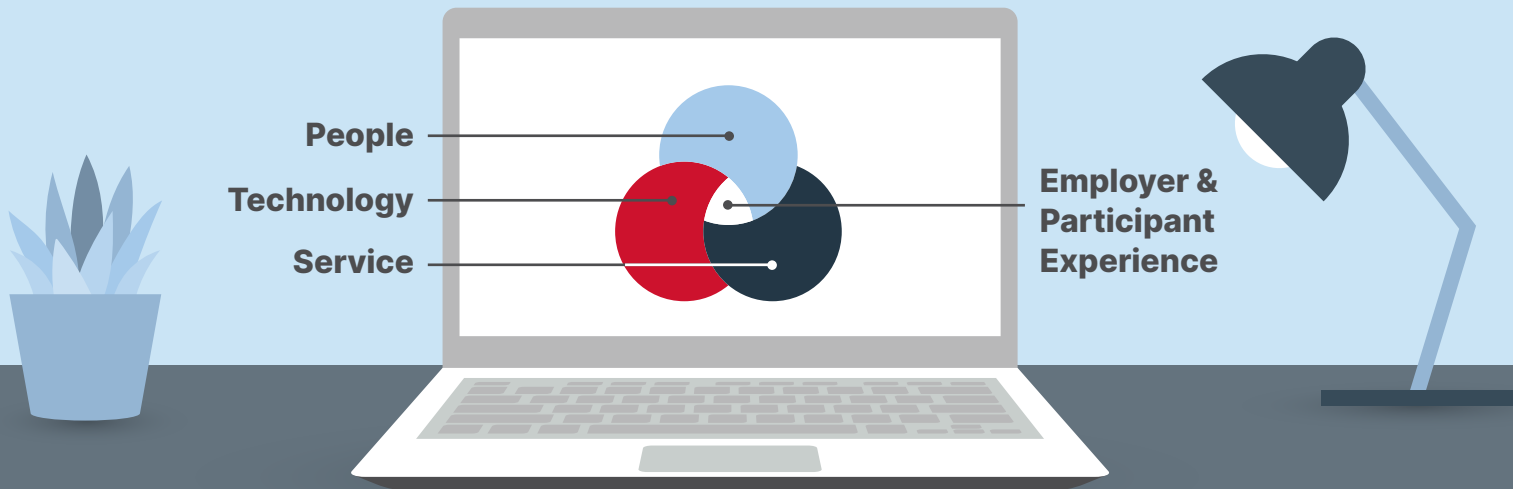


# Ultimate Guide to a **Positive** User Experience

Our people. Our customer service.  
And our technology.

We invest in these three areas to provide the best user experience for our consultants, clients, and participants. Learn how our customer service and technology provide you with the knowledge and tools you need for a positive benefits and COBRA experience.





When you're relied on to support healthcare and financial needs, a user-centric model is vital. That model requires a blended approach in which empathetic people, responsive customer service, and easy-to-use technology are not just available but also are working together to meet your needs before you know you have them. With all three of these elements included as a holistic approach, you're then able to create the personalized experience that resonates.

Our goal is to keep your employee benefits quiet and running smoothly so that you can focus on other aspects of your day-to-day. You can trust us to provide the support participants need to get the most out of their benefits. Our technology and emphasis on a simplified experience reduces employee questions. But when they have questions, we'll have the answers.

We encourage our clients and consultants to work alongside our experts, or at your own pace and at your own time, with solutions available when you need them. That's why we focus on our people, our service, and our technology to ensure everyone we serve has a positive user experience.

**90%**

Of our clients chose us because they're looking for a better service experience for themselves and their employees.

## Products We Offer



**HSA**



**FSA**



**HRA**



**LSA**



**Commuter  
Benefits**



**COBRA**



**Direct Bill**

# LEAP



Your technology can have a wide-ranging and positive impact. However, simplicity is key. LEAP is our platform that puts your administrative needs at your fingertips, allowing HR teams to access data from multiple vendors, carriers, and HRIS partners. One login for LEAP is all you need.



## The Perks

- Access both benefits and COBRA administration-level data with one set of login credentials.
- Customizable dashboard reporting and analytics to learn account trends.
- Administrative fee invoices and plan funding balances at your fingertips.
- Easy-to-complete non-discrimination testing to keep your plans compliant.
- Auto-renewal made easy with an intuitive setup and renewal wizard.
- Listening systems to collect feedback and identify future enhancements.



## Easy Access to:

- A guided onboarding and renewal
- Plan trends and statistics
- Support from our experts
- A knowledgebase of articles, tutorials, and videos

## The Numbers

**3/4**

of our clients have leveraged LEAP within the last year

**95%**

Benefits clients auto-renew

**91%**

of our clients renew with us year after year

# Integrations

Integrations are in the background, but their effect on administration is felt. They save HR teams by syncing up benefits/COBRA administration with other systems these teams need. And they reduce errors because they allow employee information to be inputted just once. That data is then exchanged seamlessly across multiple systems.

## The Perks



Improve data integrity



Create efficiencies and save time



Increase auto-approved claims

2021 technology enhancements led to a 32% reduction in overall file errors.

## The Numbers

**20,000+**

integrations in place

**350+**

payroll/HRIS/benefits  
administration partners

**225+**

insurance carrier partners

**1/2**

of our clients use some type of  
file integration

# WEX Benefits Debit Card



First and foremost, participants want the ability to easily spend their funds. Our benefits debit card puts all of their benefits on one card. It has intuitive technology that knows which plan to pull funds from. And there are no fees! Participants can obtain cards for their spouse and/or dependents over 18 years of age and easily report a lost/stolen card.

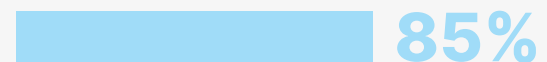
## The Perks

- ✓ One debit card for all of their benefits with us.
- ✓ Built in auto-substantiation features, including recurring expenses, copays and IIAS technology to significantly decrease the need for EOBs or receipts.
- ✓ Access your benefits debit card through Apple Pay or Samsung Pay.
- ✓ No fees for additional or replacement cards.
- ✓ Debit card substantiation integrations available to increase auto-substantiation percentages on average 5-10%.

## The Numbers



participant documents submitted via mobile or online.



average debit card transactions auto-substantiated through built in card features.



average, additional debit card transactions auto-substantiated (on top of the 85%) when adding an integration with health plan carriers.

# Mobile Apps



More than 85 percent of Americans own a smartphone, and for those who have one, they're an essential part of their day-to-day lives. We can manage almost all aspects of our lives from the palms of our hands. Our Benefits Mobile App and COBRA Mobile App were built with that in mind, providing participants and COBRA members with a comprehensive ability to access funds and maintain coverage.



## Benefits Mobile App Perks

- One mobile app for all their benefits with us.
- Comprehensive account access and management for HSA participants and investors.
- Invest, reallocate funds, view performance and trade all within the app.
- Eligible expense scanner to quickly determine eligibility of purchases.
- Ability to upload documentation using the phone's camera.
- Leverage artificial intelligence to scan an EOB and automatically file and substantiate claims.



## COBRA Mobile App Perks

- Register as a new user and make initial elections compared to completing paper forms.
- Make a one-time payment or set up recurring payments to keep coverage active.
- View upcoming payments and review payment history.
- Review all of COBRA paperwork and communication history.

## The Numbers

**16**

The average participant logged on to their mobile app 16 times in 2021

**80%**

Users preferred our Benefits Mobile App to the competition in a usability study

**3**

Our proactive approach to service has resulted in a decline in customer service support inquiries for the last 3 years, despite growth of participants

# Participant Online Account

Like our mobile apps, our participant online account is another way to provide participants with access to their employee benefits needs. It's designed to be user-friendly and with a clean, easy-to-use interface so employees can log in, do what they need, and move on with their day.



## The Perks

- One online account for all their benefits with us.
- Tools and educational resources to help them maximize their funds.
- Post-login alerts with important reminders and insight on their plans.
- Secure, live chat with our service team.
- Artificial intelligence support through a "Let's Chat" bot.
- Personalized HSA messaging based on how they use their account.
- Multiple ways for participants to provide feedback for future enhancements.



## Easy Access to:

- View account balances
- File a claim with EOB Smart Scanner
- Forecast future savings with My HSA Planner
- Manage HSA investments
- Request repayment for expenses paid out of pocket
- Ask or find answers to questions
- Sign up for text alerts (for example, when a receipt is needed for a claim)

## The Numbers

On average,

# 57%

of claims submitted manually are processed within 1 business day and 100% within 2 business days

# 94%

of consumers receive email or text alerts for electronic updates to their accounts

# 2.5M

views of knowledgebase articles, videos and tutorials (participants and clients)



WEX (NYSE: WEX) is a leading financial technology service provider.

We provide payment solutions to businesses of all sizes across a wide spectrum of sectors, including fleet, corporate payments, travel and health. WEX has offices in 14 countries and employs approximately 5,200 associates around the world. Learn more at LinkedIn, Facebook, Instagram, Twitter, and our corporate blog.

For more information, visit [www.wexinc.com](http://www.wexinc.com)







# NDT

# Cheat Sheet

## What is it?

Non-discrimination testing (NDT) shows whether or not your tax-advantaged cafeteria plans are discriminating in favor of highly compensated employees or key employees.

## Who needs to perform testing?

Any employer who offers plans governed by Section 125. This means any plans that allow employees to contribute pre-tax income into a benefits account, such as for insurance premiums under a premium only plan (POP) and a flexible spending account (FSA). And though they aren't part of Section 125, testing is also required for health reimbursement arrangements (HRAs) and self-insured medical plans (SIMPs).

## Why does it matter?

The IRS requires that cafeteria plans do not favor highly compensated or key employees. Failure to comply puts employers and employees at risk of IRS penalties. For example, IRS penalties for non-compliance are \$100 per day, per incident, up to \$500,000 for a single tax year.

## When should I perform testing?

We recommend you test at least twice per plan year, once at the beginning or the middle of the plan year and again prior to the end of the plan year. The first is to determine if the plan is in compliance, and the second helps ensure the plan has stayed in compliance. Once a plan year ends, adjustments to salary reductions can no longer be made.

## Why should I choose WEX to perform tests?

- We offer non-discrimination testing, which is an easy-to-complete, three-step testing solution.
- You can perform as many tests as you'd like for one single rate.
- You'll receive test results within minutes of uploading data.
- We ensure our tests are up-to-date with the latest regulations.
- You can sign up for testing even if you don't offer employee benefits with us.

## Would you like to learn more?

Go to [www.wexinc.com](http://www.wexinc.com) and request a proposal.



wex™

# HRAs from WEX

## › Health Reimbursement Arrangements

From integrated, non-integrated, to retirement HRAs, we can help you design an HRA that works best for your employee population.

## › Integrated HRAs

These HRAs are paired with a high-deductible or a traditional PPO health plan to help cover out of pocket expenses related to the health plan deductible or coinsurance.



- First- Dollar HRAs
- Variable Contribution HRAs
- Threshold HRAs
- Coinsurance HRAs
- Upfront Out of Pocket + Coinsurance HRAs

## › Non-Integrated HRAs

These “stand-alone” HRAs are offered outside of the traditional group health plan as supplemental benefits or in some specific cases, instead of traditional group insurance.



- Wellness
- Individual Coverage HRA (ICHRA)
- Qualified Small Employer HRA (QSEHRA)
- Excepted Benefit HRA (EBHR)

## › Retirement HRAs

These HRAs are paired with a high-deductible or a traditional PPO health plan to help cover out of pocket expenses related to the health plan deductible or coinsurance.



- Retirement Reimbursement Account (RRA)
- Taft-Hartley
- Voluntary Employee Beneficiary Association (VEBA)
- 115 Trust

## Our Difference

WEX continues to make investments that support even the most complex HRA structures, including features such as intelligent carryover and the ability to offer a single, stacked debit card to participants who participate in both an FSA and HRA (that pulls from the right purse, at the right percentage).



## ➤ Design Your Flexible, Custom Offering with HRAs from WEX

### Create an HRA that works for you.



Our technology gives you the ability to create a completely custom HRA based on what works best for you and your employees. From simple to complex plans, we make it possible (and make sure it stays within requirements). Customization can even be made down to the expense level.

### Trust the experts to help you along the way.



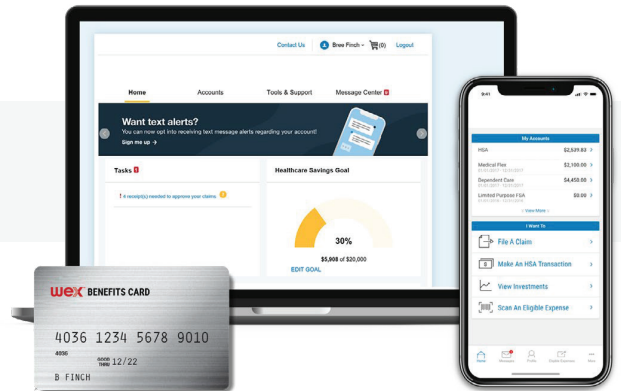
With WEX, you get a team of experts that take the time to partner with you to build your custom solution using a mature and successful process.

### Take advantage of intelligent carryover.



No more 'short plan years.' Our process allows HRA funds to be made available on day one of the current plan year, while simultaneously handling carryover funds from the previous year ... in a single purse. This removes the burden of managing carryover from the partner, and creates a hassle-free experience for participants.

## Simplify the participant experience



### ONE debit card for all benefits accounts.

No matter what accounts a participant enrolls in (HSA, FSA, HRA, commuter benefits, or a combination), they only need ONE debit card because our technology can pull from the right account (at the right percentage) based on their purchase. Plus, participants can even add their debit card to their mobile wallet to take advantage of contactless payment options. \*Varies by HRA

### ONE online account to access health and commuter benefits.

No more jumping from screen to screen (and having to remember multiple logins) to keep track of multiple benefit accounts. With WEX, participants only need one online account to manage their health (HSA, FSA, HRA) and commuter benefits.

### ONE mobile app to access their benefits on-the-go.

We manage almost all aspects of our lives from the palms of our hands. The WEX benefits mobile app was built with that in mind, and includes a consistent, simple, and modern experience. And when you're using a desktop, you can expect the same user-friendly experience.





# Security Overview

# Introduction

## Security Information overview

This resource provides a synopsis of our retention and administration procedures that secure sensitive data. WEX stores and processes sensitive information. We have privacy and security policies in place for the protection of client data. Each WEX employee acknowledges these policies when he or she is hired, and annually thereafter. WEX considers our policy and procedure documentation proprietary, therefore, within this document we have shared summaries of our practices.

## Disclaimer

This resource has been prepared in an effort to highlight key elements of WEX's policies and procedures for review by potential clients, vendors and other third parties. WEX has taken commercially reasonable measures to produce an accurate summary. However, this document is not intended to be a full and complete recitation of WEX's policies and procedures, and the full policies and procedures shall govern.

## What we do

WEX provides services as a third-party administrator to assist its clients in administering flexible benefits, COBRA and commuter benefits. The services we offer around benefits include administration of health savings accounts (HSAs), management of health reimbursement arrangements (HRAs), flexible spending accounts (FSAs), commuter benefits, wellness plans, and direct billing services. For a more detailed description of our products and services, please see the WEX Technology Overview in this document.

## Who we are

Since 1987, WEX Health Inc. has been simplifying employee benefits administration. We offer cutting-edge technology, instant access to information and expertise, and related customer service.

Financial information, including [annual reports](#), is available under the Investors section of the [WEX Inc.'s](#) home page or at SEC.gov – ticker symbol WEX.

The complete web addresses for the preceding links are as follows:

- WEX annual reports page: <https://ir.wexinc.com/financials/annual-reports>
- WEX Inc.'s home page: <https://www.wexinc.com/>

# WEX Technology Overview

We produce and leverage solutions to solve for the most common industry problems through secure technology that are designed to:

- Give real time visibility into everything you need within our intuitive consumer and client platforms
- Promote automation to ensure data integrity, security, accuracy and transparency
- Allow for agility to quickly adapt to changes and customer needs

## Engagement experiences

Our Consumer Engagement Experiences create easy access to reimbursement accounts enabling informed decisions to maximize pre-tax benefits, including online and mobile experiences for account utilization and participation:

- Designed with consumers in mind to deliver a platform that saves time, stress and money.
- Access to all account information in *one* experience is paramount to quickly understand real-time plan details and leverage technology to use benefits.
- Experiences are personalized for consumers based on their level of engagement and needs.

Our COBRA administration includes Consumer Engagement Experiences promote plan compliance and understanding by providing a simple and concise online account and mobile application:

- Qualified beneficiaries need tools that are informative, easy to use and reliable services for when they need it most.
- Designed to reduce confusion for those that need continuation of coverage through COBRA or other alternatives.

Our LEAP™ technology platform provides a guided employer experience through online capabilities, a suite of built-in apps intended to speed up plan setup, offer ongoing account transparency, and provide fast answers to questions:

- Designed with employer, consultants and brokers in mind to deliver a platform that is efficient, user-friendly and saves money.
- The only platform in the industry that provides real-time analytics on ALL administration services to provide transparency and awareness around your plan administration and consumer usage.
- We understand data and providing you with and helping you understand this information is a key driver for a successful partnership together.

## Integration tools

Our suite of integration tools offers solutions for the sharing of data that provide a greater level of automation, data integrity, and connectivity to streamline administration. These tools allow us to exchange data with virtually any HR technology partner, health plan and payroll vendor through secure transmission methods.

# Account Security with WEX

## Account monitoring



### **Identity Verification (IDV)**

We check the identity of every health savings account (HSA) consumer who opens a new account against a national database, per the USA PATRIOT Act. Participants do not have access to funds until they pass IDV, and the account is closed if we are not able to verify the identity of the accountholder.



### **Enterprise level watch list comparisons**

All accounts are compared to an enterprise-level watch list containing demographics of known fraudulent accounts. If we are unable to verify the identity of a consumer, the related account is closed.



### **New account activity monitoring**

We monitor all newly created individual accounts for unusual activity and compare account information to information known to be related to fraudulent accounts.



### **Bank account activation**

All participant-level bank accounts added to the system must pass a bank account activation process to validate the account. If the account isn't successfully validated, the account cannot be used for contributions or distributions.



### **Continuous monitoring**

Monitoring of consumer account changes and fund requests are performed utilizing technology, data analytics, and manual processes.



### **Monthly statement distribution**

All accountholders have access to monthly account statements so they can monitor activity in their accounts.

## Account controls



### Account re-opening controls

We do not allow accountholders to re-open a closed account by calling in a request to our Participant Services team — their employer must submit the request and send an updated file.



### Account information change controls

Accountholders are not able to change their first or last name through the consumer portal. If changes are made to other accountholder attributes, an email is generated to the accountholder alerting them of the change. We also limit access by user roles internally so only authorized users are able to modify system information.



### Account contribution controls

We track all contributions and do not allow contributions in excess of the annual limit for HSAs set by the Internal Revenue Service. We also perform daily reconciliations and closely monitor contributions to verify transaction validity.



### Fund access controls

We do not offer participants a credit limit option. Additionally, participants only have access to funds once the deposited funds have been successfully transferred to our custodian. Fraudulent application of funds within the system will not result in fund availability on the participant's debit card.



### Debit card controls

We mail debit cards to accountholders before they have access to account funds, which are not available until the individual logs into their account, accepts the terms and conditions, and completes the IDV process. Our debit card network is restricted to medical, dental, vision and pharmacy expenses only.



## Additional precautions



### **Training**

WEX has fraud awareness, privacy and cyber security awareness training programs in place to educate employees about fraud awareness and detection. We also train employees to understand the risks associated with electronic communications, which includes periodic phishing exercises.



### **Participant identification**

Callers are asked additional verification questions to confirm their identity when contacting our Participant Services team. Additionally, when logging into the consumer portal for the first time, consumers must set up security questions. A consumer must answer a security question when requesting an HSA distribution online or resetting their password.



### **Account alerts**

We send notifications to consumers when additional information is needed to open their HSAs. These notifications can be sent if a consumer has not yet accepted their terms and conditions, if they have not yet passed the IDV process or both. These notifications alert consumers about the additional action needed while also serving as fraud protection if a consumer is notified of an action needed on an account they did not initiate.

# System Life Cycle Framework

The WEX System Life Cycle (SLC) team follows the Agile Methodology for rapid application development that has as its goal: plan, develop, and deliver in frequent iterative and incremental development cycles. This methodology places a premium on real-time communication and control to deliver custom-developed solutions. Documentation is kept to a minimum, but documented approval cycles are more frequent and rigorous than traditional SLC methodologies.

## Four-stage agile SLC

The Portfolio Stage encompasses the initial approval for software changes to WEX Benefits platform. During this phase, enhancement needs and ideas are submitted for additions to the product team from both internal and external sources.

The Sprint Stage encompasses detailed work planning, execution of tasks, demonstrating completed features, and approvals. Business analysts, developers, and quality assurance teams work on features throughout the Sprint.

Release Testing is the point where all features and bug fixes that have made it through the Sprint Stage are subjected to a final level of testing.

The Production Stage is the point where features that have made it through the Release Testing are moved to the production environment. The Release Team formalizes the Release Plan. The Production package is deployed to the Production application and the Production database.

If a release is unsuccessful for any reason, the back-out plan is executed accordingly.

## Change Management Summary

WEX's IT change management process balances risks associated with change against organizational risks of not changing. The change control process begins in response to an incident, service request, problem or project. Changes to WEX hardware and infrastructure devices are carried out by WEX IT Infrastructure and performed using a documented process that ensures that requested changes are authorized, developed, tested, approved and implemented in a controlled and consistent manner. Changes are classified as either Standard, Normal, Expedited Normal or Emergency and go through our Change Advisory Board (CAB).

## Patch and update management

Patch management is employed to eliminate security vulnerabilities, fix bugs, and enhance the overall performance of systems. Once the need for a patch has been identified, WEX performs an appropriate assessment to evaluate the impact.

Patches may also be installed on software that may be loaded on a system but is currently inactive. For available patches that are not applied, the reason for non-application must be documented. Emergency patches released may be tested and installed outside of the normal patch cycle based on need and possible impact.

# Business Resilience

## Overview

WEX maintains a Business Resilience Program to mitigate the risk of material losses and business disruptions. The program provides a structure, controls and decision-making protocols to support business continuity in the event of a significant business disruption. The program is designed to provide centralized oversight and governance while enabling business ownership.

Business Resilience is defined as the ability of an organization's business operations to withstand or rapidly adapt and respond to internal and external dynamic changes, including, but not limited to, disruptions or threats, and to continue operations with limited impact to the business.

While it cannot be guaranteed that systems will always be available or recoverable, or that business interruptions will not ensue after a significant event, WEX's business resilience strategy supports our preparedness and provides reasonable assurance that the company can recover from emergencies and disasters.

## Business continuity

The foundation of WEX's resilience program is its Business Continuity Plans. Business Areas are required to create and maintain written business continuity plans to safeguard personnel, critical business operations, information technology and facilities.

Business Continuity Plans (BCP) identify core functions, establish the appropriate level of business controls and functionality necessary to mitigate risks, document functional requirements and account for dependencies.

## Disaster recovery

In the event of a catastrophe which results in a significant disruption in service, restoring technology supporting critical business process within acceptable timeframes becomes a top priority. Disaster Recovery Plans (DRP) are plans that address the recovery of technology that supports critical business processes.

# Incident Management Summary

WEX has well-defined and systematic procedures to respond to security and privacy related events. This ensures WEX is adequately prepared to respond and recover from incidents that may compromise the confidentiality, availability, or integrity of information assets or WEX customer information.

We will cooperate with Federal or State law enforcement through WEX corporate counsel and our Privacy Officer. Standards are in place to provide for initial and ongoing notification to any affected as well as required legal authorities and the public, as appropriate.

The WEX incident response framework includes seven phases that ensure a consistent and systematic approach: Preparation, detection, containment, investigation, remediation/recovery, root cause analysis, long-term remediation/response review.

# Vendor Management Overview

WEX uses a rigorous vendor selection and management process to oversee the relationship, quality, and security of vendor resources. The management processes have some variation, dependent on the type of relationship and tasks that the vendor handles. The program components include an annual assessment, employee onboarding requirements and periodic review of access.

Vendors are assigned a risk ranking according to a set of classification standards and questions answered by the Information Security team during the vendor review process. Additional research for information regarding the vendor to identify any additional risks is performed. Critical vendors undergo annual assessments that are reviewed by the Information Security team and submit to independent assessments of their security.

All contracts cover confidentiality, privacy and security obligations, as applicable, for the services being agreed to. Ongoing monitoring is completed of the vendor's performance.

## Written Information Security Program

The objective of WEX, in the development and implementation of this comprehensive written information security program (WISP), is to create effective administrative, technical, and physical safeguards for the protection of sensitive information. The WISP sets forth our procedure for evaluating and addressing our electronic and physical methods of accessing, collecting, storing, processing, transmitting, and protecting sensitive information.

### Purpose

The WISP is designed to establish a system of controls to protect the confidentiality, availability, and integrity of sensitive information WEX is the owner or custodian of. The WISP is designed to protect all sensitive information including personal information, which is of special interest to WEX Partners and Clients.

Therefore, while the WISP covers all sensitive information, this security overview will primarily focus on personal information.

The WISP defines "personal information" as defined as the first name and last name or first initial and last name in combination with any one or more of the following:

- a) Social Security number.
- b) Driver's license number or state-issued identification card number.
- c) Financial account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password that would permit access to a person's financial account.

Personal information does not include information that is lawfully obtained from publicly available information, or from federal, state, or local government records lawfully made available to the general public.

Additionally, WEX possesses and uses a variety of sensitive information, much of which may not be directly covered by the provisions of this program. Some information is covered by other state, federal, or industry regulations under which we are required to comply, such as the Health Insurance Portability and Accountability Act (HIPAA). Other information may be protected by contractual commitments undertaken by WEX.

## Scope

The WISP applies to all WEX employees and certain contracted third-party vendors. The data covered by this program includes any information stored, accessed, processed or collected at WEX for the purposes of administrating benefits or COBRA for our clients. The WISP is not intended to supersede any existing WEX policy that contains more specific requirements for safeguarding data. If such policy exists and is in conflict with the requirements of the WISP, the other policy takes precedence.

In formulating and implementing the WISP, WEX has addressed and incorporated the following protocols:

1. Identified reasonably foreseeable internal and external risks to the security, confidentiality, and/or integrity of any electronic, paper, or other records containing personal information.
2. Assessed the likelihood and potential damage of these threats, taking into consideration the sensitivity of the personal information.
3. Evaluated the sufficiency of existing policies, procedures, customer information systems, and other safeguards in place to control risks.
4. Designed and implemented a WISP that puts safeguards in place to minimize those risks.
5. Implemented regular monitoring of the effectiveness of those safeguards.

## Protection of personal information

WEX's Chief Information Security Officer is responsible for implementing, supervising, and maintaining the WISP, along with the following:

- Implementation of the WISP including all provisions outlined in the policies section.
- Regular testing of the WISP's safeguards.
- In coordination with the WEX Health Privacy Officer, evaluating the ability of any of our third-party service providers to implement and maintain appropriate security measures for the personal information to which we have permitted them access, and requiring such third-party service providers by contract to implement and maintain appropriate security measures.
- Reviewing the scope of the security measures in the WISP annually, or whenever there is a material change in our business practices that may implicate the security or integrity of records containing personal information.
- Assist in ensuring the annual employee and new hire training sessions required for all employees and new hires coordinated through our training department are completed. All attendees are required to certify their attendance at the training, and their familiarity with the requirements for ensuring the protection of personal information.

## Risk identification and assessment

WEX recognizes that we have both internal and external risks to the privacy and integrity of personal information. These risks include but are not limited to:

- Unauthorized access of personal information, including unauthorized requests, access through hard copies or reports, unauthorized transfer through third parties
- Compromised system security as a result of system access by an unauthorized person
- Interception of data during transmission

- Loss of data integrity
- Loss of data from physical disaster, corruption of data or systems or errors introduced to the system

WEX's Enterprise Risk Management Team actively monitors new risks by conducting regular risk assessments and considers threat issues/changes from US-CERT and other related entities.

## Policies and practices for safeguarding personal information

To guard against internal risks to the security, confidentiality, and/or integrity of personal information the following policies are in place:

### **Organization of Information Security**

Global Information Security Policy  
Mobile Device Security Policy

### **Human Resources Security**

Global Information Security Awareness & Training Policy

### **Asset Management**

Acceptable Use Policy  
Global Data Leak Prevention Policy  
Global Configuration Management P  
Global Information Classification and Handling Policy

### **Access Control**

Global Access Control and Password Policy

### **Cryptography**

Global Encryption and Key Management Policy

### **Physical and Environmental Security**

Global Equipment Disposal Policy  
Physical Security and Access Policy

### **Operations Security**

Change Management Policy  
Global Virus Protection Policy  
Global Cloud Security Policy  
Global Data Backup Policy  
Global Event Logging and Monitoring Policy  
Global Patch Management Policy  
Global Vulnerability Management Policy

### **Communications Security**

Global Network Security Policy

### **Systems Acquisition, Development and Maintenance**

Systems Development Life Cycle Methodology Policy  
Global Secure Coding and Code Review Policy

### **Supplier Relationships**

Information Security Third Party Diligence Policy  
Vendor Management Policy

### **Information Security Incident Management**

Global Information Security Incident Response Policy  
Cyber Forensics Policy

### **Information Security Aspects of Business Continuity Management**

Business Continuity Policy

### **Compliance**

Global Record Management Policy  
Record Retention and Destruction Policy

## **Review and modifications to the program**

All security measures, including the WISP, are reviewed at least annually to ensure that the policies contained in the WISP are adequate and meet all applicable federal and state regulations.

If our business practices change in a way that impacts the collection, storage, and/or transportation of records containing personal information, the WISP is reviewed to ensure that the policies contained in the WISP are adequate to meet all applicable federal and state regulations.

The Security Officer and Privacy Officer are responsible for all review and modifications of the security policies including the WISP and will fully consult and apprise management of all reviews including any recommendations for improved security arising from the review.

## COBRA ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

WEX and Employer may be referred to herein individually as a "party" and collectively as the "parties."

Employer has established one or more health plans that include medical, dental, vision, employee assistance plan, health flexible spending arrangement, and/or health reimbursement arrangement benefits (such plans, individually and collectively as the context may require, are herein referred to as the "Plan") for its employees.

Employer desires to retain WEX as an independent contractor to administer certain elements of its obligations under COBRA and WEX desires to assist Employer in the administration of such COBRA obligations.

"COBRA" means the Consolidated Omnibus Budget Reconciliation Act of 1985, as amended, and the related regulation and interpretations by the Department of Labor and the Internal Revenue Service.

WEX and Employer agree that WEX shall assist in the administration of Employer's COBRA obligations based on the terms and conditions set forth in this COBRA Administrative Services Agreement ("this Agreement"), including, without limitation that:

- Employer is the administrator of the Plan.
- WEX is an independent contractor in relation to Employer and to the Plan and may act as an agent and/or designee on behalf of Employer.
- Employer remains responsible for maintaining the Plan, including the establishment of eligibility and the payment of the benefits owed or established under the Plan to its participants.
- WEX is to provide the agreed upon services without assuming any liability for the performance of any other services beyond those set forth below.

The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

Now, therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows.

### ARTICLE 1 WEX ADMINISTRATIVE SERVICES

- 1.1 Except for those obligations that are Employer's responsibility under this Agreement, WEX shall assume responsibility for the proper interpretation, application, and administration of COBRA rules and regulations for the Plan for COBRA administration under WEX's control.
- 1.2 WEX services under this Agreement are limited to the benefit plans selected for services by Employer via the WEX portal or design guide and therefore treated as the Plan under this Agreement.
- 1.3 WEX shall have no responsibility or duty with respect to any plan where complete information about that plan is not provided.
- 1.4 WEX's responsibilities and duties with respect to the Plan are limited to those expressly provided in this Agreement.
- 1.5 WEX shall consult with Employer regarding the interpretation and application of regulations concerning COBRA administration as they apply to the Plan.
- 1.6 Upon timely receipt of the required information from Employer and within the applicable time frame required by COBRA or upon the effective date of coverage, whichever is later, WEX shall send, via "Accountable Mail" WEX's standard initial rights notification letter (also known as the general rights notice or the initial rights notice) to newly Covered employees and spouses informing them of their rights under COBRA.



“Accountable Mail” means mail that provides documented proof that the letter or notice was mailed and the date of such mailing to the recipient at the recipient’s last known address and meets COBRA regulation requirements, but does not mean that delivery is tracked.

“Covered” means participating in any plan offered by Employer that is subject to COBRA and selected by Employer for services under this Agreement.

If information is not timely received from Employer, WEX shall send the notice described in this Section 1.6 as soon as administratively practicable after receiving the information. Consequently, however, such notice may not be provided within the time frame required by COBRA. If complete information is not provided, such notice also may be incomplete.

1.7 Upon commencement of the services provided herein, if requested by Employer, WEX will mail its standard initial rights notification letter to all Covered employees and spouses. In order for WEX to complete this mailing, Employer must provide the information requested by WEX in a timely manner.

1.8 Upon timely receipt of complete information from Employer, WEX shall send via Accountable Mail within the applicable time frame required by COBRA, WEX’s standard qualifying event eligibility and election notice (also known as the specific rights notice or SRN) to all qualified beneficiaries who have a qualifying event. If complete information is not timely received from Employer, WEX shall send the notice described in the preceding sentence as soon as administratively practicable after receiving complete information, however, such notice may not be provided within the applicable time frame required by COBRA.

The terms “qualifying event” and “qualified beneficiary” shall have the meanings given to them under COBRA.

1.9 Except to the extent prohibited by state or local law, COBRA continuation coverage premiums will include an additional 2% for administrative costs. In addition to the monthly administrative fee per Covered employee under this Agreement, WEX will retain the 2% additional premium allowed by COBRA for administrative costs charged to qualified beneficiaries electing or participating in COBRA continuation coverage (“COBRA Continuant”).

1.10 WEX shall mail WEX’s portal login notice and standard payment coupons to COBRA Continuant after COBRA continuation coverage is elected and the first COBRA premium payment has been received.

1.11 WEX shall provide COBRA Continuant the option to make their COBRA premium payments by check or via automatic recurring ACH (automated clearing house electronic funds-transfer system) at no additional charge.

1.12 WEX shall provide COBRA Continuant the option to make their COBRA premium payments online with a credit card or by a single-occurrence ACH request. To the extent permitted by law and the applicable credit card operating rules and regulations, an additional online convenience processing fee charged by the online third-party vendor and payable by the third-party beneficiaries (or Employer, if Employer so elects) will apply to these payment methods. The convenience processing fee is collected by WEX and remitted to the third-party vendor.

1.13 WEX shall deposit COBRA premium payments in a custodial account for the benefit of Employer in the manner described in Article 3.

1.14 WEX shall collect, track, process, and remit to Employer (or remit to the third party designated by Employer to act in the place of Employer for the purpose of remittance) the COBRA premium payments paid by COBRA Continuant, Employer or a third party.

1.15 A remit to carrier option (“Remit to Carrier”) is available at the option of Employer. In order for WEX to implement this option, Employer must submit a completed WEX COBRA ACH direct payments form to WEX. In addition, each applicable carrier must submit a completed WEX COBRA carrier remittance form to WEX. WEX will reserve the right to discontinue Remit to Carrier if the separate billing statement that includes only COBRA Continuant is not received from the carrier. Section 2.8 addresses Employer responsibilities for this option.

1.16 WEX shall coordinate with Employer and its insurers and third party administrators (collectively “carrier” or “carriers”) to answer questions pertaining to COBRA continuation coverage eligibility and COBRA premium payment status.

1.17 Using WEX’s standard forms and letters, WEX shall communicate with COBRA Continuant concerning change of address, premium rate and benefit changes, COBRA continuation coverage eligibility status, Medicare eligibility, advance-termination notice for the individual conversion, individual conversion and private insurance options, and verification of termination.

1.18 WEX shall provide Employer real-time, online access to information related to the status of qualified beneficiaries and COBRA Continuant.

1.19 WEX shall provide this information required in the event of an IRS or other third-party audit:

- The written compliance procedures used by WEX in the administration of COBRA.
- Samples of WEX forms and notices.
- WEX records that pertain to a qualified beneficiary’s actual qualifying event or election or COBRA Continuant’s continuation of coverage.
- A description of how WEX administers COBRA coverage.

1.20 WEX shall provide Employer with the web portal login information so that Employer may notify WEX when an employee, spouse or dependent is initially added to coverage under the Plan and when an employee, spouse or dependent has experienced a qualifying event and is eligible for COBRA continuation coverage under the Plan.

1.21 WEX shall provide Employer with the file format required by WEX so that Employer may upload employee demographic, benefit, and qualifying event information using the employer web portal.

1.22 WEX shall provide a customer service line toll-free number for use during WEX normal business hours to answer questions and address issues concerning COBRA regulation, COBRA compliance, and COBRA premium payments.

Monday through Friday Central Time Zone  
Employers 7:00 a.m. to 7:00 p.m.  
Qualified Beneficiaries 6:00 a.m. to 9:00 p.m.

In compliance with applicable law, WEX may monitor and/or record calls that are made to the customer service line for quality assurance and training purposes and/or to ensure that WEX’s services fully comply with the terms of this Agreement.

1.23 WEX shall notify a COBRA Continuant if COBRA coverage terminates earlier than the end of the maximum period of coverage applicable to the qualifying event that entitled the individual to COBRA continuation coverage. The notice will be provided as soon as administratively practicable after WEX determines that the COBRA continuation coverage will be terminated early.

1.24 WEX shall extend the maximum COBRA continuation coverage period in cases of disability and second qualifying events as allowed under COBRA.

1.25 WEX shall provide its standard system generated open enrollment/premium rate change letter during open enrollment. If requested by Employer, WEX will provide qualified beneficiaries with a link to additional plan and benefit description materials provided by Employer through the web portal for qualified beneficiary and COBRA Continuant viewing and printing.

1.26 Plan Records and Data

- (a) WEX shall securely destroy or delete written and electronic records containing personal information consistent with business needs or legal retention requirements.

- (b) Per business records needs and associated retention and secure destruction periods, WEX shall retain a copy of all information (as information is defined in Section 2.22, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to WEX policy) for at least seven (7) years from the date the record is created at WEX, including, without limitation, a record of all assets and transactions involving the Custodial Account (defined in Article 3).
- (c) Following the termination of this Agreement, WEX shall cooperate with Employer or Employer's subsequent service provider to effect an orderly transition of services provided under this Agreement and, within a reasonable time, will release to Employer a copy of data, records, and files in WEX's standard format.
- (d) Upon termination of this Agreement, WEX shall be entitled to retain a copy of all information, including any data, records, and files released by WEX pursuant to this Section 1.26 and continue to use and disclose such information for claims, audits, and legal and contractual compliance purposes to the extent permitted by law and any executed or applicable business associate agreement between the parties.

#### 1.27 Information Security Program

WEX maintains an information security program in compliance with applicable law.

#### 1.28 Subcontracting

WEX may delegate or subcontract any portion of WEX services. For those WEX services that are delegated or subcontracted, WEX shall remain fully responsible to Employer for compliance with all applicable provisions of this Agreement or of any executed or applicable business associate agreement between the parties.

#### 1.29 Audit Rights

Employer may audit or inspect any transactions, procedures, records, and participant files relating to Covered employees or COBRA Continuants, at WEX's offices and at a time reasonably acceptable to WEX, upon providing ten (10) business days' advance written notice to WEX and at Employer's expense. Unless otherwise required by legal and/or regulatory compliance, audits must be completed within six (6) months following the date the audit begins.

#### 1.30 Confidentiality of Plan Information

WEX shall keep confidential all information that it obtains concerning the Plan. Other than in the due course of business, such information shall not be disclosed to a third party without prior approval of Employer or as otherwise provided in Article 4.

Employer may request that WEX share Plan information and other data with a vendor of the Plan or Employer. WEX shall consider all reasonable requests, however, prior to releasing or sharing any Plan information or other data, Employer represents that it will enter into a business associate agreement and/or confidentiality and data sharing agreement with the vendor.

For confidential or protected information transmitted by a vendor of the Plan to WEX, Employer must enter into a business associate agreement and/or confidentiality and data sharing agreement with the vendor.

#### 1.31 Benchmarks

WEX may, in its discretion, prepare and deliver to Employer benchmarks or other metrics showing the experience of Employer and its participants with the services provided herein as compared to other employers. WEX will develop any such benchmarks or metrics through the use of data that has been aggregated and de-identified consistent with any executed or applicable business associate agreement between the parties.

1.32     Professional Manner

WEX Services shall be performed in a professional manner consistent with generally accepted industry standards and in compliance with applicable law.

1.33     Disclaimer

WEX does not insure or underwrite Employer's liability to provide benefits under the Plan.

1.34     Non-Discrimination Testing and Additional Product and Service Solutions

Employer may subscribe to WEX's non-discrimination testing and request additional products and services solutions from WEX.

**ARTICLE 2 EMPLOYER RESPONSIBILITIES**

2.1     Employer shall provide accurate Covered employee counts to WEX on a monthly basis or as requested by WEX. Employer shall have thirty (30) days from the date of the invoice to correct a Covered employee count for credit or refund. Employer represents and warrants the accuracy of any information Employer provides to WEX regarding Covered employee counts.

2.2     Employer shall provide complete demographic and benefit information to WEX for its current COBRA Continuant on or by the date agreed upon during the implementation process.

2.3     Employer shall enter or upload an electronic file via the employer web portal containing complete demographic and benefit election information within seven (7) days of employees, their spouses, and/or dependents obtaining coverage under the Plan.

2.4     Employer shall notify WEX within seven (7) days of any initial qualifying event or the date coverage is lost due to the qualifying event once Employer is notified with respect to an employee, spouse or dependent.

2.5     Employer shall notify WEX within seven (7) days of a second qualifying event should Employer be notified of a second qualifying event that occurs with respect to an employee, spouse or dependent.

2.6     The foregoing seven (7) day notice timelines address all potential notice requirements. However, notwithstanding the foregoing, no matter when received, WEX will process the notice.

2.7     Unless directed otherwise by WEX, Employer shall provide notice of a qualifying event by entering the required qualifying event information directly into the employer web portal or by uploading an electronic file via the employer web portal. Employer is solely responsible for determining whether an employee, spouse or dependent has experienced an initial qualifying event under the Plan and the date of the qualifying event.

2.8     For Remit to Carrier, Employer shall be solely responsible for its carrier to send a separate billing statement to WEX that includes only COBRA Continuant.

2.9     For Remit to Carrier, Employer shall submit a completed WEX COBRA ACH Direct Payments form to WEX. Failure to submit a completed WEX COBRA ACH Direct Payments form will result in WEX remitting COBRA premium payments to Employer. Employer is at all times responsible to pay to WEX its portion of the premium, where applicable, prior to WEX remitting premiums to the carrier.

2.10    Employer (or the third party designated by Employer to act in the place of Employer for the purpose of remittance) shall be responsible for reconciling carrier billings with the online reports provided by WEX through the employer web portal. The parties acknowledge that carriers often restrict the ability to retroactively terminate COBRA coverage (even in cases of non-payment of premiums by the COBRA Continuant). WEX shall not be liable for paying any loss or damage (including premiums) to Employer with respect to any retroactive termination of COBRA coverage, provided that WEX has performed in accordance with this

Agreement. WEX reserves the right to decline to implement any retroactive changes in premium rates requested by Employer, retroactive beyond thirty (30) days.

- 2.11 Employer shall be responsible for selecting a determination period and establishing and advising WEX of the applicable premium rates to be charged for COBRA continuation coverage. Employer must notify WEX in writing at least forty-five (45) days in advance of the applicable billing date of: (a) any changes in premium rates affecting COBRA coverage under the Plan; and (b) any changes in premium rates during an open enrollment period, so that WEX has time to process the changes prior to the effective date.
- 2.12 WEX acknowledges that carriers may not always provide information about premium rate changes in a timely manner. If Employer is unable to notify WEX in writing at least forty-five (45) days in advance of the applicable billing date of any changes in premium rates, WEX will make commercially reasonable efforts to process the changes prior to the effective date.
- 2.13 Employer shall be solely responsible for any differences in premium payments when notification of a premium rate change is not provided to WEX at least forty-five (45) days in advance, causing payments made by COBRA Continuant to be incorrect for the new determination period.
- 2.14 Employer shall advise WEX of any material changes in the benefits and options provided by the Plan.
- 2.15 Employer shall be responsible for its compliance with the Patient Protection and Affordable Care Act of 2010 ("PPACA"), the Employee Retirement Income Security Act of 1974 ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), each as amended from time-to-time, and other applicable law and regulation.
- 2.16 Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney's fees) and expressly releases all claims against WEX in connection with any claim or cause of action arising out of any activity or occurrence prior to the commencement of services under this Agreement that results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than WEX) to comply with the PPACA, COBRA, ERISA, HIPAA, the Code or any other applicable law or regulation.
- 2.17 Employer shall review and be responsible for the payment of all claims under the Plan and ERISA, including, without limitation, claims and appeals for benefits and claims and appeals for eligibility determinations under the Plan. WEX is not responsible to receive or review claims for benefits under the Plan and shall not be liable for the payment of any claims for benefits in connection with the Plan, including, without limitation, where sought as damages in an action against Employer or the Plan or for any activity or occurrences prior to the Effective Date of this Agreement, provided that such activity or occurrence did not result from the services performed by WEX in accordance with this Agreement.
- 2.18 Employer shall maintain and provide written internal compliance procedures used for notifying WEX of a newly covered employee, spouse or dependent, a qualifying event, a report of terminations for each tax year, or when there are premium rate and benefit changes in the event of an IRS or any third-party audit.
- 2.19 Employer shall provide for the release of information necessary for COBRA compliance and administration under this Agreement.
- 2.20 Employer shall provide plan and benefit descriptions (e.g., Summary of Benefits and Coverage (SBC), Summary Plan Description (SPD), and benefit plan booklets, etc.) to qualified beneficiaries during open enrollment. WEX's standard process is to provide a link to these additional materials through the qualified beneficiary web portal for viewing and printing. If requested by Employer, WEX may include these additional materials with its standard open enrollment/rate change letter as long as Employer provides WEX with an electronic PDF image of the additional open enrollment materials. A handling fee of \$1.50 per page (duplex) will apply for these additional materials. WEX will allow up to twenty-five (25) duplexed pages, including the standard open enrollment/rate change letter.

2.21 Employer acknowledges and agrees that WEX shall:

- (a) Have no duty with respect to the funding of premiums by Employer or qualified beneficiaries who elect COBRA;
- (b) Not be liable for paying any premiums of a qualified beneficiary to a carrier or Employer to the extent that WEX did not receive the corresponding payment from the qualified beneficiary, Employer or third party;
- (c) Not be liable for any failure of Employer to remit to a carrier any funds Employer receives from WEX;
- (d) Not be liable for any failure of Employer to reconcile its carrier billings to online reports provided by WEX through the employer web portal;
- (e) Not be liable for any retroactive premium rate changes requested by Employer;
- (f) Not be liable for any failure of Employer to modify its carrier billings and notify carriers of a COBRA Continuant's termination from COBRA coverage when WEX remits premiums paid by COBRA Continuants to Employer;
- (g) Not be responsible for failure of delivery of any notice mailed by WEX using the qualified beneficiary information provided to WEX by Employer, which failure is due to the use of said information; and
- (h) Not be responsible for any loss or damage suffered by any participant, COBRA Continuant, Employer or Plan, should WEX fail to give a required notice or a complete notice because WEX did not receive notice of an event for which a notice was required, WEX did not receive complete information, or WEX received incorrect information.

2.22 Employer Information and Instructions

- (a) WEX shall be fully protected in relying upon representations and communications made by or on behalf of Employer in effecting its obligations under this Agreement.
- (b) WEX is entitled to rely on the most current information in its possession when providing services under this Agreement.
- (c) WEX shall provide the services in accordance with this Agreement based on information that is provided to WEX by Employer, Covered employee or qualified beneficiary. For this purpose, "information" means all data, records and other information supplied to WEX, obtained by WEX or produced by WEX (based on data, records or other information supplied to, or obtained by, WEX) in connection with performing the services pursuant to this Agreement, regardless of the form of the information or the manner in which the information is provided to WEX.
- (d) In engaging WEX to perform the services under this Agreement, Employer has authorized and instructed WEX in this Agreement to implement WEX's standard administrative forms and procedures.
- (e) WEX is not responsible for any acts or omissions it makes in reliance upon the direction or consent of Employer, Covered employee or a qualified beneficiary or inaccurate, misleading or incomplete information from Employer or any third party.
- (f) If Employer instructs WEX with a specific written request (in a format acceptable to WEX) to provide services in a manner other than in accordance with WEX's standard forms and procedures, WEX may (but need not) comply with such an instruction. This would include, but is not limited to, any Employer instruction to add a vendor link to the consumer portal. To the extent that WEX complies with such an instruction, Employer and not WEX shall be solely responsible for WEX's action so taken, and Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses and expenses (including reasonable attorney's fees) and expressly releases all claims against WEX in connection with any claim or cause of action, which results from or in connection with WEX complying

with Employer's specific written instruction to provide services in a manner other than in accordance with WEX's standard procedures.

- (g) Employer is responsible for the integrity of data in the files. Therefore, complete and accurate information from Employer is required in order for WEX to perform the services set forth herein.
- (h) Employer agrees not to use the full social security number in the employee identification number field.

#### 2.23 Employer's Electronic Account

For access to the services provided by WEX via an online account or other electronic means ("Employer's Electronic Account"), Employer is solely responsible for:

- (a) Designating who is authorized to have access to Employer's Electronic Account;
- (b) Safeguarding all of Employer's passwords, usernames, logins or other security features used to access Employer's Electronic Account ("Electronic Account Access");
- (c) Employer's use of Employer's Electronic Account under any usernames, logins or passwords;
- (d) Ensuring that use of Employer's Electronic Account complies fully with the provisions of this Agreement;
- (e) Any unauthorized access of Employer's Electronic Account due to Employer's actions or inactions, including, without limitation, Employer's failure to safeguard Employer's Electronic Account or Electronic Account Access; and
- (f) The maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

#### 2.24 Plan Tax Obligations

The Plan and/or Employer on behalf of the Plan is responsible for any state or federal tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or WEX relating to the Plan or the services provided by WEX pursuant to this Agreement, including those imposed pursuant to PPACA. This includes the funding, remittance, and determination of the amount due for PPACA required taxes and fees. In the event that WEX is required to pay or elects to pay any such tax, fee, assessment, surcharge and/or penalty on behalf of Employer, WEX shall report the payment to Employer along with documentation of the payment and Employer shall promptly reimburse WEX for the full amount or for Employer's proportionate share of such amount, as determined by WEX, except as provided in Section 7.3. This reimbursement would be in addition to the fees described in Section 6.1. Employer is at all times responsible for the tax consequences of the establishment and operation of the Plan. Further, the parties agree that WEX does not provide any legal, tax or accounting advice to the Plan and/or Employer. WEX is at all times responsible for all the taxes based upon its net income and its property ownership.

#### 2.25 Acknowledgement

Employer acknowledges and agrees that the services provided by WEX pursuant to this Agreement relate to enrollment and disenrollment in the Plan and that these services to the extent permitted under HIPAA shall be deemed to be performed by WEX on behalf of Employer in its capacity as the sponsor of the Plan.

#### 2.26 Carrier Notifications

WEX's standard practice is to notify the applicable carrier of a qualified beneficiary's enrollment in, changes to or termination from COBRA coverage. However, if instead, Employer instructs WEX to send all such

notifications to Employer or to a third party other than the applicable carrier, Employer: (a) is responsible to ensure the carrier is updated in a timely manner; (b) is responsible to provide urgent updates to the carriers in a timely manner as necessary; (c) accepts all responsibility and liability for the carrier notifications; and (d) expressly releases all claims against WEX in connection with the carrier notifications and agrees to hold WEX harmless from and against all liability, damages, costs, losses and expenses (including reasonable attorney's fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity (other than WEX) in connection with such carrier notifications.

## 2.27 Coverage Eligibility

Employer shall be solely responsible for its carrier compliance with COBRA continuation coverage regulatory guidelines that allow for retroactive changes or terminations for qualified beneficiary or COBRA Continuant coverage eligibility beyond sixty (60) days.

## **ARTICLE 3 CUSTODIAL ACCOUNT**

### 3.1 Appointment and Acceptance of Custodian

By signing this Agreement, Employer appoints WEX as custodian of Employer funds for the purposes and upon the terms and conditions set forth in this Agreement, and WEX accepts such appointment and agrees to act as custodian hereunder and to hold any Employer funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

### 3.2 Custodial Account

WEX maintains one or more depository accounts (the "Custodial Account") at a bank designated by WEX and holds in such Custodial Account all COBRA continuation premiums received from COBRA Continuant or on their behalf from third parties, less any portion of the premium payment that constitutes administrative fees payable by the COBRA Continuant. Upon deposit, such premiums shall become Employer funds (less any applicable fees or other costs as set forth in this Agreement). For administrative convenience and to reduce costs, WEX shall hold Employer funds together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts as determined by WEX). WEX shall maintain records as to the exact amount of funds allocated to each employer. Each employer has a legal right to the specific amount of its funds held in the Custodial Account for such employer.

At all times, the assets comprising each employer's funds in the Custodial Account shall be considered a separate subaccount for purposes of this Agreement.

Depending upon the context, the term "Custodial Account" as used herein shall refer to either the separate subaccount for Employer or all of the subaccounts for all employers in the aggregate.

### 3.3 Employer Funds

Employer and WEX intend and agree that the funds transferred to the Custodial Account shall be comprised of and shall remain the general assets of Employer. The COBRA continuation premiums received from COBRA Continuant are after-tax contributions relieved from the ERISA trust requirements. Except to the extent that outstanding checks have been written or withdrawals made against the Custodial Account balance on behalf of Employer, and subject to Section 6.3, Employer funds may be withdrawn by Employer at any time (less any applicable fees or other costs as set forth in this Agreement) and are subject to Employer's general creditors in the same manner as funds deposited in Employer's ordinary checking accounts.

### 3.4 Disbursements

WEX shall forward the COBRA continuation premiums (less the 2% additional premium allowed by COBRA for administrative costs charged to COBRA Continuant) from the Custodial Account to the applicable carrier or to Employer or Employer's designee as directed by Employer and in accordance with this Agreement. WEX shall neither have nor shall be deemed to have any discretion, control or authority with respect to the disposition of Employer funds.



### 3.5 Interest Earned

Employer acknowledges and understands that from time to time, WEX may receive earnings and interest on the funds held in the Custodial Account and that any such earnings or interest shall be part of WEX's compensation.

Employer acknowledges and understands that fees otherwise charged by WEX for services under this Agreement may be greater if WEX did not retain such earnings and interest on these funds.

The period during which interest may be earned begins on the date Employer funds are deposited into the Custodial Account and continues for as long as Employer funds remain in the Custodial Account.

Funds shall be disbursed on a first-in, first-out basis.

WEX does not track nor can it report interest earned for a single employer. WEX absorbs other bank charges, such as transmission charges, within the fees.

### 3.6 Maintenance of Records

Upon Employer's written request, WEX shall provide Employer with an accounting of all Employer assets, transfers, and transactions activity involving the Custodial Account, including a description of all receipts, disbursements, and other transactions.

## **ARTICLE 4 CONFIDENTIAL COMPANY INFORMATION AND INTELLECTUAL PROPERTY**

### 4.1 General Obligations

For purposes of this Article 4, "confidential company information" shall mean any company information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, service methods, software, documentation, financial information, prices, and product plans. Neither WEX nor Employer shall disclose confidential company information of the other party. The receiving party shall use reasonable care to protect the confidential company information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential company information of like kind.

The foregoing obligation shall not apply to any information that: (a) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (c) was known to the receiving party at the time of disclosure; (d) was generated independently by the receiving party; or (e) is required to be disclosed by law, subpoena or other process.

WEX may disclose Employer's or the Plan's confidential company information to a governmental agency or other third party to the extent necessary for WEX to perform its obligations under this Agreement or if Employer has given WEX written authorization to do so.

Although WEX may have confidential company information processed, managed, and/or stored with subcontractors or third parties, it remains fully responsible to Employer for the confidentiality obligations set forth herein.

### 4.2 WEX Sensitive Information

If Employer requests access to WEX confidential and/or proprietary security resources and assessments, service organization controls audit reports or other audit information for the purpose of reviewing the operating and business condition of WEX, Employer's acceptance of or access to such information shall constitute its agreement with the following:

- Employer shall maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.
- Employer may disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.
- Employer shall use reasonable care to protect the information and to ensure that it is maintained in confidence, and in no event use less than the same degree of care as Employer uses to safeguard its own like information.
- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with applicable law, as the information contains sensitive proprietary information and data defined as trade secret information that would not otherwise be publicly available and that disclosure of this information to the public, including WEX's competitors, would likely result in substantial harm to WEX's competitive positions and may also contain confidential supervisory information and personal information relating to directors, officers, and major shareholders of WEX, the disclosure of which would constitute an unwarranted invasion of personal privacy.

#### 4.3 Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by WEX), brochures, and online content ("Materials") furnished by WEX to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any WEX trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement.

Upon termination, Employer agrees to destroy Materials or, if requested by WEX, to return them to WEX, except to the extent Employer is required by law to maintain copies of such Materials.

WEX retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, techniques, and software acquired prior to or developed in the course of performing services under this Agreement.

Employer shall not permit any information regarding the systems of WEX or its subcontractors to be disseminated, sold, assigned, leased or licensed to any third party, nor otherwise used or commercially exploited in any way except as expressly set forth in this Agreement.

#### 4.4 Application

Each party agrees that its obligations contained in this Article 4 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, and representatives.

### **ARTICLE 5 TERM AND TERMINATION**

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months (the "Initial Term").

5.2 This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter unless terminated pursuant to Section 5.3, 5.4 or Section 5.5.

5.3 Notwithstanding the foregoing, this Agreement may be terminated at any time during the Initial Term or any renewal term by Employer or by WEX without cause and without liability with written notice of the intention

to terminate to be effective as of a date certain set forth in the written notice, not fewer than sixty (60) days following the date of such notice.

5.4 This Agreement may be terminated upon written notice:

- (a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;
- (b) If any fee (to the extent not subject to a good faith dispute) for any service provided by WEX to Employer remains unpaid to WEX beyond thirty (30) days past the due date, upon written notification by WEX to Employer that WEX intends to exercise its option to enforce this provision; or
- (c) Due to (i) a party's filing for bankruptcy, (ii) a party's making any assignment for the benefit of creditors, (iii) a party's consenting to the appointment of a trustee or receiver, (iv) a party's insolvency, as defined by applicable law, or (v) the filing of an involuntary petition against Employer under the Federal Bankruptcy Code or any similar law which remains un-dismissed for a period of forty-five (45) days.

5.5 If a party is in default under any provision of this Agreement other than a payment default, the other party may give written notice to the defaulting party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice to terminate this Agreement as of any future date designated in the notice.

5.6 Employer shall pay all fees not subject to a good faith dispute that have accrued up to the date of the termination of this Agreement within thirty (30) days after the date of the termination.

5.7 Upon termination of this Agreement, any funds in the Custodial Account that have not been disbursed in accordance with the terms and conditions of this Agreement shall be returned to Employer less any applicable undisputed unpaid fees, costs or expenses as set forth in this Agreement.

5.8 If this Agreement is terminated under Sections 5.3 or 5.4, WEX will cease the performance of any further services under this Agreement unless both parties agree in writing that certain services shall continue for an additional period. Upon prepayment, if requested by WEX, of the fees for this additional period or upon continued monthly invoicing, WEX will continue the processing of qualifying events, initial notices, the collection and tracking of COBRA premium payments, forwarding premiums to Employer and processing and reporting of COBRA elections and terminations with respect to those qualified beneficiaries who incurred a qualifying event prior to the date of termination of this Agreement.

5.9 Upon the completion of the later of the Agreement, or any period of further services, WEX will cease the performance of these COBRA administration services and Employer shall be immediately responsible for all aspects of COBRA administration. WEX shall return to Employer any Employer funds in the Custodial Account. However, the return of such funds shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. As necessary, WEX shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to WEX as of the date of termination pursuant to the terms of this Agreement or any other agreement between the parties.

## **ARTICLE 6 COST OF SERVICES**

6.1 Administrative Services Fees

- (a) Employer shall pay WEX a fee for its services under this Agreement. This fee shall be payable in accordance with the fee schedule attached hereto. Fees are invoiced monthly and are due within thirty (30) days of the invoice date. If Employer disputes in good faith any portion of the fees invoiced, Employer shall provide WEX with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30)

days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice.

- (b) As part of the administrative fees under this Agreement, WEX shall also retain the 2% additional premium allowed by COBRA for administrative costs charged to COBRA Continuant. If any law prevents COBRA Continuant from being charged the additional 2% premium, then the additional 2% premium shall become a fee paid by the Employer to WEX for its services under this Agreement. This fee shall be payable in accordance with the fee schedule attached hereto. Such fee will be invoiced monthly and will be due within thirty (30) days of the invoice date.
- (c) Notwithstanding the foregoing, WEX reserves the right to:
- Charge for the provision of additional services and/or proprietary technology that were neither included in nor contemplated by this Agreement on the Effective Date.
  - Increase fees based on additional costs imposed on WEX, such as significant postal rate or bank fee increases or substantiated increased costs due to legislative or regulatory changes, foreign or domestic, actually incurred in performing its services; and
  - Pass through any fees charged to WEX by a vendor of Employer.

WEX shall provide Employer with reasonable prior written notice of such charges or increases.

- (d) On or after the rate expiration date indicated on the fee schedule, WEX reserves the right to amend the fee schedule with at least sixty (60) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to WEX no later than the effective date of the fee schedule amendment.
- (e) Fees quoted assume that WEX's standard software and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the services can be readily performed without any modifications or alterations of WEX's software and systems. In the unusual event that costs are incurred by WEX to integrate the WEX services with Employer's software and systems and/or in migrating the data from the prior service provider to WEX's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

## 6.2 Non-Party Payment on Behalf of Employer and Compliance with Anti-Rebating Law

Employer represents and warrants that if someone other than Employer is paying WEX's fees on behalf of Employer, the making of such payment shall not violate any applicable anti-rebating law and agrees to hold WEX harmless (including reasonable attorney's fees) from all losses that result from Employer's breach of this provision.

## 6.3 Past Due Fees

Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary, if Employer fails to pay WEX any amount (except for amounts subject to a good faith dispute) that is due as a result of the services provided by WEX to Employer under this Agreement or any other agreement between the parties, WEX shall be permitted to deduct the undisputed amount from any funds held by WEX that were received from Employer. This right of offset shall be in addition to any other remedies that WEX may have in this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate this Agreement or a right of recoupment, regardless of whether the past due amount is paid in full as a result of the offset or recoupment rights provided herein.

## ARTICLE 7 GENERAL

### 7.1      Limitations of Liability

Notwithstanding any other provision in this Agreement to the contrary, the total cumulative liability of WEX to Employer for all claims, actions, or suits however caused arising out of or in connection with this Agreement shall be limited to direct damages and shall not exceed the greater of: (a) the amount of fees received by WEX from Employer under this Agreement for the twelve (12) months prior to the occurrence of the event giving rise to any such claims, actions or suits; or (b) amounts payable and actually paid to Employer or WEX resulting from Employer's claim, as applicable, under the insurance policies provided for under Section 7.2 of this Agreement.

In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use, or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility or foreseeability of such damages.

No action under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

WEX and Employer expressly agree that the limitations of liability in this Section 7.1 represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by WEX to Employer and is an essential element of the basis of the bargain between the parties.

### 7.2      Insurance

During the term of this Agreement, WEX shall maintain general liability insurance and cyber/E&O liability insurance policy limits of \$5,000,000 per occurrence and in the aggregate.

WEX shall also maintain commercial crime insurance policy limits of \$5,000,000, including employee dishonesty coverage.

Upon request, once per year, WEX shall provide Employer with a certificate or certificates of insurance reflecting the required coverage, initially and then upon policy renewals.

### 7.3      Indemnification

(a) Subject to the limitations in Section 7.1, WEX will indemnify, defend and hold harmless Employer (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against all Charges (as defined below in Section 7.3(e)), liability, damages, costs, losses, penalties, expenses and reasonable attorney's fees (collectively, "Losses") incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of WEX's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

(b) In addition to Sections 2.16, 2.22, 2.26, and 6.2, Employer will indemnify, defend and hold harmless WEX (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against all Losses incurred by WEX in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of Employer's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, Employer

agrees that WEX shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its employees or assigns.

- (c) A party (the "Indemnified Party") seeking indemnification under Sections 7.3(a) or 7.3(b) above shall promptly notify the other party (the "Indemnifying Party") of any matters in respect of which the foregoing indemnity may apply and of which the Indemnified Party has knowledge, and give the Indemnifying Party the opportunity to control the response thereto and the defense thereof; provided, however, that the Indemnified Party shall have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at the Indemnified Party's sole cost and expense; and provided further, however, that no settlement or compromise of an asserted third-party claim may be made without the prior written consent of the Indemnifying Party.
- (d) The Indemnified Party must notify the Indemnifying Party within thirty (30) days in writing of any actual or threatened claim, demand, action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the Indemnifying Party shall not be deemed a waiver of the right to seek indemnification, unless the actions of the Indemnifying Party have been materially prejudiced by the failure of the Indemnified Party to provide notice within the required time period.
- (e) For purposes of this Section 7.3, "Charges" means: (i) excise taxes imposed under Code Section 4980B (26 USC § 4980B), subject to the provisions of the aggregate limitations set forth in Code Section 4980B and the right of the assessed party to challenge the Internal Revenue Service with respect to all or part of the imposition of such excise taxes; and/or (ii) penalties (in an amount up to \$110 per day) that are imposed by a court under Section 502(c)(1) of ERISA (29 USC § 1132) and that are paid. Charges shall not include the payment of the claims for benefits under the terms of the Plan.

## **ARTICLE 8 MISCELLANEOUS**

### 8.1 Number

Where the context of this Agreement requires, the singular shall include the plural and vice versa.

### 8.2 Force Majeure

Notwithstanding anything to the contrary contained herein, neither party shall be responsible or liable if the performance of its obligations hereunder is hindered or adversely affected or becomes impossible or impracticable, as a result of an event or effect that the party could not have anticipated or controlled or for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, lockouts, strikes, work stoppages or other labor disruption, accidents, epidemics, pandemics, quarantines, war (whether declared or undeclared), acts of war or terrorism (whether foreign or domestic in origin), insurrection, sabotage, riot, a decree of health emergency, national emergencies or other man-made emergency, civil or military disturbances including any law, regulation, order or other action by any governmental authority, nuclear or natural disasters or acts of God, interruptions, loss or malfunctions of utility, transportation, communications or computer (software and hardware) services, including the disruption or outage of the Internet, or disruption of financial markets or banking functions (a "Force Majeure Event").

A party affected by a Force Majeure Event shall as soon as reasonably practicable after the occurrence of the Force Majeure Event or the occurrence of harm resulting from such a Force Majeure Event that causes the party to be unable to perform: (a) provide written notice to the other party of the nature and extent of any such Force Majeure Event; and (b) use commercially reasonable efforts to remedy any inability to perform due to such a Force Majeure Event.

### 8.3 Waiver

If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

#### 8.4 Severability

If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein.

#### 8.5 Governing Law

This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Connecticut (without regard to the laws of conflict that might otherwise apply) as to all matters, including without limitation, matters of validity, interpretation, construction, effect, performance, enforcement and remedies.

#### 8.6 Dispute Resolution

Excluding all matters pertaining to the collection of amounts due to WEX arising out of the services provided, any claim, controversy or dispute arising out of, or relating to, this Agreement, in addition to disputes about invoices per Section 6.1, first promptly shall be settled by managers with direct day-to-day responsibility under this Agreement, and if not so settled, promptly shall be addressed by executives of the parties who have authority to settle the dispute. A party wishing to raise a dispute shall give prompt written notice to the other party, and the good faith attempt to resolve the dispute, as described in the foregoing sentence, shall take place within thirty (30) days thereafter. Engaging in the dispute resolution process described in this Section 8.6 shall be a condition precedent to proceeding with litigation.

Notwithstanding the foregoing, this provision shall not prevent either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of their dispute relating to this Agreement.

To the extent this Agreement must be enforced in a court of law, the parties agree that it can only be brought in the United States District Court for the District of Connecticut, and both parties consent to such jurisdiction and venue.

#### 8.7 Notice

Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (a) when received if delivered by hand; (b) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (c) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or (d) when received if delivered electronically. WEX: 82 Hopmeadow Street, Simsbury, CT 06089, Attention: General Counsel.

#### 8.8 Entire Agreement

This Agreement, together with the business associate agreement if so applicable, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings, whether written or verbal. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order, payment processing agreement, or other document relating to the services provided by WEX herein, the terms and conditions of this Agreement shall control. Further, the terms and conditions of this Agreement shall prevail over any additional terms contained in any such purchase order, payment processing agreement, or other document. Any amendment to this Agreement must be in writing and consented to by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, permitted assigns, and successors in interest. Unless expressly set forth in this Agreement, nothing in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

#### **8.9**      **Assignment**

This Agreement may not be assigned by either party without the prior written consent of the other unless to an affiliate or in connection with a change in control, merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing within thirty (30) days following the date of the assignment. If consent is required, the parties shall not unreasonably withhold or delay consent.

#### **8.10**      **Survival**

Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive.

#### **8.11**      **Relationship of the Parties**

Employer and WEX acknowledge and agree that WEX is retained under this Agreement as an independent contractor of Employer to assist Employer with its obligations to comply with the continuation coverage provisions of COBRA, and that WEX is not a fiduciary under ERISA and lacks any discretion hereunder. Employer agrees that use of or offset of amounts in the Custodial Account to pay for fees or other amounts due to WEX under this Agreement shall constitute an Employer action that is authorized by Employer under this Agreement. Employer agrees that such actions are not discretionary acts of WEX and do not create fiduciary status for WEX. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and WEX.

#### **8.12**      **Press Release and Publicity**

Employer grants WEX the right to include Employer's name in WEX's published client list. Subject to Employer's consent to both content and timing (not to be unreasonably withheld), Employer grants WEX permission to issue and distribute a press release announcing the existence of the business relationship between the parties, and to engage in publicity concerning the same that may appear on the WEX website and in WEX publications, including proposal materials and/or presentations. Employer shall provide and grant WEX use of a company logo for use in the published materials.

#### **8.13**      **Authority**

Neither WEX nor Employer, when dealing with the other party in relation to the Plan, shall be obliged to determine the other party's authority to act pursuant to this Agreement.



## HEALTH SAVINGS ACCOUNT ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

WEX and Employer may be referred to herein individually as a "party" and collectively as the "parties."

Employer makes a Health Savings Account ("HSA") available for its employees enrolled in a high deductible health plan under which HSAs can be established by or on behalf of Employer's employees ("Employees").

An HSA is a tax-advantaged medical savings account available to taxpayers in the United States who are enrolled in a high-deductible health plan.

The funds contributed to an account are not subject to federal income tax at the time of deposit. HSA funds roll over and accumulate year to year if they are not spent.

The HSAs are owned by the individual accountholder ("Accountholder").

An HSA is an account used to pay or reimburse certain medical expenses, to which an employee, the employer or both may make contributions.

Employer desires WEX to assist in its administration of HSAs, and WEX agrees to perform certain recordkeeping and nondiscretionary administrative services based on the terms and conditions set forth in this Health Savings Account Administrative Services Agreement ("this Agreement").

WEX will transfer and distribute deductions and contributions made by or on behalf of Employees to the HSAs.

WEX Inc., the ultimate parent company of WEX Health, Inc., will serve as the IRS-approved non-bank custodian of the HSAs ("Custodian" to distinguish Custodian from WEX Health, Inc.).

The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

Now, therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows.

### ARTICLE 1 SCOPE AND PURPOSE

This Agreement is limited in scope and purpose to establishing the terms and conditions for the transfer and distribution of payroll deductions and Employer contributions (as applicable) to HSAs of Employees.

Nothing in this Agreement shall modify or amend the terms of any HSA agreement entered into between the Custodian and the Accountholder.

Complete and accurate information from Employer is required in order for WEX to perform the services set forth herein.

WEX shall not be responsible for the truth or accuracy of such information or for the establishment of an HSA or for the HSA maintenance activities based on the information received from Employer.

Employer acknowledges and agrees that WEX shall have no liability in connection with:

- Determining that the Employee is eligible to maintain an HSA and make contributions under applicable tax law;
- Ensuring that all distributions Employees take are permitted under applicable tax law;
- The tax consequences of any contribution (including rollover contributions) or distribution; or

- Paying any custodian investment fees that may be applicable to an HSA.

WEX assumes no responsibility or authority under this Agreement for:

- Providing legal, tax or accounting advice in relation to the HSAs;
- The design, funding or operation of any Employer-sponsored health and welfare benefit plan or for compliance of any such plan with the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), including any aspect of the Consolidated Omnibus Budget Reconciliation Act of 1985 ("COBRA");
- Duties incumbent upon a "plan sponsor" or "covered entity" under the Health Insurance Portability and Accountability Act of 1996, as amended ("HIPAA") privacy and security rules;
- The funding of claims for benefits under any HSA or employee benefit plan or the payment of fees to third parties providing services or products to Employer or Employees;
- The funding of any contributions; or
- Insuring or underwriting any liability to provide benefits under any employee benefit plan.

The parties agree that it is intended that the HSAs shall not be employee benefit plans subject to ERISA and that the assets held in the HSAs shall not be plan assets subject to the provisions of ERISA, and that neither party will take any action that will cause the HSAs to become subject to ERISA. Neither WEX nor Employer, when dealing with the other party in relation to Employer's HSA program provided herein, shall be obliged to determine the other party's authority to act pursuant to this Agreement.

WEX may, in its discretion, prepare and deliver to Employer benchmarks or other metrics showing the experience of Employer and its participants with the services provided herein as compared to other employers. WEX will develop any such benchmarks or metrics through the use of data that has been aggregated and de-identified consistent with any executed or applicable business associate agreement between the parties.

WEX Services shall be performed in a professional manner consistent with generally accepted industry standards and in compliance with applicable law.

Employer may subscribe to WEX's non-discrimination testing and request additional products and services from WEX.

## **ARTICLE 2 OPENING OF ACCOUNTS**

In accordance with procedures to be agreed upon by the parties, Employer will: (i) inform Employees who are eligible to participate that they may enroll in an HSA via electronic procedures established by WEX; (ii) provide each Employee with all applicable WEX notices, forms, and disclosures directly or online through the consumer portal; and (iii) provide to WEX at such time and in such format as WEX requires, the information with respect to each Employee participating in Employer's HSA program.

Employer shall ask WEX to establish or "open" HSAs only for those Employees who have indicated the intent to open such an account; represents that the Employees have certified their authorization to work in the United States and have furnished their social security or other taxpayer identification numbers, which Employer will provide to WEX for the purposes of establishing HSAs; and warrants that the information and data Employer provides to WEX under this Agreement will be true and complete to the best of Employer's knowledge, information and belief.

WEX reserves all rights to decline to open or activate any HSA or to close any HSA insofar as its practices and procedures have not been properly observed by Employer or the Employee.

### **ARTICLE 3 FUNDING OF ACCOUNTS**

Based on the contribution timing set and maintained by Employer and in the form to be agreed upon by the parties, Employer shall remit the contributions to WEX and provide accompanying information that accurately indicates each HSA and the dollar amount to be deposited in each such HSA.

WEX shall have no liability for any funds not received by WEX or for any errors in crediting an HSA based on the information provided by Employer, including where such contributions are automated, recurring contributions.

Unless the account has not been successfully opened, contributions may be withdrawn or transferred from an HSA solely upon the instructions of the Custodian and the respective Accountholder.

Employer shall have the sole responsibility and liability for payment of all benefits it makes available to its Employees.

### **ARTICLE 4 MISTAKEN EMPLOYER CONTRIBUTIONS**

Employer acknowledges and agrees that federal regulation requires that HSA contributions be non-forfeitable, provided that the Internal Revenue Service ("IRS") will allow the reversal of "Mistaken Employer Contributions" under the following circumstances:

- When there is a mistake in the eligibility to establish an HSA and the employee was never eligible for HSA contributions.
- When the contribution exceeds the annual HSA maximum contribution.
- When there is clear documentary evidence demonstrating that there was an administrative or process error.

WEX agrees to assist Employer in requesting the return of Mistaken Employer Contributions from the Custodian in the above situations, or as otherwise permitted by applicable IRS guidance. In all cases, the return of mistaken HSA contributions is subject to the rules, procedures, and limitations of the Custodian.

WEX assumes no liability for "Mistaken Employer Contributions."

### **ARTICLE 5 ACCOUNT MAINTENANCE**

In order to administer and maintain the HSAs, from time to time in accordance with procedures to be agreed upon, Employer shall submit to WEX certain information concerning the status of Employees and HSA contributions, and WEX may provide certain information about the HSAs to Employer.

Employer acknowledges that WEX may rely upon all information provided by Employer in maintaining and administering the HSAs.

Employer shall be responsible for all costs and expenses incurred by WEX for error correction or other activities undertaken by WEX at Employer's request or as a result of erroneous information provided by Employer to WEX.

If requested, Employer shall certify to WEX the personnel authorized by Employer to receive and furnish information under this Agreement.

As permitted by law, Employer shall cooperate with WEX in any manner deemed reasonably necessary by WEX to protect its rights.

## **ARTICLE 6 CLOSING OF HSAs**

WEX will close an HSA only upon the instructions of the respective Accountholder.

Notwithstanding anything to the contrary herein, at its discretion, WEX may refuse to open, or may close any previously established HSA for which the Employee is unable or unwilling to sign WEX forms or otherwise agree to the terms and conditions related to such HSA or otherwise violates any terms thereof.

Employer acknowledges that upon any such closure, funds in the HSA will be returned to the Accountholder or forwarded to another financial institution upon instructions of the Accountholder unless the Mistaken Employer Contribution rules apply, in which case the funds will be returned to Employer.

Employer further acknowledges that such closure may result in tax consequences for which the Accountholder shall be solely responsible and Employer will be responsible for the applicable tax reporting consequences.

The Custodian may resign and close the HSA for any reason or no reason, effective thirty (30) days after it provides written notice of its resignation to the Accountholder.

## **ARTICLE 7 EMPLOYER RESPONSIBILITIES**

Employer represents and warrants that it will have confirmed the identity and employment eligibility of all Employees for whom information is provided to WEX as follows:

- Through the U.S. Citizenship and Immigration Services I-9 forms completed by Employees if hired after November 6, 1986; or
- Through review by Employer of Employees' driver's licenses or other government-issued identifying documentation evidencing nationality or residence and bearing a photograph or similar safeguard, for Employees hired before November 6, 1986.

Employer represents and warrants that it does not:

- Limit the ability of eligible individuals to move their funds to another HSA beyond restrictions imposed by the Internal Revenue Code of 1986, as amended ("Code");
- Impose conditions on uses of HSA funds beyond those permitted under the Code;
- Make or influence the investment decisions with respect to funds contributed to an HSA;
- Represent that HSAs are an employee welfare benefit plan established or maintained by Employer; or
- Receive any payment or compensation from WEX in connection with an HSA.

To the extent applicable, the HSA comparability testing under Code Section 4980G is the responsibility of Employer to complete.

## **ARTICLE 8 EMPLOYER INFORMATION AND INSTRUCTIONS**

Employer has authorized and instructed WEX in this Agreement to implement WEX's standard administrative procedures to provide services in accordance with this Agreement. WEX shall be fully protected in relying upon representations by Employer set forth in this Agreement and communications made by or on behalf of Employer in effecting its obligations under this Agreement.

Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney fees) and expressly releases all claims against WEX in connection with any claim or cause of action for any activity or occurrence prior to the commencement of services under this Agreement that results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on

behalf of Employer (other than WEX) to comply with ERISA, the Code, and any other applicable law or regulation with respect to the HSAs.

If Employer instructs WEX with a specific written request in a format acceptable to WEX to provide services in a manner other than in accordance with WEX's standard forms and procedures, WEX may (but need not) comply with such an instruction. This would include any Employer instruction to add a vendor link to the consumer portal. To the extent that WEX complies with such an instruction, Employer and not WEX shall be solely responsible for WEX's action so taken, and Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney fees), and expressly releases all claims against WEX in connection with any claim or cause of action, which results from or in connection with WEX complying with Employer's specific written instruction to provide services in a manner other than in accordance with WEX's standard procedures.

#### **ARTICLE 9 RETENTION AND RELEASE OF DATA, RECORDS, AND FILES**

Written and electronic records containing personal information are securely destroyed or deleted consistent with business needs or legal retention requirements.

Per business records needs and associated retention and secure destruction periods, WEX retains a copy of all information, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to WEX policy, for at least seven (7) years from the date created at WEX.

Following the termination of this Agreement, WEX shall cooperate with Employer or Employer's subsequent service provider to effect an orderly transition of services provided under this Agreement and, within a reasonable time, will release to Employer a copy of all data, records, and files in WEX's standard format.

Upon termination of this Agreement, WEX is entitled to retain a copy of all information including the data, records, and files to use and disclose such information for claims, audits, and legal and contractual compliance purposes to the extent permitted by law.

#### **ARTICLE 10 CONFIDENTIAL COMPANY INFORMATION AND INTELLECTUAL PROPERTY**

(a) General Obligations

For purposes of this Article 10, "confidential company information" shall mean any company information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, service methods, software, documentation, financial information, prices, and product plans. Neither WEX nor Employer shall disclose confidential company information of the other party.

The receiving party shall use reasonable care to protect the confidential company information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential company information of like kind. The foregoing obligation shall not apply to any information that: (i) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (ii) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (iii) was known to the receiving party at the time of disclosure; (iv) was generated independently by the receiving party; or (v) is required to be disclosed by law, subpoena or other process.

WEX may disclose Employer's confidential company information to a governmental agency or other third party required by law to the extent necessary for WEX to perform its obligations under this Agreement or if Employer has given WEX written authorization to do so.

Although WEX may have confidential company information processed, managed, and/or stored with subcontractors or third parties, it remains fully responsible to Employer for the confidentiality obligations set forth herein.

(b) WEX Sensitive Information

If Employer requests access to WEX confidential and/or proprietary security resources and assessments, service organization controls audit reports or other audit information for the purpose of reviewing the operating and business condition of WEX, Employer's acceptance of or access to such information shall constitute its agreement with the following:

- Employer will maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.
- Employer may only disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.
- Employer shall use reasonable care to protect the information and to ensure that it is maintained in confidence, and in no event use less than the same degree of care as Employer uses to safeguard its own like information.
- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with the applicable law and the information contains sensitive proprietary information and data defined as trade secret information that would not otherwise be publicly available and that disclosure of this information to the public, including WEX's competitors, would likely result in substantial harm to WEX's competitive positions and may also contain confidential supervisory information and personal information relating to directors, officers, and major shareholders of WEX, the disclosure of which would constitute an unwarranted invasion of personal privacy.

(c) Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by WEX), brochures, and online content ("Materials") furnished by WEX to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any WEX trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement. Upon termination, Employer agrees to destroy Materials or, if requested by WEX, to return them to WEX, except to the extent Employer is required by law to maintain copies of such Materials. WEX retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, techniques, and software acquired prior to or developed in the course of performing services under this Agreement. Employer shall not permit any information regarding the systems of WEX or its subcontractors to be disseminated, sold, assigned, leased or licensed to any third party, nor otherwise used or commercially exploited in any way except as expressly set forth in this Agreement.

(d) Application

Each party agrees that its obligations contained in this Article 10 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, and agents.

**ARTICLE 11 TERM OF AGREEMENT**

(a) Duration

The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months (the "Initial Term").

(b) Renewal

This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter unless terminated pursuant to this Article 11.

(c) Termination without Cause

Notwithstanding the foregoing, this Agreement may be terminated at any time during the Initial Term or any renewal term by Employer or by WEX without cause and without liability with written notice of the intention to terminate to be effective as of a date set forth in the written notice not fewer than sixty (60) days from the date of such notice.

(d) This Agreement may be terminated upon written notice:

- If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;
- If at any time Employer fails to provide funds for the payment of benefits; or
- Due to (i) a party's filing for bankruptcy, (ii) a party's making any assignment for the benefit of creditors, (iii) a party's consenting to the appointment of a trustee or receiver, (iv) a party's insolvency, as defined by applicable law, or (v) the filing of an involuntary petition against Employer under the Federal Bankruptcy Code or any similar state or federal law which remains un-dismissed for a period of forty-five (45) days.

(e) If a party is in default under any provision of this Agreement other than a payment default, the other party may give written notice to the defaulting party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice, or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice (the "Termination Notice") to terminate the Agreement as of any future date designated in the Termination Notice.

(f) Fees or Charges

All fees and charges that have accrued up to the date of termination shall be paid within thirty (30) days after the date of termination.

## **ARTICLE 12 COST OF SERVICES**

The service fees shall be payable in accordance with the fee schedule attached hereto.

Fees are invoiced monthly and are due within thirty (30) days of the invoice date.

If Employer disputes in good faith any portion of the fees invoiced, Employer shall provide WEX with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30) days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice.

If Employer fails to pay within sixty (60) days of the invoice date, and upon written request of WEX to the Custodian, fees will be deducted directly from each HSA to which the fees relate, provided that no amount may be deducted from one HSA to cover the unpaid service fees from another HSA.

Employer shall have thirty (30) days from the date of the invoice to correct the HSA participant count for credit or refund.

The service fees are billed to the Accountholder after termination of employment with Employer.

If requested by Employer, the service fees may be charged to Accountholders, and withdrawn from the HSAs on or around the first of each month. This transaction will appear as a separate line item on the account. The fees cannot be charged to Accountholders if the service fees are part of a WEX solution or a monthly minimum fee.

Notwithstanding the foregoing, WEX reserves the right to:

- Charge Employer reasonable fees for the reproduction or return of records or reports requested by Employer or governmental agencies if the governmental agency has made the request on behalf of Employer or for reasonable fees charged by other parties for information reasonably required by WEX to perform its duties under this Agreement;
- Charge for the provision of additional services and/or proprietary technology that were neither included in nor contemplated by this Agreement on the Effective Date.
- Increase fees based on additional costs imposed on WEX, such as significant postal rate or bank fee increases or substantiated increased costs due to legislative or regulatory changes, foreign or domestic, actually incurred in performing its services; and
- Pass through any fees charged to WEX by a vendor of Employer.

WEX's service fees incorporate the service fees charged by the Custodian. Upon thirty (30) days' advance written notice to Employer, WEX may adjust its service fees to reflect any adjustment in the service fees charged to WEX by the Custodian. The service fees do not include the investment management fee, if any, charged by the Custodian.

WEX shall provide Employer with reasonable prior written notice of such increases.

On or after the rate expiration date indicated on the fee schedule, WEX reserves the right to amend the fee schedule with at least sixty (60) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to WEX no later than the effective date of the fee schedule amendment.

Fees quoted assume that WEX standard software and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the services can be readily performed without any modifications or alterations of WEX's software and systems. If costs are incurred by WEX to integrate the WEX services with Employer's software and systems and/or in migrating the data from the prior service provider to WEX's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

### **ARTICLE 13 RED FLAGS RULE COMPLIANCE**

For the purposes of this Article 13, "Red Flags Rule" means regulation adopted by various federal agencies, including the Federal Trade Commission, in connection with the detection, prevention, and mitigation of identity theft and located at 72 Fed. Reg. 63718 (November 9, 2007), as amended.

For the purposes of this Article 13, "Covered Services" means the services provided that allow Accountholders to pay for eligible expenses with a debit card or other stored-value card and any other services provided by WEX pursuant to this Agreement that fall under the protections of the Red Flags Rule as determined by WEX in its sole discretion.

To the extent applicable, WEX shall comply with the Red Flags Rule with respect to Covered Services provided by WEX under this Agreement as determined by WEX in its sole discretion. As part of its Red Flags Rule compliance, WEX shall adopt, maintain, and use appropriate and commercially reasonable rules, procedures, and safeguards to detect and identify red flags and to prevent and mitigate identify theft as required by the Red Flags Rule.

This Article 13 shall be null and void to the extent action is taken by U.S. Congress or a federal agency to exempt the Covered Services (or third-party administrators that provide Covered Services) from the Red Flags Rule.



## ARTICLE 14 LIMITATIONS, INDEMNIFICATION, AND INSURANCE

- (a) Notwithstanding any other provision in this Agreement to the contrary, the total cumulative liability of WEX to Employer for all claims, actions, or suits however caused arising out of or in connection with this Agreement shall be limited to direct damages and shall not exceed the greater of: (a) the amount of fees received by WEX from Employer under this Agreement for the twelve (12) months prior to the occurrence of the event giving rise to any such claims, actions or suits; or (b) amounts payable and actually paid to Employer or WEX resulting from Employer's claim, as applicable, under the insurance policies provided for under section (h) below.
- (b) In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use, or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility or foreseeability of such damages.
- (c) No action under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

WEX and Employer expressly agree that the limitations of liability in this section represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by WEX to Employer and is an essential element of the basis of the bargain between the parties.

- (d) Subject to the limitations in this Article 14, WEX will indemnify, defend and hold harmless Employer (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against any and all liability, damages, costs, losses, penalties, expenses and reasonable attorney fees (collectively, "Losses") incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of WEX's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.
- (e) In addition to the provisions of Article 8, Employer will indemnify, defend and hold harmless WEX (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against any and all Losses incurred by WEX in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of Employer's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, WEX shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its employees or assigns.

- (f) A party (the "Indemnified Party") seeking indemnification under sections (d) or (e) above shall promptly notify the other party (the "Indemnifying Party") of any matters in respect of which the foregoing indemnity may apply and of which the Indemnified Party has knowledge, and give the Indemnifying Party the opportunity to control the response thereto and the defense thereof; provided, however, that the Indemnified Party shall have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at the Indemnified Party's sole cost and expense; and provided further, however, that no settlement or compromise of an asserted third-party claim may be made without the prior written consent of the Indemnifying Party.
- (g) The Indemnified Party must notify the Indemnifying Party within thirty (30) days in writing of any actual or threatened claim, demand, action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the Indemnifying Party shall not be deemed a waiver of the right to seek indemnification, unless

the actions of the Indemnifying Party have been materially prejudiced by the failure of the Indemnified Party to provide notice within the required time period.

During the term of this Agreement, WEX shall maintain general liability insurance and cyber/E&O liability insurance policy limits of \$5,000,000 per occurrence and in the aggregate. WEX shall also maintain commercial crime insurance policy limits of \$5,000,000, including employee dishonesty coverage.

Upon request, once per year, WEX shall provide Employer with a certificate or certificates of insurance reflecting the required coverage, initially and then upon policy renewals.

## ARTICLE 15 GENERAL

- (a) Neither Employer nor WEX will restrict the ability of Accountholders to move funds to another HSA beyond those restrictions imposed by the Code.
- (b) By executing this Agreement, the parties agree to extend the term of any Automated Clearing House ("ACH") agreement associated herewith to be coterminous with the term of this Agreement and to have such agreement be covered by the terms and provisions hereof.
- (c) From time-to-time and in compliance with applicable federal and state laws, WEX may monitor and/or record calls which are made to the customer service line for quality assurance and training purposes, and/or to ensure that WEX's services fully comply with the terms of this Agreement. WEX shall provide a customer service line toll-free number Monday through Friday Central Time Zone for use during WEX normal business hours: Employers 7:00 a.m. to 7:00 p.m., Accountholders 6:00 a.m. to 9:00 p.m.
- (d) WEX maintains an information security program in compliance with applicable law.
- (e) WEX may delegate or subcontract any portion of WEX services. For those WEX services that are delegated or subcontracted, WEX shall remain fully responsible to Employer for compliance with all applicable provisions of this Agreement or of any executed or applicable business associate agreement between the parties.
- (f) To the extent that the U.S. Congress, Department of Health and Human Services ("HHS") or another agency with similar authority issues a definitive ruling or order that the privacy rule applies to the HSA services, the parties shall confer in good faith to discuss compliance with same.
- (g) Notwithstanding anything to the contrary contained herein, neither party shall be responsible or liable if the performance of its obligations hereunder is hindered or adversely affected or becomes impossible or impracticable, as a result of an event or effect that the party could not have anticipated or controlled or for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, lockouts, strikes, work stoppages or other labor disruption, accidents, epidemics, pandemics, quarantines, war (whether declared or undeclared), acts of war or terrorism (whether foreign or domestic in origin), insurrection, sabotage, riot, a decree of health emergency, national emergencies or other man-made emergency, civil or military disturbances including any law, regulation, order or other action by any governmental authority, nuclear or natural disasters or acts of God, interruptions, loss or malfunctions of utility, transportation, communications or computer (software and hardware) services, including the disruption or outage of the Internet, or disruption of financial markets or banking functions (a "Force Majeure Event").

A party affected by a Force Majeure Event shall as soon as reasonably practicable after the occurrence of the Force Majeure Event or the occurrence of harm resulting from such a Force Majeure Event that causes the party to be unable to perform: (a) provide written notice to the other party of the nature and extent of any such Force Majeure Event; and (b) use commercially reasonable efforts to remedy any inability to perform due to such a Force Majeure Event.

- (h) If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

- (i) If any provision of this Agreement is found to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein, and the parties will negotiate a mutually acceptable replacement provision consistent with the parties' original intent.
- (j) This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Connecticut (without regard to the laws of conflict that might otherwise apply) as to all matters, including without limitation, matters of validity, interpretation, construction, effect, performance, enforcement and remedies.
- (k) Excluding all matters pertaining to the collection of amounts due to WEX arising out of the services provided, any claim, controversy or dispute arising out of, or relating to, this Agreement, in addition to disputes about invoices per Article 12, first promptly shall be settled by managers with direct day-to-day responsibility under this Agreement, and if not so settled, promptly shall be addressed by executives of the parties who have authority to settle the dispute. A party wishing to raise a dispute shall give prompt written notice to the other party, and the good faith attempt to resolve the dispute, as described in the foregoing sentence, shall take place within thirty (30) days thereafter. Engaging in the dispute resolution process described in this subsection shall be a condition precedent to proceeding with litigation.
- (l) Notwithstanding the foregoing, this provision shall not prevent either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of their dispute relating to this Agreement.
- (m) To the extent this Agreement must be enforced in a court of law, the parties agree that it can only be brought in the United States District Court for the District of Connecticut, and both parties consent to such jurisdiction and venue.
- (n) Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (i) when received if delivered by hand; (ii) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (iii) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or (iv) when received if delivered electronically. WEX: 82 Hopmeadow Street, Simsbury, CT 06089, Attention: General Counsel.
- (o) This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings, whether written or verbal. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order, payment processing agreement, or other document relating to the services provided by WEX herein, the terms and conditions of this Agreement shall control. Further, the terms and conditions of this Agreement shall prevail over any additional terms contained in any such purchase order, payment processing agreement, or other document. Any amendment to this Agreement must be in writing and signed by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns, and successors in interest. Unless expressly set forth in this Agreement, nothing in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.
- (p) This Agreement may not be assigned by either party without the prior written consent of the other unless to an affiliate or in connection with a change in control, merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing within thirty (30) days following the date of the assignment. If consent is required, the parties shall not unreasonably withhold or delay consent.
- (q) Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive.
- (r) The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be

construed to create, a relationship of partner or joint venture or any association for profit between Employer and WEX.

- (s) In the event of WEX's resignation or inability to serve, Employer may appoint a successor. In such situations, the replacement of WEX shall be considered a termination of this Agreement, and the termination provisions of Article 11 shall remain effective and controlling.
- (t) Employer grants WEX the right to include Employer's name in WEX's published client list. Subject to Employer's consent to both content and timing (not to be unreasonably withheld), Employer grants WEX permission to issue and distribute a press release announcing the existence of the business relationship between the parties, and to engage in publicity concerning the same that may appear on the WEX website and in WEX publications, including proposal materials and/or presentations. Employer shall provide and grant WEX use of a company logo for use in the published materials.
- (u) Neither WEX nor Employer, when dealing with the other party in relation to the Plan, shall be obliged to determine the other party's authority to act pursuant to this Agreement.

## REIMBURSEMENT ACCOUNT ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

WEX and Employer may be referred to herein individually as a "party" and collectively as the "parties."

Employer has adopted an Internal Revenue Code (together with its implementing regulations, in each case as amended) (the "Code") Section 125 (26 USC § 125) Cafeteria Plan (the "125 Plan") for its eligible employees. Included in the 125 Plan is one or more of the following plans or arrangements: a health flexible spending arrangement ("Health FSA"); a dependent care flexible spending arrangement ("Dependent Care FSA") (a health FSA and a Dependent Care FSA are referred to collectively as an "FSA"); and/or a limited purpose health flexible spending arrangement ("Limited Health FSA").

Employer may have also adopted one or more of the following for its eligible employees: a health reimbursement arrangement ("HRA") Code Section 105 (26 USC § 105); a limited purpose health reimbursement arrangement ("Limited HRA") Code Section 105 (26 USC § 105); an individual coverage health reimbursement arrangement ("ICHRA") Code Section 105 (26 USC § 105); and/or a transportation fringe benefit plan spending account ("TSA" or "Commuter") qualified under Code Section 132(f) (26 USC § 132(f)).

Employer may have also adopted other spending or reimbursement account benefits or post-tax benefits that are not subject to the Code.

Individually and collectively, as the context may require, the foregoing plans or other arrangements maintained by Employer shall be referred to as the "Plan."

Employer desires WEX to assist in its administration of the Plan, and WEX desires to assist Employer in the administration of the Plan.

WEX and Employer agree that WEX shall assist in the administration of the Plan based on the terms and conditions set forth in this Reimbursement Account Administrative Services Agreement ("this Agreement"), including, without limitation that:

- Employer has established the Plan for the exclusive benefit of its employees.
- Employer is the administrator of the Plan (the "Plan Administrator").
- Employer remains the Plan Administrator and is responsible for the operation and maintenance of the Plan, including the establishment of eligibility and benefits and funding the payment of benefits owed to participants under the Plan.
- WEX is an independent contractor in relation to Employer and to the Plan and acts as an agent on behalf of Employer in rendering services for Employer pursuant to this Agreement.
- WEX is to provide the agreed upon services without assuming any liability for the performance of any other services beyond those set forth below.

The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

Now, therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 WEX ADMINISTRATIVE SERVICES**

### **1.1 Plan Administration Assistance**

WEX shall assist Employer in the administration of the Plan as provided in this Agreement. WEX's duties with respect to the Plan are limited to those selected for services by Employer via the WEX portal or design guide.

### **1.2 Plan Documents Assistance**

(a) Upon request, WEX will assist Employer in the establishment and operation of the Plan by providing, for review by Employer, WEX's standard documents, including a plan document, a summary plan description ("SPD"), if applicable, and other standard documents relating to the administration of a plan.

(b) Employer is under no obligation to use WEX's standard documents in establishing and maintaining its plan.

(c) WEX's standard documents are based on WEX's internal policies and procedures, which may change from time to time, and the legal and regulatory requirements then in effect.

(d) It is Employer's responsibility to determine whether WEX's standard documents are legally compliant for Employer's purposes, in compliance with the requirements of its Plan, are appropriately completed, and are appropriately and timely adopted by Employer.

(e) Employer must provide WEX with an executed copy of its plan document.

(f) When there is a change in applicable domestic law or regulation or when requested by Employer due to Employer changing plan design, WEX will provide Employer with its standard plan amendments.

(g) It is Employer's responsibility to determine whether WEX's standard plan amendments or other revisions are legally compliant for Employer's purposes, in compliance with the requirements of its Plan, are appropriately completed, and are appropriately and timely adopted by Employer.

(h) Employer must provide WEX with an executed copy of its amended plan document.

(i) For the establishment of HRAs, Limited HRAs, and TSAs, WEX provides a prototype plan with an agreement that, once adopted, becomes Employer's HRA, Limited HRA or TSA plan document.

(j) For the establishment of other spending or reimbursement account benefits or post-tax benefits that are not subject to the Code, WEX does not provide a standard plan document or a prototype plan with an agreement.

### **1.3 Recordkeeping**

WEX shall assist Employer in the development and maintenance of administrative and recordkeeping systems for the Plan. WEX's recordkeeping services are listed in the Services Addendum.

### **1.4 Information for Employer Disclosure and Plan Reporting**

WEX shall provide Employer with general information about disclosure and Plan reporting requirements that relate to the Plan and the information maintained by WEX that is necessary for Employer to prepare the annual Form 5500.

WEX shall not be responsible for the accuracy of any information provided by Employer nor shall WEX be responsible for determining the level of compliance required by the Plan. It is the sole responsibility of Employer to comply with all legal disclosure and Plan reporting requirements.

### 1.5 WEX Reporting to Employer

WEX shall provide the following reports to Employer:

- Employer Funding Report (daily or monthly – the frequency of this report is dependent on the funding method selected)
- Payment History Report (on demand)
- Enrollment Report (monthly and on demand)
- Account Balance Detail Report (monthly and on demand)
- Payroll Deduction Report (frequency based on payroll frequency for auto-post employers)
- Statement of fees due to WEX (monthly invoice)

### 1.6 Forms

WEX shall provide Employer forms for use in administering the Plan. The forms are available within the online account. All forms and all user guide information will be subject to periodic updates and revision. WEX shall also provide Employer instructions and forms for use in the processing of benefit claims under the Plan.

### 1.7 Plan Payments

Using funds received from Employer, WEX shall pay the amounts due as a result of the operation of the Plan and in compliance with the participant's current Plan elections.

### 1.8 Claims Processing

(a) WEX shall process claims received from Employer or from Plan participants on a daily basis during regular business hours (6:00 a.m. to 6:00 p.m. Central Time Zone, Monday through Friday excluding holidays).

(b) WEX shall arrange for the payment of approved reimbursement requests as provided in the Plan.

(c) WEX shall process any initial claim for benefits made under the Plan provided the claim is submitted in accordance with the terms of the Plan, the SPD, and any reasonable rules established by WEX and communicated to Employer and participants.

(d) WEX will accept or deny (in whole or in part) an initial claim for benefits after making such investigation as it deems necessary.

(e) To the extent WEX determines that a participant is entitled to the claimed benefits under the Plan, WEX will arrange for the proper payment from the Plan using the funds provided by Employer.

(f) To the extent WEX determines that a participant is not entitled to claimed benefits under the Plan, WEX shall provide to such participant a written notification of its decision as soon as administratively practicable after the claim was received by WEX, subject to the requirements of Section 503 of the Employee Retirement Income Security Act of 1974 ("ERISA") (29 USC § 1133) and 29 CFR § 2590.715-2719.

(g) WEX shall be responsible for making the decision to accept or deny (in whole or in part) all appeals of denied benefit claims consistent with Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719.

(h) WEX shall be responsible for notifying the participant of its decision regarding an appeal consistent with Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719.

(i) In making decisions regarding claims for benefits and appeals of denied benefit claims, WEX shall have discretionary authority to construe and interpret the terms of the Plan and to determine whether a benefit claim is properly payable under the Plan.

(j) Notwithstanding anything herein to the contrary, Employer shall be responsible for all eligibility claims, eligibility appeals, and eligibility determinations with respect to eligibility of an individual to participate in the Plan.

(k) To the extent that WEX provides written non-English assistance to a participant during the course of claims processing as required by Section 503 of ERISA (29 USC § 1133) and 29 CFR § 2590.715-2719, Employer shall reimburse WEX for the related fees and expenses, if any.

#### 1.9 Fiduciary Duties

WEX performs fiduciary duties under the Plan only to the extent described in Section 1.8 and is a fiduciary under ERISA for the claim review and claim appeal determinations for those plans or arrangements that are subject to ERISA.

#### 1.10 Employer Funds and Custodial Account

Funds received by WEX from Employer for the payment of Plan benefits shall be held in the Custodial Account pursuant to Article 3.

#### 1.11 Direct Load Payments for TSA

As applicable, using Plan funds, and based on instructions received from the participant, WEX shall pay employer-provided transportation benefits through electronic media by transmitting funds to a participant's smartcard or account with the transit authority. Only pre-tax participant contributions are eligible for use with the transit authority smartcard. A transactional processing fee could be imposed by a third party, such as the transportation authority.

#### 1.12 Overpayment Recovery

If WEX determines that it has paid benefits to an ineligible person or paid more than the appropriate amount, WEX shall, with Employer's full cooperation, undertake a good faith, commercially reasonable effort to recover such erroneous payment. What constitutes a "good faith, commercially reasonable effort" may vary from time to time depending upon the circumstances of the overpayment, but may include WEX's attempt to contact the participant twice via letter, phone, email or another means about the recovery of the payment at issue.

#### 1.13 Unused Amounts and Unclaimed Amounts

Except for those amounts subject to any Health FSA carryover elected by the Plan in accordance with the Internal Revenue Service ("IRS") Notice 2013-71 (as such guidance may be modified or updated), all amounts that remain unused in an FSA account or a TSA after the end of the period specified by the Plan during which a participant can make a claim plus any periods for appeal or claim dispute shall be forfeited by the participant and returned to Employer less any undisputed fees and expenses due and owing to WEX under this Agreement. The direct terms of an applicable Plan may alter the forfeiture provisions of this Section 1.13 only with respect to a Plan participant.

Any amounts unclaimed by participants, including any unclaimed reimbursement checks (or other similar methods of payment) that have been issued but remain unendorsed or uncashed and unpaid after the end of the plan year's run-out period elected by the Plan, shall be returned to Employer less any undisputed fees and expenses due and owing to WEX under this Agreement. Employer shall be responsible to report unclaimed amounts in accordance with applicable state law unless otherwise forfeited under the terms of the Plan.

#### 1.14 Retention and Release of Plan Data, Records, and Files

(a) WEX shall securely destroy or delete written and electronic records containing personal information consistent with business needs or legal retention requirements.



(b) Per business records needs and associated retention and secure destruction periods, WEX retains a copy of all information (as information is defined in Section 2.14, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to WEX policy) for at least seven (7) years from the date created at WEX, including, without limitation, a record of all assets and transactions involving the Custodial Account (defined in Article 3).

(c) Following the termination of this Agreement, WEX shall cooperate with Employer or Employer's subsequent service provider to effect an orderly transition of services provided under this Agreement and, within a reasonable time, will release to Employer a copy of all data, records, and files in WEX's standard format.

(d) Upon termination of this Agreement, WEX is entitled to retain a copy of all information including the data, records, and files released by WEX pursuant to Section 1.14(c) and to use and disclose such information for claims, audits, and legal and contractual compliance purposes to the extent permitted by law and any executed or applicable business associate agreement between the parties.

#### 1.15 Notice of Litigation

WEX shall notify Employer promptly of any summons, complaint or other communication concerning threatened litigation or any inquiry by any governmental agency that is related to the Plan unless such notification would be a violation of applicable law.

#### 1.16 Confidentiality of Plan Information

WEX shall keep confidential all information that it obtains concerning the Plan. Other than in the due course of business, such information shall not be disclosed to a third party without prior approval of Employer or as otherwise provided in Article 4.

Employer may request that WEX share Plan information and other data with another vendor of the Plan or Employer. WEX shall consider all reasonable requests, however, prior to releasing or sharing any Plan information or other data with another vendor, Employer must enter into a business associate agreement and/or a confidentiality and data sharing agreement with the vendor and make a copy of such agreement available to WEX upon request.

For confidential or protected information transmitted by a vendor of the Plan to WEX, Employer must enter into a business associate agreement and/or a confidentiality and data sharing agreement with the vendor.

#### 1.17 Audit

(a) During the term of this Agreement, and at any time within six (6) months following its termination, Employer (or a mutually agreeable third-party auditor) may audit WEX to determine whether WEX is fulfilling its obligations under this Agreement with respect to processing claims for benefits.

(b) The audit shall be limited to such processing claims for benefits information relating to the calendar year in which the audit begins and/or the immediately preceding calendar year.

(c) WEX will provide timely inquiry and feedback regarding the sample size and sampling methodology as it relates to the objective of the audit.

(d) Unless otherwise required by legal and/or regulatory compliance, the audit must be completed within six (6) months following the date the audit begins.

(e) The place, time, type, duration, and frequency of any audit must be reasonable and mutually agreeable.

(f) Employer shall pay or cause to be paid any expenses that it incurs in connection with the audit, including WEX's then current internal billing rate for audit related tasks.

- (g) Any audit will be subject to these additional requirements:
- (i) Employer must provide WEX with a sixty (60) day advance written notice of its intent to audit.
  - (ii) Employer must utilize individuals to conduct the audit who are qualified by appropriate training and experience for such work; who will perform their review in accordance with published administrative safeguards and procedures against unauthorized use or disclosure (in the audit report or otherwise) of any individually identifiable information (including health care information) contained in the information audited; and who will not make or retain any record of payment identifying information concerning treatment of drug or alcohol abuse, mental/nervous disorders, HIV/AIDS or genetic markers in connection with the audit ("Auditor").
  - (iii) At least thirty (30) days in advance of the commencement of the audit, Employer must provide WEX with a complete and accurate list of the transactions to be selected for audit, along with the specific service for which each transaction or item is being tested. The sample must be based on a statistically valid random sampling methodology (e.g., systematic random sampling, simple random sampling, or stratified random sampling).
  - (iv) The Auditor must provide its draft findings to WEX before a final audit report is presented to Employer. The draft findings will be the basis for discussion between the Auditor and WEX to resolve any disagreement and to summarize the audit findings.
  - (v) The Auditor must provide its final audit report to WEX before delivery to Employer and allow WEX to include with the final audit report a supplementary statement containing facts that WEX considers pertinent to the audit.
  - (vi) The Auditor must provide WEX with a complete copy of the final audit report that is delivered to Employer.
  - (vii) The audit will be subject to proprietary and confidentiality protections. Before the audit commences, Employer and any third-party auditor shall execute a non-disclosure and confidentiality agreement, the scope of which shall be reasonable and shall be determined by WEX.
  - (viii) There must be no conflict of interest that would prevent the Auditor from performing an independent audit. Auditors retained exclusively by Employer may not be compensated on the basis of a contingency fee or a percentage of overpayments identified.

#### 1.18 Red Flags Rule

For the purposes of this Section 1.18, "Red Flags Rule" means regulation adopted by various federal agencies, including the Federal Trade Commission, in connection with the detection, prevention, and mitigation of identity theft and located at 72 Fed. Reg. 63718 (November 9, 2007), as amended.

For the purposes of this Section 1.18, "Covered Services" means the services provided by WEX under this Agreement and as described in the Debit Card Services Addendum that allow Plan participants to pay for eligible expenses under the Plan with a debit card or other stored-value card and any other services provided by WEX pursuant to this Agreement that fall under the protections of the Red Flags Rule as determined by WEX in its sole discretion.

To the extent applicable, WEX shall comply with the Red Flags Rule with respect to Covered Services. As part of its Red Flags Rule compliance, WEX shall adopt, maintain, and use appropriate and commercially reasonable rules, procedures, and safeguards to detect and identify red flags and to prevent and mitigate identity theft as required by the Red Flags Rule.

The parties agree that if a breach of unsecured protected health information (as defined in any executed or applicable business associate agreement between the parties) occurs and a violation of the Red Flags Rule occurs with respect to the same incident, both the Red Flags Rule and the provisions of any executed or applicable business associate agreement between the parties shall apply, except that the notice requirements of any executed or applicable business

associate agreement between the parties shall satisfy any notice obligations under the Red Flags Rule and this Section 1.18.

This Section 1.18 shall be null and void to the extent action is taken by U.S. Congress or a federal agency to exempt the Covered Services (or third-party administrators that provide Covered Services) from the Red Flags Rule.

#### 1.19 Information Security Program

WEX maintains an information security program in compliance with applicable law.

#### 1.20 Total Control and Discretionary Authority

Except as otherwise expressly provided in this Agreement, Employer has total control and discretionary authority over the Plan and the manner in which the Plan is operated. WEX serves as Employer's agent only for the processing of qualifying expense/reimbursement requests as provided under this Agreement.

#### 1.21 External Review

To the extent that the external review requirements set forth in 29 CFR § 2590.715-2719 apply to the Plan, WEX shall serve as a conduit for external review requests, meaning WEX will send appropriate information to, and cooperate fully with, the external review organization conducting the review. Any cost, fee or expense related to the review or request for review shall be paid by Employer. If WEX pays any such cost, fee or expense on behalf of Employer, Employer shall reimburse WEX promptly upon request.

#### 1.22 Subcontracting

WEX may delegate or subcontract any portion of WEX services. For those WEX services that are delegated or subcontracted, WEX shall remain fully responsible to Employer for compliance with all applicable provisions of this Agreement or of any executed or applicable business associate agreement between the parties.

#### 1.23 Benchmarks

WEX may, in its discretion, prepare and deliver to Employer benchmarks or other metrics showing the experience of Employer and its participants with the services provided herein as compared to other employers. WEX will develop any such benchmarks or metrics through the use of data that has been aggregated and de-identified consistent with any executed or applicable business associate agreement between the parties.

#### 1.24 Professional Manner

WEX Services shall be performed in a professional manner consistent with generally accepted industry standards and in compliance with applicable law.

#### 1.25 Disclaimer

WEX does not insure or underwrite Employer's liability to provide benefits under the Plan. WEX shall not be liable or obligated to use its funds for payment of benefits under the Plan, including, without limitation, where such payment of benefits is sought as damages in an action against Employer, WEX or the Plan. Employer shall promptly reimburse WEX for any benefit payments made using WEX funds.

#### 1.26 Non-Discrimination Testing and Additional Product and Service Solutions

In order to run the non-discrimination tests, Employer must provide WEX with all information requested and in WEX's file format. Employer's Human Resource Information System ("HRIS") and payroll systems are the systems of record and all information requested for testing must be provided to WEX from Employer's systems. Failure to provide the information required will result in incomplete test results. Employer is responsible to initiate any corrective action required in the event the plan is deemed discriminatory. WEX warrants that the test will perform materially in accordance with the data submitted and that the functionality of test will not be materially decreased during the term

of this Agreement. Employer may subscribe to WEX's expanded non-discrimination testing and request other additional products and services solutions from WEX.

## **ARTICLE 2 EMPLOYER RESPONSIBILITIES**

### **2.1 Compliance with Laws**

**Plan Compliance.** Although WEX serves as Employer's agent for services rendered pursuant to this Agreement, Employer remains responsible for compliance of the Plan itself with the Patient Protection and Affordable Care Act of 2010 (the "PPACA"), ERISA, the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), each as amended from time-to-time, the Code, and any other law or regulation, foreign or domestic, as applicable.

**Employer Compliance.** Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses and expenses (including reasonable attorney's fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than WEX) to comply with PPACA, ERISA, HIPAA, the Code, and any other law or regulation, foreign or domestic, as applicable, or the provisions of this Agreement.

**Medicare Secondary Payer Information.** Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses and expenses (including reasonable attorney's fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than WEX) to provide WEX with the required information for proper and timely reporting under the Medicare Secondary Payer ("MSP") for Employer's HRA participants where WEX acts as Responsible Reporting Entity ("RRE") for any HRA offered by Employer.

**Prior Activity or Occurrence.** Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney's fees) and expressly releases all claims against WEX in connection with any claim or cause of action for any activity or occurrence prior to the commencement of services under this Agreement that results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than WEX) to comply with ERISA, the Code, and any other applicable law or regulation.

### **2.2 Plan Documents**

Employer is responsible for the final content of all Plan materials and documents. It is Employer's responsibility to ensure that the Plan documents and any amendments to the Plan documents are legally compliant for Employer's purposes, appropriately completed, in compliance with the requirements of the Plan, and appropriately and timely adopted by Employer. Employer shall file with the appropriate governmental agencies all required returns, reports, documents, and other papers relating to the Plan. Employer shall distribute to its employees participating in the Plan all materials and documents as required under applicable law.

### **2.3 Summary Plan Description**

To the extent applicable, Employer shall distribute to its employees participating in the Plan a copy of the SPD and/or the summary of benefits and coverage.

### **2.4 Plan Amendments**

Employer shall notify WEX of any contemplated amendment to the Plan. Under no circumstances may Employer alter WEX's services or obligations under the Agreement through an amendment to the Plan without the prior written notice to and acceptance of WEX. WEX has no obligation to provide any Plan amendments to Employer other than described in Section 1.2.

### **2.5 Plan Eligibility**

Employer shall provide WEX a record of all employees who are eligible to participate in the Plan and notify WEX of any changes on a monthly basis.

Employer shall also provide WEX with the demographic and related information that WEX may need to perform its services under this Agreement.

Employer shall be solely responsible for determining which of its employees are eligible to participate in the respective plan, to collect the required information from those employees, and to inform WEX of such eligible employees.

Employer shall be responsible to collect and to provide to WEX, in an electronic format, all reasonably required information to ensure compliance with the MSP rules and regulations where WEX acts as RRE for an HRA offered by Employer.

## 2.6 Employer Assistance

Employer shall assist in the enrollment of the employees in the Plan, cooperate with WEX regarding the proper settlement of claims, and transmit inquiries pertaining to the Plan to WEX. Late notification of Plan eligibility or incorrect Plan eligibility provided by Employer to WEX may result in erroneous plan benefit payments, for which Employer shall be solely responsible. Employer shall also be responsible for collecting any such erroneous payments from the employee. If there are insufficient Employer funds available to restore the erroneous payments or if the requested reimbursement of funds would otherwise cause the Minimum Account Balance deposit (if applicable) to become insufficient, WEX may suspend services under this Agreement and request immediate restoration of funds from Employer.

## 2.7 Funds

Employer shall deposit funds in the Custodial Account to be used to pay benefits and expenses under the Plan as agreed to herein and in accordance with the Plan documents. Funds deposited in the Custodial Account shall consist solely of general assets of Employer. Participant contributions, if any, made by employees to the Plan through salary reduction or otherwise, shall be used to reimburse Employer for the funds advanced by Employer to pay benefits under the Plan. Employer has the sole responsibility and liability for the funding of all benefits under the Plan.

## 2.8 Claims-Based Funding Method

If Employer selects the claims-based funding method to pay claims, Employer gives WEX approval to withdraw applicable amounts from Employer's designated United States bank account to deposit in the Custodial Account from which disbursements can be made on Employer's behalf for payment of qualifying expenses, which are otherwise specified by Employer in its Plan document or as provided for under the Code.

## 2.9 Deduction/Contribution-Based Funding Method

The deduction/contribution-based funding method may be available for certain types of plans and certain employer groups. For this funding method to pay claims, if selected, Employer establishes a pre-determined initial deposit amount that will adequately fund the reasonable needs of the Plan to be deposited into the Custodial Account (the "Minimum Account Balance") from which disbursements can be made on Employer's behalf for payment of qualifying expenses. If the deposited amount falls below the Minimum Account Balance, Employer will be notified of the deficiency and will be required to provide additional funds until such time the Minimum Account Balance can be restored.

## 2.10 Debit Card Payments

All participants in a Health FSA, Dependent Care FSA, a comprehensive HRA or a TSA (as applicable) shall automatically receive one or more debit cards or similar electronic payment technology, for which the terms of the Debit Card Services Addendum shall control.

## 2.11 Ownership of Account Assets

All funds from Employer deposited in the Custodial Account remain Employer's general assets. WEX shall be responsible for administering the funds in accordance with the terms of this Agreement. Funds are disbursed from the Custodial Account by WEX or any of its designees only for an allowable Plan expense as determined by Employer or a representative of Employer (including WEX) or as otherwise required by a court of competent jurisdiction.

## 2.12 Fraud Against the Plan

Employer is solely responsible for making the Plan whole if fraud is committed against the Plan by its employees, Plan participants or any third party (other than WEX). WEX will assist in pursuing or remedying such fraud using its standard procedures.

## 2.13 Plan Fiduciary

(a) Except as provided in Section 1.9, Employer agrees that WEX is not a named fiduciary, or a Plan fiduciary under the Plan as such terms are described under ERISA. WEX shall have no power or authority to waive, alter, breach or modify any terms and conditions of the Plan. WEX shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices, and procedures set forth in the Plan, this Agreement, and as otherwise agreed upon or directed by Employer.

(b) Except as provided in Section 1.9, WEX neither shall have nor shall be deemed to exercise any discretion, control or authority with respect to the disposition of Employer funds. Employer agrees that the use of offset or recoupment of funds in the Custodial Account to pay undisputed fees or other undisputed amounts due to WEX pursuant to this Agreement constitutes Employer action that is authorized by Employer under this Agreement and agrees that such actions are not discretionary acts of WEX and do not create a fiduciary status for WEX.

(c) WEX agrees that it will perform services on the Plan's behalf as set forth in this Agreement, including any addenda to this Agreement. However, WEX will not undertake any duties or responsibilities, regardless of whether they are set forth in the Plan, if such actions are in violation of any applicable domestic law or regulation.

## 2.14 Employer Information and Instructions

(a) WEX shall be fully protected in relying upon representations and communications made by or on behalf of Employer in effecting its obligations under this Agreement.

(b) WEX is entitled to rely on the most current information in its possession when providing services under this Agreement.

(c) WEX shall provide the services in accordance with this Agreement based on information that is provided to WEX by Employer. For this purpose, the term "information" means all data, records, and other information supplied to WEX, obtained by WEX or produced by WEX (based on data, records or other information supplied to or obtained by WEX) in connection with performing the services pursuant to this Agreement, regardless of the form of the information or the manner in which the information is provided to WEX.

(d) In engaging WEX to perform the services under this Agreement, Employer has authorized and instructed WEX to implement WEX's standard administrative forms and procedures.

(e) WEX is not responsible for any acts or omissions it makes in reliance upon the direction or consent of Employer or inaccurate, misleading or incomplete information from Employer or any third party.

(f) If Employer instructs WEX with a specific written request (in a format acceptable to WEX) to provide services in a manner other than in accordance with WEX's standard forms and procedures, WEX may (but need not) comply with such an instruction. This would include, but is not limited to, any Employer instruction to add a vendor link to the participant's online account. To the extent that WEX complies with such an instruction, Employer and not WEX shall be solely responsible for WEX's action so taken, and Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney's fees) and expressly releases all claims against WEX in connection with any claim or cause of action, which results from or in connection with WEX complying with Employer's specific written instruction to provide services in a manner other than in accordance with WEX's standard procedures.

(g) Employer is responsible for the integrity of data in the files. Therefore, complete and accurate information from Employer or a vendor on behalf of Employer is required in order for WEX to perform the services set forth herein.

(h) Employer agrees not to use the full social security number in the employee number field.

(i) Employer warrants the accuracy of the information provided by or on behalf of Employer to WEX regarding the participant count.

#### 2.15 Employer's Electronic Account

If Employer chooses to access the services provided by WEX via an online account or other electronic means ("Employer's Electronic Account"), Employer is solely responsible for:

(a) Designating who is authorized to have access to Employer's Electronic Account;

(b) Safeguarding all of Employer's passwords, usernames, logins or other security features used to access Employer's Electronic Account ("Electronic Account Access");

(c) Employer's use of Employer's Electronic Account under any usernames, logins or passwords;

(d) Ensuring that use of Employer's Electronic Account complies fully with the provisions of this Agreement; and

(e) Any unauthorized access or use of Employer's Electronic Account caused by Employer's actions or inactions, including, without limitation, its failure to safeguard Employer's Electronic Account or Electronic Account Access.

Employer is solely responsible for the maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

Employer acknowledges and agrees that WEX has no control over and is not liable to Employer, Employer's employees or any other third party for any consequences, losses or damages resulting from unauthorized access or use of Employer's Electronic Account as set forth in this Section 2.15.

#### 2.16 Plan Tax Obligations

The Plan and/or Employer on behalf of the Plan is responsible for any state, federal or foreign tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or WEX relating to the Plan or the services provided by WEX pursuant to this Agreement, including those imposed pursuant to PPACA. This includes the funding, remittance, and determination of the amount due for PPACA required taxes and fees. In the event that WEX is required to pay any such tax, fee, assessment, surcharge and/or penalty on behalf of Employer, WEX shall report the payment to Employer along with documentation of the payment, and Employer shall promptly reimburse WEX for the full amount or for Employer's proportionate share of such amount, except as provided in Section 7.3. This reimbursement would be in addition to the fees described in Section 6.1. Employer is at all times responsible for the tax consequences of the establishment and operation of the Plan. Further, the parties agree that WEX does not provide any legal, tax or accounting advice to the Plan and/or Employer. WEX is at all times responsible for all the taxes based upon its net income and its property ownership.

#### 2.17 Acknowledgment

Employer acknowledges and agrees that the services provided by WEX pursuant to this Agreement relate to enrollment and disenrollment in the Plan and that these services to the extent permitted under HIPAA shall be deemed to be performed by WEX on behalf of Employer in its capacity as the sponsor of the Plan.

## **ARTICLE 3 CUSTODIAL ACCOUNT**

### **3.1 Appointment and Acceptance of Custodian**

By signing this Agreement, Employer appoints WEX as custodian of Employer funds for the purposes and upon the terms and conditions set forth in this Agreement, and WEX accepts such appointment and agrees to act as custodian hereunder and to hold any Employer funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

### **3.2 Custodial Account**

WEX maintains one or more depository accounts ("Custodial Account") at a bank designated by WEX and holds in such Custodial Account all funds initially received from Employer plus any additional funds that may be received from Employer for Custodial Account from time to time. For administrative convenience and to reduce costs, WEX shall hold funds received from Employer together with similar funds from other employers in a single Custodial Account (or one or more Custodial Accounts as determined by WEX). WEX shall maintain records as to the exact amount of funds attributable to each employer so that each employer has a legal right to the specific amount of its funds held in the Custodial Account (less any applicable fees, costs or expenses as set forth in this Agreement). At all times, the assets comprising each employer's funds in the Custodial Account shall be considered a separate subaccount for purposes of this Agreement. Depending upon the context, the term "Custodial Account" as used herein shall refer to either the separate subaccount for Employer or all of the subaccounts for all employers in the aggregate.

### **3.3 Employer Funds**

WEX and Employer intend and agree that all funds received from Employer for deposit in the Custodial Account shall be comprised of and shall remain Employer's general assets. In no event will funds received from Employer and deposited in the Custodial Account constitute or include participant or employee contributions to employee benefit plans, whether made by salary reduction or otherwise, as those terms have their general meaning under ERISA. Except to the extent that outstanding checks have been written or withdrawals have been made against the Custodial Account balance on behalf of Employer, and subject to Section 6.3, all funds received from Employer and deposited in the Custodial Account may be withdrawn by Employer at any time (less applicable fees, costs or expenses as set forth in this Agreement) and are subject to the claims of Employer's general creditors in the same manner as funds deposited in Employer's ordinary checking accounts. Notwithstanding the foregoing, this Agreement does not alter or eliminate any separate obligation of Employer to fund and maintain the Minimum Account Balance in the Custodial Account as described in Section 2.9.

### **3.4 Disbursements**

WEX shall make payments or distributions from the Custodial Account in accordance with the framework of policies, interpretations, rules, practices, and procedures established by WEX for this purpose and as set forth in the Plan or as otherwise agreed upon or directed by Employer. WEX shall neither have nor shall be deemed to have any discretion, control or other authority with respect to the disposition of Employer funds.

### **3.5 Interest Earned**

Employer acknowledges and understands that from time to time, WEX may receive earnings and interest on the funds held in the Custodial Account and that any such earnings or interest shall be part of WEX's compensation. Employer acknowledges and understands that fees otherwise charged by WEX for services under this Agreement would be greater if WEX did not retain such earnings and interest on these funds. The period during which interest may be earned begins on the date Employer funds are deposited into the Custodial Account and continues for as long as Employer funds remain in the Custodial Account. Funds shall be disbursed on a first-in, first-out basis.

WEX does not track nor can it report interest earned for a single employer. WEX absorbs other bank charges, such as transmission charges, within the fees.



### 3.6 Maintenance of Records

Upon Employer's written request, WEX shall provide Employer with an accounting of all Employer assets, transfers, and transaction activity involving the Custodial Account in relation to Employer, including a description of all receipts, payments or disbursements, and other transactions.

## **ARTICLE 4 CONFIDENTIAL COMPANY INFORMATION AND INTELLECTUAL PROPERTY**

### 4.1 General Obligations

For purposes of this Article 4, "confidential company information" shall mean any company information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, service methods, software, documentation, financial information, prices, and product plans. Neither WEX nor Employer shall disclose confidential company information of the other party. The receiving party shall use reasonable care to protect the confidential company information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential company information of like kind. The foregoing obligation shall not apply to any information that: (a) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (c) was known to the receiving party at the time of disclosure; (d) was generated independently by the receiving party; or (e) is required to be disclosed by law, subpoena or other process.

WEX may disclose Employer's or the Plan's confidential company information to a governmental agency or other third party to the extent necessary for WEX to perform its obligations under this Agreement or if Employer has given WEX written authorization to do so.

Although WEX may have confidential company information processed, managed, and/or stored with subcontractors or third parties, it remains fully responsible to Employer for the confidentiality obligations set forth herein.

### 4.2 WEX Sensitive Information

If Employer requests access to WEX confidential and/or proprietary security resources and assessments, service organization controls audit reports or other audit information for the purpose of reviewing the operating and business condition of WEX, Employer's acceptance of or access to such information shall constitute its agreement with the following:

- Employer shall maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.
- Employer may disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.
- Employer shall use reasonable care to protect the information and to ensure that it is maintained in confidence, and in no event use less than the same degree of care as Employer uses to safeguard its own like information.
- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with applicable law, as the information contains sensitive proprietary information and data defined as trade secret information that would not otherwise be publicly available and that disclosure of this information to the public, including WEX's competitors, would likely result in substantial harm to WEX's competitive positions and may also contain confidential supervisory information and personal information relating to directors, officers, and major shareholders of WEX, the disclosure of which would constitute an unwarranted invasion of personal privacy.

#### 4.3 Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by WEX), brochures, and online content ("Materials") furnished by WEX to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any WEX trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement.

Upon termination, Employer agrees to destroy Materials or, if requested by WEX, to return them to WEX, except to the extent Employer is required by law to maintain copies of such Materials.

WEX retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, techniques, and software acquired prior to or developed in the course of performing services under this Agreement.

Employer shall not permit any information regarding the systems of WEX or its subcontractors to be disseminated, sold, assigned, leased or licensed to any third party, nor otherwise used or commercially exploited in any way except as expressly set forth in this Agreement.

#### 4.4 Application

Each party agrees that its obligations contained in this Article 4 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, and agents.

### **ARTICLE 5 TERM AND TERMINATION OF THE AGREEMENT**

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months ("Initial Term").

5.2 This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter unless terminated pursuant to this Article 5.

5.3 Notwithstanding the foregoing, this Agreement may be terminated at any time during the Initial Term or any renewal term by Employer or by WEX without cause and without liability with written notice of the intention to terminate to be effective as of a date certain set forth in the written notice not fewer than sixty (60) days from the date of such notice.

5.4 All obligations of WEX relating to payment of claims under the Plan will be terminated on the effective date of termination given in the written termination notice, regardless of when the claim for such benefit is incurred.

5.5 This Agreement may be terminated upon written notice:

(a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;

(b) If any fee (to the extent not subject to a good faith dispute) for any service provided by WEX to Employer remains unpaid to WEX beyond thirty (30) days past the due date, upon written notification by WEX to Employer that WEX intends to exercise its option to enforce this provision;

(c) Due to (i) a party's filing for bankruptcy, (ii) a party's making any assignment for the benefit of creditors, (iii) a party's consenting to the appointment of a trustee or receiver, (iv) a party's insolvency, as defined by applicable law, or (v) the filing of an involuntary petition against Employer under the Federal Bankruptcy Code or any similar state or federal law which remains un-dismissed for a period of forty-five (45) days;

(d) If at any time Employer fails to provide funds for the payment of Plan benefits; or

(e) If Employer fails to provide the required information in a timely manner to ensure compliance with the MSP reporting required for HRAs.

**5.6** If a party is in default under any provision of this Agreement other than a payment default, the other party may give written notice to the defaulting party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice or if good faith efforts to cure have begun within thirty (30) days, but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice to terminate this Agreement as of any future date designated in the notice. WEX may suspend services under this Agreement, as applicable, until Employer restores the Minimum Account Balance.

**5.7** If this Agreement is terminated under Section 5.3 or Section 5.5, WEX will cease the performance of services. If, however, the parties agree in writing that this Agreement shall continue while WEX performs services during a run-out period (and upon prepayment for such run-out period if requested by WEX), WEX will continue to process qualifying expense reimbursements and to provide general Plan administration and services with respect to any claims that are received by WEX on or before the run-out period end date. The terms of this Agreement will remain in force and effect during any such run-out period.

**5.8** Upon the termination of this Agreement, or any specified run-out period, WEX will cease the processing of any claims that are received, and Employer shall be immediately responsible for all aspects of its Plan, including the processing of all claims, annual reporting, and general plan administration. WEX shall return to Employer any funds in the Custodial Account that have not been used for Plan benefit payments along with any unpaid or other pending payment requests and/or subsequent claims that are received after the end date of any specified run-out period. Such return shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of any undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. WEX shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to WEX as of the date of termination under the terms of this Agreement or any other agreement between the parties.

**5.9** Within sixty (60) days after the later of the termination of this Agreement or the specified run-out period, WEX shall prepare and deliver to Employer a complete and final accounting and report of the financial status of the Plan as of the date of termination, together with all books and records in WEX's possession and control pertaining to the administration of the Plan, all claims files (including any pending and unpaid claims), and all reports pertaining to the Plan.

## **ARTICLE 6 COST OF SERVICES**

### **6.1 Plan Administrative Service Fees**

(a) Employer shall pay WEX a fee for its services rendered pursuant to this Agreement in accordance with the fee schedule attached hereto. Fees are invoiced monthly and are due within thirty (30) days of the invoice date. If Employer disputes in good faith any portion of the fees invoiced, Employer shall provide WEX with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30) days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice.

(b) Employer shall have thirty (30) days from the date of the invoice to correct a participant count for credit or refund.

(c) On or after the rate expiration date indicated on the fee schedule, WEX reserves the right to amend the fee schedule with at least sixty (60) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to WEX no later than the effective date of the fee schedule amendment.

(d) Fees quoted assume that WEX standard software, procedures, and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the services can be readily performed without any modifications or alterations of WEX's software and systems. If costs are incurred by

WEX to enhance or integrate its services with Employer's software and systems and/or in migrating the data from the prior service provider to WEX's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

- (e) Notwithstanding the foregoing, WEX reserves the right to:
- Charge for the provision of proprietary technology and/or additional services that were neither included in nor contemplated by this Agreement on the Effective Date.
  - Increase fees based on additional costs imposed on WEX, such as significant postal rate or bank fee increases or substantiated increased costs due to legislative or regulatory changes, foreign or domestic, actually incurred in performing its services; and
  - Pass through any fees charged to WEX by a vendor of Employer.

WEX shall provide Employer with reasonable prior written notice of such charges or increases.

#### 6.2 Non-Party Payment on Behalf of Employer and Compliance with Anti-Rebating Law

Employer represents and warrants that if someone other than Employer is making the payment of WEX's fees on behalf of Employer, the making of such payment does not violate any applicable anti-rebating law. Employer agrees to hold WEX harmless and not liable and release it from all liability whatsoever from all losses and expenses that result from Employer's breach of this provision.

#### 6.3 Past Due Fees

Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary, if Employer fails to pay WEX, any amount (except for amounts subject to a good faith dispute) that is due as a result of the services provided by WEX to Employer under this Agreement or any other agreement between the parties, WEX shall be permitted to deduct (in accordance with Section 2.13(b)) the undisputed amount from any funds held by WEX that were received from Employer. This right of offset shall be in addition to any other remedies that WEX may have under this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate this Agreement or right of recoupment, regardless of whether the past due amount is paid in full as a result of the offset or any recoupment rights provided herein.

#### 6.4 Participant Count for Billing Purposes

The participant count for billing purposes is determined by WEX on a monthly basis. A participant is counted for billing purposes if their account is being administered by WEX under the Plan, which may include a carryover and/or applicable grace period, a run-out period, and/or a zero dollar balance.

### **ARTICLE 7 GENERAL**

#### 7.1 Limitations of Liability

Notwithstanding any other provision in this Agreement to the contrary, the total cumulative liability of WEX to Employer for all claims, actions, or suits however caused arising out of or in connection with this Agreement shall be limited to direct damages and shall not exceed the greater of: (a) the amount of fees received by WEX from Employer under this Agreement for the twelve (12) months prior to the occurrence of the event giving rise to any such claims, actions or suits; or (b) amounts payable and actually paid to Employer or WEX resulting from Employer's claim, as applicable, under the insurance policies provided for under Section 7.2 of this Agreement.

In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility or foreseeability of such damages.

No action under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

WEX and Employer expressly agree that the limitations of liability in this Section 7.1 represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by WEX to Employer and is an essential element of the basis of the bargain between the parties.

## 7.2 Insurance

During the term of this Agreement, WEX shall maintain general liability insurance and cyber/E&O liability insurance policy limits of \$5,000,000 per occurrence and in the aggregate.

WEX shall also maintain commercial crime insurance policy limits of \$5,000,000, including employee dishonesty coverage.

Upon request, once per year, WEX shall provide Employer with a certificate or certificates of insurance reflecting the required coverage, initially and then upon policy renewals.

## 7.3 Indemnification

(a) Subject to the limitations in Section 7.1, WEX will indemnify, defend and hold harmless Employer (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against all liability, damages, costs, losses, penalties, expenses and reasonable attorney's fees (collectively, "Losses") incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of WEX's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

(b) In addition to Sections 2.1, 2.14, 6.2 and 7.4, Employer will indemnify, defend and hold harmless WEX (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against all Losses incurred by WEX in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of Employer's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, Employer agrees that WEX shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its employees or assigns.

(c) A party (the "Indemnified Party") seeking indemnification under Sections 7.3(a) or 7.3(b) above shall promptly notify the other party (the "Indemnifying Party") of any matters in respect of which the foregoing indemnity may apply and of which the Indemnified Party has knowledge, and give the Indemnifying Party the opportunity to control the response thereto and the defense thereof; provided, however, that the Indemnified Party shall have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at the Indemnified Party's sole cost and expense; and provided further, however, that no settlement or compromise of an asserted third-party claim may be made without the prior written consent of the Indemnifying Party.

(d) The Indemnified Party must notify the Indemnifying Party within thirty (30) days in writing of any actual or threatened claim, demand, action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the Indemnifying Party shall not be deemed a waiver of the right to seek indemnification, unless the actions of the Indemnifying Party have been materially prejudiced by the failure of the Indemnified Party to provide notice within the required time period.

#### 7.4 Plan Benefits Litigation

(a) Against WEX. If a demand is asserted or litigation or an administrative proceeding is commenced by a Plan participant or beneficiary, an employee of Employer, or a federal or state agency against WEX, or against Employer, the Plan Administrator and/or the Plan and WEX jointly, related to the services provided by WEX or benefits provided under the Plan, including the administration, processing or determination of a claim for Plan benefits ("Plan Benefits Litigation"), WEX shall select and retain counsel to represent WEX's interest. In actions asserted against Employer and/or the Plan Administrator and WEX, and provided no conflict of interest arises between the parties, as shall reasonably be determined by WEX, WEX agrees to joint defense counsel. Employer shall pay or cause to be paid all reasonable attorneys' fees and costs incurred by WEX in defense of the Plan Benefits Litigation, to the extent such fees and costs are reasonably attributed to the defense of Employer. The failure to provide notice of Plan Benefits Litigation does not relieve Employer of the obligation to pay or cause to be paid WEX's attorneys' fees and costs. WEX and Employer and/or the Plan Administrator shall cooperate fully with each other in the defense of the Plan Benefits Litigation.

(b) Against Employer. If Plan Benefits Litigation is commenced against Employer, the Plan Administrator and/or the Plan, but to which WEX is not a party, Employer and/or the Plan Administrator shall select and retain counsel and shall be responsible for all reasonable attorney's fees and costs in connection with Plan Benefits Litigation. WEX shall provide reasonable cooperation in the defense of Plan Benefits Litigation arising out of matters relating to this Agreement, but shall retain the right to select and retain counsel to represent WEX's interests, if any, and reasonable attorney's fees and costs incurred by WEX in defense of the Plan Benefits Litigation shall be paid or reimbursed by Employer to the extent such fees and costs are reasonably attributed to the defense of Employer.

(c) Plan Benefits. Notwithstanding any provision in this Agreement to the contrary, Employer is responsible for the full amount of any Plan benefits paid as a result of Plan Benefits Litigation. Furthermore, to the extent a party exercises its rights with respect to Plan Benefits Litigation pursuant to this Section 7.4, there is no requirement to also proceed pursuant to Section 7.3.

### **ARTICLE 8 MISCELLANEOUS**

#### 8.1 Number

Where the context of this Agreement requires, the singular shall include the plural and vice versa.

#### 8.2 Force Majeure

Notwithstanding anything to the contrary contained herein, neither party shall be responsible or liable if the performance of its obligations hereunder is hindered or adversely affected or becomes impossible or impracticable, as a result of an event or effect that the party could not have anticipated or controlled or for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, lockouts, strikes, work stoppages or other labor disruption, accidents, epidemics, pandemics, quarantines, war (whether declared or undeclared), acts of war or terrorism (whether foreign or domestic in origin), insurrection, sabotage, riot, a decree of health emergency, national emergencies or other man-made emergency, civil or military disturbances including any law, regulation, order or other action by any governmental authority, nuclear or natural disasters or acts of God, interruptions, loss or malfunctions of utility, transportation, communications or computer (software and hardware) services, including the disruption or outage of the Internet, or disruption of financial markets or banking functions (a "Force Majeure Event").

A party to this Agreement affected by such a Force Majeure Event shall as soon as reasonably practicable after the occurrence of the Force Majeure Event or the occurrence of harm resulting from such a Force Majeure Event that causes the party to be unable to perform: (a) provide written notice to the other party of the nature and extent of any such Force Majeure Event; and (b) use commercially reasonable efforts to remedy any inability to perform due to such a Force Majeure Event.

#### 8.3 Waiver

If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

#### 8.4 Severability

If any provision of this Agreement is determined by a court to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein.

#### 8.5 Governing Law

This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Connecticut (without regard to the laws of conflict that might otherwise apply) as to all matters, including without limitation, matters of validity, interpretation, construction, effect, performance, enforcement and remedies.

#### 8.6 Dispute Resolution

Excluding all matters pertaining to the collection of amounts due to WEX arising out of the services provided, any claim, controversy or dispute arising out of, or relating to, this Agreement, in addition to disputes about invoices per Section 6.1, first promptly shall be settled by managers with direct day-to-day responsibility under this Agreement, and if not so settled, promptly shall be addressed by executives of the parties who have authority to settle the dispute. A party wishing to raise a dispute shall give prompt written notice to the other party, and the good faith attempt to resolve the dispute, as described in the foregoing sentence, shall take place within thirty (30) days thereafter. Engaging in the dispute resolution process described in this Section 8.6 shall be a condition precedent to proceeding with litigation.

Notwithstanding the foregoing, this provision shall not prevent either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of their dispute relating to this Agreement.

To the extent this Agreement must be enforced in a court of law, the parties agree that it can only be brought in the United States District Court for the District of Connecticut, and both parties consent to such jurisdiction and venue.

#### 8.7 Notice

Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (a) when received if delivered by hand; (b) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (c) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or (d) when received if delivered electronically. WEX: 82 Hopmeadow Street, Simsbury, CT 06089, Attention: General Counsel.

#### 8.8 Entire Agreement

This Agreement, together with the business associate agreement if so applicable, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings, whether written or verbal. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order, payment processing agreement, or other document relating to the services provided by WEX herein, the terms and conditions of this Agreement shall control. Further, the terms and conditions of this Agreement shall prevail over any additional terms contained in any such purchase order, payment processing agreement, or other document. Any amendment to this Agreement must be in writing and consented to by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, permitted assigns, and successors in interest. Unless expressly set forth in this Agreement, nothing in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

#### 8.9 Assignment

This Agreement may not be assigned by either party without the prior written consent of the other unless to an affiliate or in connection with a change in control, merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing

within thirty (30) days following the date of the assignment. If consent is required, the parties shall not unreasonably withhold or delay consent.

#### 8.10 Survival

Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive.

#### 8.11 Relationship of the Parties

The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and WEX.

#### 8.12 Successor

In the event of WEX's resignation or inability to serve, Employer may appoint a successor. In such situations, the replacement of WEX shall be considered a termination of this Agreement and the termination provisions of Article 5 shall remain effective and controlling.

#### 8.13 Press Release and Publicity

Employer grants WEX the right to include Employer's name in WEX's published client list. Subject to Employer's consent to both content and timing (not to be unreasonably withheld), Employer grants WEX permission to issue and distribute a press release announcing the existence of the business relationship between the parties, and to engage in publicity concerning the same that may appear on the WEX website and in WEX publications, including proposal materials and/or presentations. Employer shall provide and grant WEX use of a company logo for use in the published materials.

#### 8.14 Authority

Neither WEX nor Employer, when dealing with the other party in relation to the Plan, shall be obliged to determine the other party's authority to act pursuant to this Agreement.



## SERVICES ADDENDUM

<b>Services and Recordkeeping as Applicable</b>		
Adjudicate FSA, HRA and Parking reimbursement requests		Included
Administration for standard 2½ month grace period extension		Included
Automatic email to participant when claims received and reimbursement is made		Included
Assumption of plan year mid-year, including takeover of grace period or run-out of previous plan year		Additional fee may apply
Claims-Based Funding		Included
Deduction/Contribution-Based Funding as available		Included
Daily processing of claims for reimbursement		Included
Debit card		Included
Employee group meetings		Additional fee may apply
IIAS compliant debit card		Included
Issue direct deposit to participant savings or checking accounts		Included
Issue reimbursement checks to participants		Included
Maintain and update employee FSA/HRA/TSA records		Included
Electronic open enrollment materials or online enrollment presentation (Health FSA and Dependent Care FSA Only)		Included
Standard plan design and set up		Included
Postage for standard mailings		Included
Process claims during standard plan year run-out period		Included
Reconcile records to employer's payroll, if applicable		Included
Web enrollment		Included
<b>Reporting and Communication – Employer</b>		
Standard reporting available on status of account balances		Included
<b>Reporting and Communication – Participant</b>		
Account balance notice sent 60 days prior to end of plan year (Health and Dependent Care FSA Only)		Included
Communication concerning ineligible claims		Included
Open Enrollment Guides/Handouts		Included
Online access to account information 24/7		Included
Emailed notice of account statement available		Included
Statement included with each reimbursement check		Included
<p style="text-align: center;">Toll-free customer service line      Monday through Friday      Central Time Zone</p> <p style="text-align: center;">Employers      7:00 a.m. to 7:00 p.m.                      Participants      6:00 a.m. to 9:00 p.m.</p> <p>In compliance with United States federal and state law, WEX may monitor and/or record calls that are made to the customer service line for quality assurance and training purposes and/or to ensure that WEX's services fully comply with the terms of the Agreement.</p>		Included
<b>Compliance</b>		
Standard plan document (Section 125, FSA, HRA and TSA only)		Included
Standard plan document and summary plan description updates		Included
Standard summary plan description		Included
Information for annual 5500 Filing (Health FSA and HRA)		Included
Standard KeyDCAP Non-Discrimination Testing: Cafeteria Plan 25% Key Employee Concentration Dependent Care More than 5% Owners Concentration Dependent Care 55% Average Benefits		Included
Expanded Non-Discrimination Subscription Testing: Premium Only Plan (POP), Flexible Spending Account (FSA), Health Reimbursement Arrangement (HRA), Self-Insured Medical Plan (SIMP)		Additional fee may apply

## DEBIT CARD SERVICES ADDENDUM

To the extent that debit cards are used for the reimbursement accounts, the following applies with respect to the debit card services:

### 1 Definitions for the purposes of this Addendum:

- 1.1 "Card Transaction" means the presentation of the debit card for payment of Qualified Services.
- 1.2 For a Health FSA and/or HRA, "Qualified Services" means all related goods and services within the meaning of the term "medical care" or "medical expense" as defined in Code Section 213 (26 USC § 213) and the rulings and Treasury regulations thereunder to the extent that such goods and services are allowable for the Account in question.
- 1.3 For a TSA, "Qualified Services" means parking, transit passes, and commuter highway vehicle, within the meaning of Code Section 132(f) (26 USC § 132(f)) as it relates to qualified transportation plans.
- 1.4 "Account" means the FSA account, HRA account, and/or TSA as the context requires and as elected by Employer as part of the Agreement.
- 1.5 "Employee" means those employees eligible to participate in the Plan.
- 1.6 Plan participants or "Participant" means Employees who are entitled to account coverage based on Employer's plan document.

### 2 General Provisions of Debit Card Services

- 2.1 WEX is responsible to provide debit card services to Participants, including:
  - Updating Participant records;
  - Maintaining accurate account balances and deposit information;
  - Activating and deactivating the debit cards;
  - Canceling the debit cards;
  - Responding to Participant inquiries; and
  - Providing appropriate notices of actions taken.
- 2.2 WEX agrees to reasonably ensure compliance with proper use of the debit card and take whatever action is necessary to investigate and resolve errors in Card Transactions that are asserted by Participants within five (5) business days of notice of an assertion.
- 2.3 WEX agrees to cancel access to a Participant's Account when a debit card is reported as lost or stolen.
- 2.4 WEX agrees to deactivate a Participant's debit card upon notice from Employer of ineligibility or termination. If Employer fails to provide notice, Employer will be responsible for any ensuing Card Transactions.
- 2.5 WEX will make available to Employer, for distribution to the Participants, information as to the proper use of the debit card.
- 2.6 Employer acknowledges that it must, in accordance with and to the extent permitted by, applicable law, facilitate an after-tax payroll deduction in those instances where the debit card was used to pay for an ineligible expense and the Participant failed to reimburse the Plan or the ineligible expense could not be offset with an eligible expense.
- 2.7 Employer agrees to notify WEX immediately upon suspicion or confirmation of inappropriate or fraudulent debit card use.

2.8 The liability for payment of claims falls on Employer or the Participant. Additional Card Transaction costs, if any, are paid by Employer or Participant.

2.9 WEX standard administrative procedures may be different for Card Transactions with respect to a Health FSA, HRA, and TSA and with respect to a group or groups of Card Transactions.

### 3 Settlement Provisions of Debit Card Services

3.1 Employer has, in conjunction with this Agreement and as applicable to the funding method selected by Employer, executed and delivered to WEX an Authorization Agreement for Automated Clearing House (ACH) Direct Payments, which authorizes the issuer of the debit cards ("Issuer") to debit the account of the depository financial institution designated by Employer in said Agreement as more fully set forth therein. This information may be delivered or collected via or within an online form.

3.2 Each business day, Issuer is authorized to debit the account in the amount required to settle all Card Transactions ("Daily Settlement Amount") and the collected and available funds in the account must be greater than or equal to the Daily Settlement Amount for the previous business day.

3.3 Employer shall reimburse/pay Issuer for all Card Transactions irrespective of whether any authorization for a Card Transaction was made in accordance with the terms of the Plan.

3.4 If Employer fails to fund the account to settle with Issuer for Card Transactions, fails to reimburse/pay Issuer for all Card Transactions, or breaches its obligations to Issuer, Issuer may, at its option, suspend or terminate all debit cards or change the method by which Employer may settle with Issuer for Card Transactions.

3.5 Employer acknowledges that Issuer is not a party to the Agreement and Issuer has no obligation or responsibility to process and or adjudicate benefit claims. Issuer's function is to issue debit cards and to make settlements arising from Card Transactions based solely on the information provided to it by the debit card processor.

### 4 Miscellaneous Provisions of Debit Card Services

4.1 Card Transactions will be settled directly to the account at the depository financial institution designated by Employer and on record with WEX.

4.2 Changes to the account information must be made via the submission to WEX of a new Authorization Agreement for Automated Clearing House (ACH) Direct Payments. This information may be delivered or collected via or within an online form.

4.3 Said authorization remains in full force and effect until WEX and Issuer receive written notification to revoke it in such time and manner as to afford WEX, Issuer, and the depository financial institution designated by Employer a reasonable opportunity to act on it.

4.4 Employer acknowledges that the Issuer shall be deemed to be a third party beneficiary with respect to Sections 3 and 4 of this Addendum with full rights to rely upon and enforce the provisions thereof.

4.5 Employer acknowledges that the origination of ACH transactions to the account must comply with the provisions of United States law.

4.6 Unless otherwise stated, all provisions of the Agreement apply to the debit card services.

## BUSINESS ASSOCIATE AGREEMENT

### RECITALS

WEX and Employer may be referred to herein individually as a party and collectively as the "parties."

WHEREAS, WEX provides certain administrative services, activities or functions in connection with the Plan ("Services") pursuant to a services agreement ("Services Agreement") between WEX and Employer (also "Sponsor"); and

WHEREAS, the parties desire to enter into this Business Associate Agreement (this "Agreement"), effective upon the earlier of the respective Services Agreement effective date or the date of first receipt of PHI from the Plan or Sponsor by WEX, as set forth below for the purpose of addressing the following law, as amended and clarified by the HIPAA Omnibus Rule or any regulation, rule or guidance that may be issued after the effective date of this Agreement:

- The Health Information Technology for Economic and Clinical Health Act ("HITECH Act") enacted as part of the American Recovery and Reinvestment Act of 2009 and the regulations promulgated thereunder relating to the privacy and security of protected health information;
- The "Standards for Privacy of Individually Identifiable Health Information," 45 CFR Part 160 (specifically recognizing here 45 CFR Part 160, Subparts C, D, and E ("Enforcement Rule")) and Part 164, Subparts A and E ("Privacy Rule");
- The "Standards for Electronic Transactions," 45 CFR Part 160, Subpart A and Part 162, Subpart A and Subparts I through R ("Electronic Transaction Rule");
- The "Security Standards for the Protection of Electronic Protected Health Information," 45 CFR Part 160 and Part 164, Subparts A and C ("Security Rule"); and
- The "Standards for Breach Notification for Unsecured Protected Health Information," 45 CFR Part 160 and Part 164, Subparts A and D ("Breach Notification Rule").

The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Plan and WEX agree as follows:

### ARTICLE 1 DEFINITIONS

1.1 "Agent" shall have the meaning given to it in Section 2.5. As provided by the Health Insurance Portability and Accountability Act, as amended ("HIPAA"), an Agent and a Subcontractor are two separate types of arrangements.

1.2 "Breach" shall have the meaning given to it by 45 CFR § 164.402.

1.3 "Business Associate" shall have the meaning given to it by 45 CFR § 160.103.

1.4 "Designated Record Set" shall have the meaning given to it by 45 CFR § 164.501.

1.5 "Health Care Operations" shall have the same meaning given to it in 45 CFR § 164.501.

1.6 "HIPAA" shall mean, collectively, the Privacy Rule, the Electronic Transaction Rule, the Security Rule, and/or the Breach Notification Rule, each as amended and clarified by the HIPAA Omnibus Rule.

1.7 "HIPAA Omnibus Rule" shall mean the "Modifications to the HIPAA Privacy, Security, Enforcement, and Breach Notification Rules under the Health Information Technology for Economic and Clinical Health Act (the HITECH Act) and the Genetic Information Nondiscrimination Act (GINA)," 78 Federal Register 5566 (January 25, 2013).

1.8 "Individual" shall mean the person who is the subject of PHI and shall include a person who qualifies as a personal representative in accordance with 45 CFR § 164.502(g).

1.9 "Individual Rights Requests" shall mean requests under Article 3.

1.10 "Payment" shall have the same meaning given to it in 45 CFR § 164.501.

1.11 "PHI" or "protected health information", defined at 45 CFR § 160.103, shall mean any information, whether oral or recorded in any form or medium, that: (i) relates to the past, present or future physical or mental health or 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) identifies the Individual or with respect to which there is a reasonable basis to believe the information can be used to identify the Individual.

1.12 "Plan" shall have the same meaning given to it as the group health plan or plans of the Sponsor as set forth in 45 CFR § 160.103.

1.13 "Plan Administration Functions" shall have the same meaning given to it in 45 CFR § 164.504.

1.14 "Plan Administrator" shall mean the entity, individual, group or committee appointed by the Sponsor, or its successor or successors with the authority to administer the Plan.

1.15 "Privacy Official" shall mean the person designated by the Plan to serve as its privacy official within the meaning of 45 CFR § 164.530(a), and any person to whom the Privacy Official has delegated any of his or her duties or responsibilities.

1.16 "Protected Information" shall mean PHI received from the Plan or created, received, maintained or transmitted by WEX on behalf of the Plan.

1.17 "Required by Law" shall have the same meaning given to it in 45 CFR § 164.103.

1.18 "Secretary" shall mean the Secretary of the United States Department of Health and Human Services.

1.19 "Services" shall mean the activities, functions, and/or services that WEX from time to time renders to or on behalf of the Plan to the extent that those activities, functions, and/or services are covered by HIPAA.

1.20 "Subcontractor" shall have the same meaning given to it in 45 CFR § 160.103.

1.21 "Unsecured PHI" shall mean Protected Information that is not secured through the use of a technology or methodology that renders such Protected Information unusable, unreadable or indecipherable to unauthorized individuals as specified in 45 CFR § 164.402.

## **ARTICLE 2 OBLIGATIONS AND ACTIVITIES OF WEX**

2.1 Status of WEX. WEX acknowledges and agrees that it is a Business Associate of the Plan for purposes of the Privacy Rule.

2.2 Permitted Uses and Disclosures of Protected Information.

(a) Permitted Uses. WEX shall not use Protected Information other than as permitted by this Agreement. WEX may use Protected Information: (i) in connection with the performance, management and administration of the Services; (ii) for the proper business management and administration of WEX; (iii) to carry out WEX's legal responsibilities; (iv) to report violations of law consistent with 45 CFR § 164.502(j); (v) to the extent and for any purpose authorized by an Individual under 45 CFR § 164.508; and (vi) for any purpose provided that no data

is identifiable and data has been de-identified pursuant to 45 CFR § 164.514(b) (including the separate de-identification guidance issued by the Secretary on November 26, 2012). Notwithstanding the foregoing sentence, WEX shall not use Protected Information in any manner that violates the Privacy Rule, or that would violate the Privacy Rule if so used by the Plan (except for the purposes specified under 45 CFR § 164.504(e)(2)(i)(A) and (B)).

(b) Permitted Disclosures. WEX shall not disclose Protected Information other than as permitted by this Agreement. WEX may disclose Protected Information: (i) in connection with the performance, management and administration of the Services; (ii) to report violations of law consistent with 45 CFR § 164.502(j); (iii) to the extent and for any purpose authorized by an Individual under 45 CFR § 164.508; and (iv) for any purpose provided that no data is identifiable and data has been de-identified pursuant to 45 CFR § 164.514(b) (including the separate de-identification guidance issued by the Secretary on November 26, 2012). In addition, WEX may also disclose Protected Information to a third party for the proper business management and administration of WEX and to carry out WEX's legal responsibilities, provided that the disclosure is Required by Law or WEX obtains, prior to the disclosure: (i) reasonable assurances from the third party that the Protected Information will be held confidentially and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the third party; and (ii) an agreement from the third party that the third party will notify WEX immediately of any instances in which it knows the confidentiality of the information has been breached. Further, WEX shall disclose, upon request, Protected Information to the Sponsor for Plan Administration Functions and to designated Sponsor employees (or designated Business Associates of the Plan) who are working for or on behalf of the Plan for purposes of Payment and Health Care Operations (including claims assistance activities) consistent with 45 CFR § 164.506(c)(1). Notwithstanding the foregoing, WEX shall not disclose Protected Information in any manner that violates the Privacy Rule, or that would violate the Privacy Rule if so disclosed by the Plan (except for the purposes specified under 45 CFR § 164.504(e)(2)(i)(A) and (B)).

(c) Minimum Necessary. To the extent required by the Privacy Rule, WEX shall only request, use, and/or disclose the minimum amount of Protected Information necessary to accomplish the purpose of the request, use, and/or disclosure. For this purpose, the determination of what constitutes the minimum necessary amount of Protected Information shall be determined in accordance with Section 164.502(b) of the Privacy Rule.

(d) Direct Application of Privacy Rules. WEX shall not use and/or disclose Protected Information or provide any Services that require the use and/or disclosure of Protected Information unless such use and/or disclosure directly complies with this Section 2.2 and Sections 164.502(a)(3) and 164.504(e) of the Privacy Rule.

(e) GINA Provisions. Notwithstanding subsections (a) through (c) above, WEX shall not use and/or disclose Protected Information that is genetic information for underwriting purposes, as set forth in 45 CFR § 164.502(a)(5).

2.3 Safeguards. WEX shall maintain and use appropriate and commercially reasonable safeguards to prevent use and/or disclosure of Protected Information other than as permitted or required in this Agreement.

2.4 Report of Prohibited Use or Disclosure. If WEX becomes aware of a prohibited use or disclosure of an Individual's Protected Information by WEX and the use or disclosure violates the provisions of this Agreement, WEX must inform the Privacy Official regarding the prohibited use or disclosure of the Individual's Protected Information. To the extent that a use or disclosure described in this Section 2.4 also constitutes a Breach of Unsecured PHI, the provisions of this Section 2.4 shall not apply, but rather the provisions of Section 2.8 shall apply.

2.5 Agents and Subcontractors. WEX shall require each of its authorized representatives, agents, and entities (collectively, "Agents") to whom WEX provides Protected Information on behalf of the Plan to agree to observe the restrictions on use and disclosure of the Protected Information imposed upon WEX by this Agreement and the Privacy Rule. In addition, WEX shall enter into a business associate agreement with each of its Subcontractors which meets the requirements of the Privacy Rule, including the requirements set forth in 45 CFR § 164.504(e).

2.6 Access by Secretary. WEX shall make available to the Secretary WEX's internal practices, books, and records (including its policies and procedures) relating to WEX's use and disclosure of Protected Information for the purpose of enabling the Secretary to assess the Plan's and/or WEX's compliance with HIPAA. WEX shall inform the Privacy Official of any request sent by the Secretary on behalf of the Plan that is received by WEX, unless it is prohibited by applicable law from doing so.

2.7 Mitigation. WEX agrees to mitigate, to the extent practicable, any harmful effect that is known to WEX of a use or disclosure of Protected Information by WEX in violation of the requirements of this Agreement and provide any notice and remediation that either WEX or the Plan is required to provide by any applicable law in connection with such actual or suspected Breach. Where a Breach involves PHI data elements that reasonably could lead to identity theft, WEX shall provide credit monitoring or other commercially-reasonable identity theft mitigation service for the affected individuals for one year.

2.8 Notice of Breach of Unsecured PHI.

(a) WEX Requirements. Upon WEX's discovery of a Breach of Unsecured PHI by WEX, WEX shall –

(1) Pursuant to the requirements set forth in subsection (c) below, provide written notice of the Breach to the Privacy Official, as soon as administratively practicable, but no later than ten (10) business days after the Breach is discovered, and

(2) Pursuant to the requirements set forth in subsection (b) below, provide written notice of the Breach, on behalf of the Plan, without unreasonable delay and in no case later than sixty (60) calendar days after discovery of a Breach as authorized under 45 CFR § 164.404 or such later date as is authorized under 45 CFR § 164.412 to:

(i) each Individual whose Unsecured PHI has been, or is reasonably believed by WEX to have been, accessed, acquired, used or disclosed as a result of the Breach;

(ii) the media to the extent required under 45 CFR § 164.406; and

(iii) the Secretary to the extent required under 45 CFR § 164.408 (unless the Plan has elected to provide this notification and has informed WEX); and

(3) If the Breach involves less than 500 individuals, maintain a log or other documentation of the Breach which contains such information as would be required to be included if the log were maintained by the Plan pursuant to 45 CFR § 164.408, and provide such log to the Plan within five (5) business days of the Plan's written request.

(b) Notice Requirements. This subsection (b) provides the following special rules that shall each be applicable to the provisions of Section 2.8(a)(2) –

(1) The date that a Breach is discovered shall be determined by WEX, in its sole discretion, in accordance with the Breach Notification Rule.

(2) The content, form, and delivery of each of the notices required by Section 2.8(a)(2) shall comply in all respects with the breach notification provisions applicable to the Plan, as set forth in the Breach Notification Rule.

(3) WEX shall send the notices described in Section 2.8(a)(2)(i) to each Individual using the address on file with WEX (or as may be otherwise provided by the Plan). If the notice to any Individual is returned as undeliverable, WEX shall make one additional attempt to deliver the notice to the Individual using such information as is reasonably available to it, or shall take other action required by the Breach Notification Rule.

(4) With respect to notices required under Section 2.8(a)(2)(i) and (ii), WEX and the Privacy Official shall cooperate in all respects regarding the drafting and the content of the notices. To that end, before sending any notice to any Individual or the media under Section 2.8(a)(2)(i) or (ii), WEX shall first provide a draft of the notice to the Privacy Official. The Privacy Official shall have ten (10) business days (plus any reasonable extensions) to either approve WEX's draft of the notice or revise the language of the notice. Alternatively, the Privacy Official may elect to draft the notice for review by WEX. Once WEX and the Privacy Official agree on the final content of the notice, WEX shall send the notice to the Individuals and/or the media based on the requirements of the Breach Notification Rule.

(c) Privacy Official Notice. The notice to the Privacy Official pursuant to Section 2.8(a)(1) shall include any information available to WEX that is required to be included in a notification to an Individual under 45 CFR § 164.404(c). To the extent that WEX does not have the information to be provided in the prior sentence when it is required to notify the Privacy Official, WEX shall provide such information as soon as administratively practicable after such information becomes available. Upon the Plan's written request, WEX shall provide such additional information regarding the Breach as may be reasonably requested from time-to-time by the Plan.

(d) Notice Fees. WEX reserves the right to charge reasonable, cost-based fees for sending the notices required by this Section 2.8 should a Breach be due to actions on the part of the Sponsor, the Plan or any other entity (other than WEX, its Agents or Subcontractors).

(e) Remuneration. WEX shall not directly or indirectly receive any remuneration in exchange for PHI for marketing or fundraising purposes in a manner that is inconsistent with HIPAA's requirements.

### **ARTICLE 3 INDIVIDUAL RIGHTS REQUIREMENTS**

#### **3.1 Designated Record Sets.**

(a) General. WEX agrees to maintain a Designated Record Set for the Plan in a manner and form that will allow the Plan to provide access and amendment rights to an Individual with respect to the Individual's Protected Information in conformance with 45 CFR §§ 164.524 and 164.526.

(b) Access to Protected Information. Upon request from the Plan, WEX shall process and respond to a request by an Individual for access to an Individual's Protected Information that is maintained by WEX in a Designated Record Set pursuant to 45 CFR § 164.524 (an "Access Request"). WEX shall respond to such Access Request by furnishing such Protected Information to the Plan within a timeframe that reasonably allows the Plan to satisfy the timeframes required by 45 CFR § 164.524. If the Protected Information that is requested is maintained electronically and the Individual requests an electronic copy of such information, WEX will provide access to the information in an electronic format that complies with 45 CFR § 164.524(c)(2)(ii). Thereafter, the Plan will be responsible for sending such information to the Individual.

(c) Amendment to Protected Information. Upon request from the Plan, WEX shall process a request by an Individual for amendment to an Individual's Protected Information that is maintained by WEX in a Designated Record Set pursuant to 45 CFR § 164.526 (an "Amendment Request"). WEX shall process such Amendment Request within a timeframe that reasonably allows the Plan to satisfy the timeframes required by 45 CFR § 164.526.

(d) Coordination with Privacy Official. WEX shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping, and documentation issues relating to Access Requests and Amendment Requests. Notwithstanding the foregoing, WEX shall not be obligated to coordinate with the Privacy Official if an Individual files an Access Request or an Amendment Request with WEX and such request is directed solely to WEX.

#### **3.2 Accounting of Disclosures of Protected Information.**

(a) Documentation of Disclosures. WEX agrees to document and maintain a log of any and all disclosures from and after the date or dates required by 45 CFR § 164.528 made by WEX of Protected Information in a manner and form that will allow the Plan to provide to an Individual an accounting of disclosures or other applicable report of the Individual's Protected Information in compliance with and based on the requirements of 45 CFR § 164.528.

(b) Accounting Requests. Upon request from the Plan, WEX shall process and respond to a request by an Individual for an accounting of disclosures or other applicable report of an Individual's Protected Information pursuant to the requirements of 45 CFR § 164.528 (an "Accounting Request"). WEX shall furnish such accounting relating to the Accounting Request to the Plan within a timeframe that reasonably allows the Plan to satisfy the timeframes required by 45 CFR § 164.528. Thereafter, the Plan will be responsible for sending such information to the Individual.

(c) Coordination with Privacy Official. WEX shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing,



recordkeeping, and documentation issues relating to Accounting Requests. Notwithstanding the foregoing, WEX shall not be obligated to coordinate with the Privacy Official if an Individual files an Accounting Request with WEX and such request is directed solely to WEX.

### 3.3 Privacy Protection Requests.

(a) Restriction Requests on Uses and Disclosures. The Plan and WEX on behalf of the Plan shall not agree to a restriction on the use or disclosure of Protected Information pursuant to 45 CFR § 164.522(a) without first consulting with the other party. WEX is not obligated to implement any restriction, if such restriction would hinder Health Care Operations or the Services WEX provides to the Plan, unless such restriction would otherwise be required by 45 CFR § 164.522(a).

(b) Confidential Communication Requests. WEX shall implement any reasonable requests by Individuals relating to a request to receive communications of Protected Information by alternative means or at alternative locations to the extent required by 45 CFR § 164.522(b).

(c) Coordination with Privacy Official. WEX shall coordinate and cooperate with the Privacy Official (or any other person designated by the Plan Administrator for this purpose) regarding all processing, recordkeeping, and documentation issues relating to requests under this Section 3.3.

## **ARTICLE 4 ELECTRONIC TRANSACTION RULE**

4.1 Business Associate Requirements. WEX acknowledges that it is a Business Associate of the Plan for purposes of the Electronic Transaction Rule. WEX agrees that it shall comply with all Electronic Transaction Rule requirements that may be applicable to WEX with respect to the Services it provides to and on behalf of the Plan. WEX shall also require each of its Agents and Subcontractors to whom WEX provides Protected Information that is received from, or created or received by WEX on behalf of the Plan, to provide assurances, in writing, that they will comply with the applicable requirements of the Electronic Transaction Rule.

4.2 Sponsor Transmissions. The Sponsor hereby represents and warrants that all electronic transmissions with respect to the Plan between the Sponsor (either directly or through its designated agent) and WEX relating to enrollment and disenrollment information and premium payment information as each are covered by the Electronic Transaction Rule are sent or received by the Sponsor (either directly or through its designated agent) in the Sponsor's capacity as an employer and are not sent or received by the Plan or are not subject to HIPAA for other reasons, such as that the information is an employment record and not PHI.

## **ARTICLE 5 OBLIGATIONS OF PLAN**

5.1 Privacy Notice. Upon request, the Plan will provide WEX with a copy of its notice of privacy practices pursuant to 45 CFR § 164.520.

5.2 Authorizations. The Plan will notify WEX of any changes in or revocations of Individual authorizations for use or disclosure of Protected Information to the extent that such changes or revocations may affect WEX's use or disclosure of Protected Information.

5.3 Officials. The Plan will notify WEX of the current name and contact information of the Plan Administrator, the Privacy Official, and any other with the authority to act on behalf of the Plan with respect to the provisions contained in this Agreement.

5.4 Plan. Sponsor represents that its Plan documents include specific provisions to restrict the use or disclosure of PHI and to ensure adequate procedural safeguards and accounting mechanisms for such uses or disclosures, in accordance with the Privacy Rule.

5.5 Standard Requirements for Group Health Plans. The Plan represents and warrants that: (a) its plan documents, in accordance with 45 CFR § 164.504(f), allow the Plan to receive Protected Information; (b) it has received a certification from the Sponsor in accordance with 45 CFR § 164.504(f)(2)(ii) and will provide a copy of such certification to WEX upon request; (c) the plan document amendments permit the Plan to receive Protected Information (including detailed invoices, reports, and statements from WEX); and (d) the Plan has determined, through its own

policies and procedures and in compliance with 45 CFR § 164.502(b), that the Protected Information that it receives from WEX (including the detailed invoices, reports, and statements) contains the minimum information necessary for the Plan to carry out its Payment and Health Care Operations activities.

5.6 Sponsor agrees and understands that the Plan is independently responsible for the security of all PHI in its possession (electronic or otherwise), including all PHI that it receives from outside sources including WEX.

## **ARTICLE 6 AMENDMENT AND TERMINATION**

6.1 Amendment. No change, modification or attempted waiver of any of the provisions of this Agreement shall be binding upon any party hereto unless reduced to writing and signed by both parties. WEX agrees to take such action as is necessary to amend this Agreement from time to time as the Plan reasonably determines necessary to comply with HIPAA, or any other applicable law, rule or regulation.

6.2 Term. The Term of this Agreement shall be effective on the Effective Date (unless otherwise noted herein) and shall terminate when all of the Protected Information received from the Plan, or created or received by WEX on behalf of the Plan, is destroyed in accordance with the Plan's authorization or is returned to the Plan (or its designated agents) pursuant to Section 6.4.

6.3 Termination. If one party to this Agreement ("Non-Breaching Party") has knowledge of a material violation of this Agreement by the other party to this Agreement ("Breaching Party"), as determined in good faith by the Non-Breaching Party, the Non-Breaching Party must promptly:

(a) Provide an opportunity for the Breaching Party to end and to cure the material violation within a reasonable time specified by the Non-Breaching Party, and if the Breaching Party does not end and cure the material violation within such time (including reasonable extensions that the Non-Breaching Party determines are necessary) to the satisfaction of the Non-Breaching Party, the Non-Breaching Party shall immediately terminate the Services rendered by WEX and any agreement or contract related thereto; or

(b) If a cure is not possible as determined by the Non-Breaching Party in its sole discretion, the Non-Breaching Party shall immediately terminate the Services rendered by WEX and any agreement or contract related thereto.

6.4 Effect of Termination. Upon termination pursuant to Section 6.3, the Plan within a reasonable time thereafter must inform WEX to either destroy or return to the Plan (or any agents designated by the Plan) the Protected Information that WEX and its Agents and Subcontractors maintain in any form, and WEX and its Agents and Subcontractors shall retain no copies of the Protected Information.

However, in many situations WEX maintains one or more backup copies of Protected Information for auditing, data management, and other related purposes and WEX has determined that destruction of all copies of Protected Information that it maintains is infeasible.

Therefore, after termination of the Services and pursuant to 45 CFR § 164.504(e)(2)(ii)(J), this Agreement shall remain in effect, and WEX shall continue to observe and shall ensure that its Agents and Subcontractors continue to observe its obligations under this Agreement to the extent copies of the Protected Information are retained by WEX and shall limit further uses and disclosures of Protected Information to the purposes that make its return or destruction infeasible and that are consistent with the Privacy Rule.

## **ARTICLE 7 ELECTRONIC SECURITY STANDARDS**

7.1 Definitions. When used in this Article, the following terms shall have the meanings set forth as follows:

(a) "Electronic Media" shall have the meaning given to it in 45 CFR § 160.103.

(b) "Electronic Protected Information" shall mean Protected Information received from the Plan or created, received, maintained or transmitted by WEX on behalf of the Plan that is transmitted by Electronic Media or maintained in Electronic Media.

(c) "Security Incident" shall have the meaning given to it in 45 CFR § 164.304.

**7.2 Requirements.** Pursuant to 45 CFR § 164.314(a)(2)(i), WEX shall:

(a) Comply with the applicable requirements of the Security Rule, including the requirement that WEX implement, maintain and document administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of Electronic Protected Information to the extent required by the Security Rule;

(b) Report (pursuant to the terms and conditions of Section 7.3) to the Privacy Official (or such other person designated for this purpose) any Security Incident of which WEX becomes aware and which occurred during the applicable reporting period;

(c) Require each of its Agents to whom WEX provides Electronic Protected Information to agree to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the Electronic Protected Information that is provided to the Agent to the extent required by the Security Rule; and

(d) Enter into a contract or other arrangement with each of its Subcontractors that create, receive, maintain or transmit Electronic Protected Information on behalf of WEX pursuant to which the Subcontractor agrees to comply with the applicable requirements of the Security Rule.

**7.3 Reporting Protocols.** All reports required by Section 7.2(b) shall be provided pursuant to the terms and conditions specified in this section.

(a) **Attempted Security Incidents.** Reporting for any Security Incident involving the attempted unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, an "Attempted Security Incident") shall be provided pursuant to the standard reporting protocols of WEX (as determined by WEX).

(b) **Successful Security Incident.** Reporting for any Security Incident involving the successful unauthorized access, use, disclosure, modification or destruction of Electronic Protected Information (collectively, a "Successful Security Incident") shall be provided to the Plan pursuant to the standard reporting protocols of WEX (as determined by WEX), provided that: (i) the reports shall at a minimum include the date of the incident, the parties involved (if known, including the names of Individuals affected), a description of the Successful Security Incident, a description of the Electronic Protected Information involved in the incident, and any action taken to mitigate the impact of the Successful Security Incident and/or prevent its future recurrence; and (ii) the reports shall satisfy the minimum requirements for Security Incident reporting that may be required from time to time by the Secretary. In addition, Successful Security Incidents shall be reported to the Plan as soon as administratively practicable after the occurrence of the incident taking into account the severity and nature of the incident. Notwithstanding the foregoing, the Plan may request details about one or more Successful Security Incidents, and WEX shall have thirty (30) days thereafter to furnish the requested information.

(c) **Breach of Unsecured PHI.** To the extent that a Security Incident described in this Section 7.3 also constitutes a Breach of Unsecured PHI, the provisions of this Section 7.3 shall not apply, but rather the provisions of Section 2.8 shall apply.

**7.4 Mitigation.** WEX agrees to mitigate, to the extent practicable, any harmful effect that is known to WEX relating to any Successful Security Incident and provide any notice and remediation that either WEX or the Plan is required to provide by any applicable law in connection with such Security Incident. Where the Security Incident involves data elements that reasonably could lead to identity theft, WEX shall provide credit monitoring or other commercially-reasonable identity theft mitigation service for the affected individuals for one year.

**7.5 Access by Secretary.** WEX shall make available to the Secretary WEX's internal practices, books and records (including its policies and procedures) relating to the safeguards established by WEX with respect to Electronic Protected Information for the purpose of enabling the Secretary to assess WEX and/or the Plan's compliance with the Security Rule. WEX shall inform the Privacy Official of any request sent by the Secretary on behalf of the Plan that is received by WEX, unless WEX is prevented by applicable law from doing so.

## ARTICLE 8 GENERAL

**8.1 Other Agreements.** The Plan and WEX acknowledge and affirm that this Agreement is in no way intended to address or cover all aspects of the relationship of the Plan and WEX and of the Services that are rendered by WEX to and on behalf of the Plan. Rather, this Agreement deals only with those matters that are specifically addressed herein. Further, this Agreement supersedes any prior business associate agreements entered into by WEX and the Plan (or any predecessor to the Plan), and shall apply to all Protected Information existing as of the effective date of this Agreement or created or received thereafter while this Agreement is in effect.

**8.2 Indemnification.** Any indemnification relating to violations of this Agreement by WEX or the Plan (or the Sponsor on behalf of the Plan) shall be addressed to the extent applicable by the respective Services Agreement.

**8.3 Severability.** The provisions of this Agreement shall be severable, and the invalidity or unenforceability of any provision (or part thereof) of this Agreement shall in no way affect the validity or enforceability of any other provisions (or remaining part thereof). If any part of any provision contained in this Agreement is determined by a court of competent jurisdiction, or by any administrative tribunal, to be invalid, illegal or incapable of being enforced, then the court or tribunal shall interpret such provisions in a manner so as to enforce them to the fullest extent of the law.

**8.4 Interpretation.** The provisions of this Agreement shall be interpreted in a manner intended to achieve compliance with HIPAA. Whenever the Agreement uses the term "including" followed by a specific item or items, or there is a passage having a similar effect, such passages of the Agreement shall be construed as if the phrase "without limitation" followed such term (or otherwise applied to such passage in a manner that avoids limitations on its breadth of application). Where the term "and/or" is used in this Agreement, the provision that includes the term shall have the meaning the provision would have if "and" replaced "and/or," but it shall also have the meaning the provision would have if "or" replaced "and/or." Any reference to a section or provision of HIPAA shall include any amendment or clarification of such section or provision contained in the HIPAA Omnibus Rule and any regulation, rule or guidance issued by the Secretary following the effective date of this Agreement.

**8.5 Binding Effect.** The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, assigns and successors in interest. The Plan shall have the right to assign this Agreement to any successor or surviving health plan, and all covenants and agreements hereunder shall inure to the benefit of and be enforceable by any such assignee.

**8.6 No Third-Party Beneficiaries.** Nothing express or implied in this Agreement is intended to confer, and nothing herein shall confer, upon any person other than the parties hereto any rights, remedies, obligations or liabilities whatsoever.

**8.7 Applicable Law and Disputes.** The provisions of this Agreement shall be construed and administered to, and its validity and enforceability determined under HIPAA. To the extent that HIPAA is not applicable in a particular circumstance, the provisions of this Agreement shall be construed and administered to, and its validity and enforceability determined under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). In the event that HIPAA and ERISA do not preempt state law in a particular circumstance, the laws of the State of Connecticut shall govern. In the event of any conflict of state laws, the laws of the State of Connecticut shall prevail. The parties agree that any claim or action arising from this Agreement can only be brought in the United States District Court for the District of Connecticut, and both parties consent to such jurisdiction and venue. Any disputes between the parties arising under this Agreement shall be resolved in accordance with the dispute resolution procedures, if any, set forth in the respective Services Agreement.

**8.8 Obligation of Plan and WEX.** To the extent that WEX carries out the HIPAA obligations of the Plan (including the obligations set forth in Section 2.8 and Article 3), WEX shall comply with the applicable requirements of HIPAA as they apply to the Plan in the performance of such obligations on behalf of the Plan.

## DIRECT BILL ADMINISTRATIVE SERVICES AGREEMENT

### RECITALS

WEX and Employer may be referred to herein individually as a "party" and collectively as the "parties."

Employer has established one or more group health plans (such plans, individually and collectively as the context may require, are herein referred to as the "Plan"), which may be modified or amended from time to time; and

The Plan provides coverage for certain eligible individuals and their eligible dependents subject to payment of required contributions toward the cost of such coverage; and

Employer now wishes to retain the services of WEX for purposes of assisting it in billing for the required contributions or "premiums" and WEX is willing to provide such services ("Direct Bill Services") in return for certain fees and consideration.

WEX shall assume no liability for the performance of any other services beyond those set forth in this Direct Bill Administrative Services Agreement (this "Agreement").

The above-stated recitals are accurate, true, and correct and are incorporated herein and made a part hereof by this reference.

Now, therefore, for good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties agree as follows.

### ARTICLE 1 WEX ADMINISTRATIVE SERVICES

- 1.1 WEX shall assist Employer in the administration of the Direct Bill Services as selected and communicated by Employer in the WEX implementation process. WEX's duties shall be limited to those expressly provided in this Agreement or subsequently agreed to in writing by WEX and Employer.
- 1.2 "Member" means any individual eligible to participate in and be covered by the Plan (or portion thereof) that is included in the Direct Bill Services, including medical, dental, vision, and any other benefit plan that qualifies for Plan coverage.
- 1.3 Upon receipt of complete information from Employer (as determined by WEX), WEX shall send WEX's standard notification letter to new Members informing them of their rights under the Plan.
- 1.4 WEX shall mail its member portal login notice and standard premium payment coupons to Members.
- 1.5 WEX shall provide to Members the option to pay premiums by check.
- 1.6 WEX shall provide to Members the option to make premium payments via automatic recurring ACH (an electronic funds-transfer system run by the National Automated Clearing House Association).
- 1.7 WEX shall provide to Members the option to make premium payments online with a credit card or via a single-occurrence ACH request. To the extent permitted by law and the applicable credit card operating rules and regulations, a reasonable additional processing fee charged by the online third-party vendor and payable by the Members will apply to these payment methods. The fee is collected by WEX and remitted to the third-party vendor.
- 1.8 WEX shall collect, track, process, and remit the premiums paid by Members in accordance with the terms and conditions of this Agreement, including, without limitation, Article 3.
- 1.9 WEX shall deposit premium payments in a Custodial Account (as defined in Article 3) for the benefit of Employer in the manner described in Article 3.

- 1.10 WEX shall coordinate with Employer and its insurance carriers to answer questions pertaining to a Member's eligibility and payment status.
- 1.11 Using WEX's standard communications, WEX shall maintain communication with Members who participate in coverage concerning eligibility status, termination, and benefit and rate changes.
- 1.12 WEX shall provide Employer real-time, online access to information related to the status of Member payment and coverage, and for notifying WEX when a Member is enrolled in or has terminated from Plan coverage.
- 1.13 WEX shall supply Employer with the initial login information for accessing the employer web portal.
- 1.14 WEX shall supply Employer with the required file format for uploading Member demographic and benefit information to the employer web portal.
- 1.15 WEX shall provide Members real-time, online access to information related to the status of their premium payments and coverage.
- 1.16 WEX shall provide a customer service line toll-free number for use during WEX normal business hours to answer questions about Direct Bill and premium payments.

Monday through Friday Central Time Zone

Employers	7:00 a.m. to 7:00 p.m.
Members	6:00 a.m. to 9:00 p.m.

In compliance with applicable federal and state law, WEX may monitor and/or record calls that are made to the customer service line for quality assurance and training purposes and/or to ensure that WEX's services fully comply with the terms of this Agreement.

- 1.17 WEX shall notify a Member when coverage terminates earlier than the end of the maximum period of coverage applicable to the Plan that entitled the individual to coverage. The notice will be provided as soon as administratively practicable after WEX determines that Plan coverage will be terminated early.
- 1.18 WEX shall send WEX's standard system generated open enrollment/rate change letter during open enrollment. If requested by Employer, WEX will provide Members with a link to additional plan and benefit description materials provided by Employer through the member web portal for member viewing and printing.
- 1.19 Per business records needs and associated retention and secure destruction periods, WEX shall retain a copy of all information (as information is defined in Section 2.14, excluding emails or similar electronic communications destroyed in the ordinary course of business pursuant to WEX policy) for at least seven (7) years from the date the record is created at WEX, including, without limitation, a record of all assets and transactions involving the Custodial Account (defined in Article 3).
- 1.20 WEX maintains an information security program in compliance with applicable law.
- 1.21 WEX may delegate or subcontract any portion of WEX services. For those WEX services that are delegated or subcontracted, WEX shall remain fully responsible to Employer for compliance with all applicable provisions of this Agreement or of any executed or applicable business associate agreement between the parties.
- 1.22 Employer may inspect any transactions, procedures, records, and participant files relating to Members, at WEX's offices and at a time reasonably acceptable to WEX, upon providing ten (10) business days' advance written notice to WEX.
- 1.23 WEX may, in its discretion, prepare and deliver to Employer benchmarks or other metrics showing the experience of Employer and its participants with the services provided herein as compared to other employers.

WEX will develop any such benchmarks or metrics through the use of data that has been aggregated and de-identified consistent with any executed or applicable business associate agreement between the parties.

- 1.24 WEX Services shall be performed in a professional manner consistent with generally accepted industry standards and in compliance with applicable law.
- 1.25 WEX does not insure or underwrite Employer's liability to provide benefits under the Plan.
- 1.26 Employer may subscribe to WEX's non-discrimination testing and request additional products and services solutions from WEX.

## **ARTICLE 2 EMPLOYER RESPONSIBILITIES**

- 2.1 Employer shall provide to WEX accurate Member counts on a monthly basis or as requested by WEX. Employer warrants the accuracy of any information Employer provides to WEX regarding Member counts.
- 2.2 Employer shall provide to WEX complete demographic and benefit information for Members receiving Plan coverage under Employer's Plan, allowing WEX to take over the administration of individuals currently on coverage under the Plan.
- 2.3 Employer shall enter information or upload an electronic file via the employer web portal containing complete demographic and benefit election information for newly covered Members within seven (7) days of obtaining coverage under the Plan.
- 2.4 Employer shall advise WEX of the applicable premium rates to be charged for Plan coverage. Employer shall notify WEX in writing at least forty-five (45) days in advance of the applicable billing date of: (a) any changes in premium rates affecting Plan coverage and (b) any changes in premiums applicable to Members during an open enrollment period. If Employer is unable to notify WEX in writing at least forty-five (45) days in advance of the applicable billing date of any changes in premium rates, WEX will make commercially reasonable efforts to process the changes prior to the effective date.
- 2.5 Employer shall reconcile Employer's insurance carrier or third party administrator billings with the online reports provided by WEX through the employer web portal. Most insurers restrict the ability to retroactively terminate coverage even in cases of non-payment of premiums by the Member. WEX shall not be liable for paying any loss or damage (including premiums) to Employer with respect to any retroactive termination of coverage due to Employer's failure to reconcile and/or Employer advancing payment of premium on behalf of any Member and not due to WEX's failure to perform in accordance with this Agreement.
- 2.6 Employer shall be responsible for differences in premium payments paid by Members when notification of rate changes is not provided to WEX at least forty-five (45) days in advance, causing payments made by Members to be incorrect.
- 2.7 Employer shall be responsible for advising WEX of any material changes in the benefits and options provided by the Plan.
- 2.8 Employer shall be responsible for its compliance with the Patient Protection and Affordable Care Act ("PPACA") of 2010, the Employee Retirement Income Security Act of 1974 ("ERISA"), the Health Insurance Portability and Accountability Act of 1996 ("HIPAA"), the Internal Revenue Code (the "Code"), each as amended from time-to-time, and other applicable law and regulation with respect to the Plan, other than for the Direct Bill Services and HIPAA responsibilities assumed by WEX under this Agreement or the business associate agreement entered into between the parties.
- 2.9 Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney's fees) and expressly releases all claims against WEX in connection with any claim or cause of action for any activity or occurrence prior to the Effective Date of this Agreement that results from the failure or alleged failure of Employer, its officers and employees, and any other entity related to or performing services on behalf of Employer (other than WEX) to comply with the PPACA, ERISA, HIPAA, the Code or any other applicable law or regulation.

2.10 Employer shall review and be responsible for payment of all claims under the Plan and ERISA, including, without limitation, claims and appeals for benefits and claims and appeals for eligibility determinations under the Plan. WEX is not responsible to receive or review claims or appeals for benefits or eligibility under the Plan, and WEX is not liable for the payment or funding of any claims for benefits in connection with the Plan, including, without limitation, where sought as damages in an action against Employer or the Plan or for any occurrences prior to the Effective Date of this Agreement, provided that such failure did not result from the services performed by WEX in accordance with this Agreement.

2.11 Employer shall provide the release of the information necessary for Direct Bill administration under this Agreement.

2.12 As applicable only, Employer shall provide plan and benefit descriptions (e.g., Summary of Benefits and Coverage (SBC), Summary Plan Description (SPD) and benefit plan booklets, etc.) to Members during open enrollment. WEX's standard process is to provide a link to these additional materials through the participant web portal for Member viewing and printing. If requested by Employer, WEX may include these additional materials with its standard open enrollment/rate change letter as long as Employer provides WEX with an electronic PDF image of the additional open enrollment materials. A handling fee of \$1.50 per page (duplex) will apply for these additional materials. WEX will allow for a total of up to twenty-five (25) duplexed pages, including the standard open enrollment/rate change letter.

2.13 Employer acknowledges and agrees that under this Agreement, WEX shall:

- (a) Have no duty with respect to the payment or funding of premiums or contributions by Employer or Members who elect Plan coverage.
- (b) Not be liable for paying any premiums or contributions of a Member to an insurer or third party administrator of the Plan to the extent that WEX did not receive the corresponding payment from the Member or third party.
- (c) Not be liable for any failure of Employer to remit to the insurers or third party administrators of the Plan any funds Employer receives from WEX.
- (d) Not be liable for any failure of Employer to reconcile its carrier or third party administrator billings to online reports provided by WEX through the employer web portal.
- (e) Not be liable for any failure of Employer to modify its carrier or third party administrator billing and notify insurers and administrators of a Member's termination from coverage when WEX remits premiums or contributions paid by continuants to Employer.
- (f) Not be responsible for failure of delivery of any notice mailed by WEX using the Member information provided to WEX by Employer as of the applicable time, which failure is due to that information.
- (g) Not be responsible for any loss or damage suffered by any Member, Employer or the Plan, should WEX fail to give a required notice because WEX did not receive complete notice of an event for which a notice was required or the proper address to which the notice was to be sent.
- (h) Not be responsible for payments not made during or after grace periods if Employer instructs WEX to ignore grace periods.

2.14 Employer Information and Instructions

- (a) WEX shall be fully protected in relying upon representations and communications made by or on behalf of Employer in effecting its obligations under this Agreement.
- (b) WEX is entitled to rely on the most current information in its possession when providing services under this Agreement.



- (c) WEX shall provide the services in accordance with this Agreement based on information that is provided to WEX by Employer or Member. For this purpose, "information" means all data, records, and other information supplied to WEX, obtained by WEX or produced by WEX (based on data, records or other information supplied to, or obtained by, WEX) in connection with performing the services pursuant to this Agreement, regardless of the form of the information or the manner in which the information is provided to WEX.
- (d) In engaging WEX to perform the services under this Agreement, Employer has authorized and instructed WEX in this Agreement to implement WEX's standard administrative forms and procedures to provide services in accordance with this Agreement.
- (e) WEX is not responsible for any acts or omissions it makes in reliance upon: (i) the direction or consent of Employer or a Member; or (ii) inaccurate, misleading or incomplete information.
- (f) Employer and WEX agree that if Employer instructs WEX with a specific written request (in a format acceptable to WEX) to provide services in a manner other than in accordance with WEX's standard forms and procedures, WEX may (but need not) comply with such an instruction. This would include, but is not limited to, any Employer instruction to add a vendor link to the consumer portal. To the extent that WEX complies with such instructions, Employer and not WEX shall be solely responsible for WEX's action so taken, and Employer agrees to hold WEX harmless from and against all liability, damages, costs, losses, and expenses (including reasonable attorney's fees) and expressly releases all claims against WEX in connection with any claim or cause of action, which results from or in connection with WEX complying with Employer's specific written instruction to provide services in a manner other than in accordance with WEX's standard procedures.
- (g) Employer is responsible for the integrity of data in the files. Therefore, complete and accurate information from Employer is required in order for WEX to perform the services set forth herein.
- (h) Employer agrees not to use the full social security number in the employee identification number field.

#### 2.15 Employer's Electronic Account

For access to the services provided by WEX via an online account or other electronic means ("Employer's Electronic Account"), Employer is solely responsible for:

- (a) Designating who is authorized to have access to Employer's Electronic Account;
- (b) Safeguarding all of Employer's passwords, usernames, logins or other security features used to access Employer's Electronic Account ("Electronic Account Access");
- (c) Employer's use of Employer's Electronic Account under any usernames, logins or passwords;
- (d) Ensuring that use of Employer's Electronic Account complies fully with the provisions of this Agreement; and
- (e) Any unauthorized access of Employer's Electronic Account due to Employer's actions or inactions, including, without limitation, Employer's failure to safeguard Employer's Electronic Account or Electronic Account Access.
- (f) The maintenance and routine review of its computing and electronic system usage records (i.e., log files) and the security of its own data, data storage, computing devices, other electronic systems, and network connectivity.

#### 2.16 Plan Tax Obligations

The Plan and/or Employer on behalf of the Plan is responsible for any state or federal tax, fee, assessment, surcharge and/or penalty imposed, assessed or levied against or with respect to the Plan and/or WEX relating to the Plan or the services provided by WEX pursuant to this Agreement, including those imposed pursuant

to PPACA. This includes the funding, remittance, and determination of the amount due for PPACA required taxes and fees. In the event that WEX is required to pay or elects to pay any such tax, fee, assessment, surcharge and/or penalty on behalf of Employer, WEX shall report the payment to Employer and Employer shall promptly reimburse WEX for the full amount or for Employer's proportionate share of such amount, as determined by WEX, except as provided in Section 7.3. This reimbursement would be in addition to the fees described in Section 6.1. Further, the parties agree that WEX does not provide any legal, tax or accounting advice to the Plan and/or Employer. WEX is at all times responsible for all the taxes based upon its net income and its property ownership.

#### 2.17 Acknowledgement

Employer acknowledges and agrees that the services provided by WEX pursuant to this Agreement relate to enrollment and disenrollment in the Plan, and that these services, to the extent permitted under HIPAA, shall be deemed to be performed by WEX on behalf of Employer, in its capacity as the sponsor of the Plan.

#### 2.18 Carrier Notifications

As applicable only, WEX's standard practice is to notify the Carrier of a Member's enrollment in, changes to or termination from coverage. If Employer instructs WEX to instead send all such notifications to Employer or to a third party other than the carrier, Employer: (a) is responsible to ensure the carrier is updated in a timely manner; (b) is responsible to provide urgent updates to the carriers in a timely manner as necessary; (c) accepts all responsibility and liability for the carrier notifications; and (d) expressly releases all claims against WEX in connection with the carrier notifications and agrees to hold WEX harmless from and against all liability, damages, costs, losses and expenses (including attorney's fees) that result from the failure or alleged failure of Employer, its officers and employees, and any other entity (other than WEX) in connection with such carrier notifications.

### **ARTICLE 3 CUSTODIAL ACCOUNT**

3.1 By signing this Agreement, Employer appoints WEX as custodian for the purposes and upon the terms and conditions set forth in this Agreement, and WEX accepts such appointment and agrees to act as custodian hereunder and to hold any Employer funds received hereunder in accordance with the terms and conditions set forth in this Agreement.

3.2 WEX maintains one or more depository accounts (the "Custodial Account") at a bank designated by WEX and holds in such account all premiums and contributions received from Members, less any portion of the funds that constitutes administrative fees payable by the Member. Upon deposit, such premiums and contributions shall become Employer funds (less any applicable fees or other costs as set forth in this Agreement). For administrative convenience and to reduce costs, WEX shall hold Employer funds of Employer together with similar funds from other employers in the Custodial Account (or one or more Custodial Accounts). WEX shall maintain records as to the exact amount of funds of each employer. Each employer has a legal right to the specific amount of funds held in the Custodial Account.

3.3 Employer and WEX intend and agree that Employer funds are and shall remain the general assets of Employer, are not the general assets of WEX and are not plan assets within the meaning of ERISA. Except to the extent that outstanding checks have been written against the account on behalf of Employer, and subject to Section 6.3, Employer funds may be withdrawn by Employer at any time and are subject to Employer's creditors in the same manner as funds deposited in Employer's ordinary checking accounts.

3.4 WEX shall forward premiums and contributions from the Custodial Account to Employer or Employer's designee as directed by Employer and in accordance with this Agreement and Employer's Plan. WEX shall neither have nor shall be deemed to exercise any discretion, control or authority with respect to the disposition of Employer funds.

3.5 Employer acknowledges and understands that from time to time, WEX may receive earnings and interest on the funds held in the Custodial Account and that any such earnings or interest shall be part of WEX's compensation.

- 3.6 Employer acknowledges and understands that fees otherwise charged by WEX for services under this Agreement would be greater if WEX did not retain such earnings and interest on these funds.
- 3.7 WEX does not track nor can it report interest earned for a single employer. WEX absorbs other bank charges, such as transmission charges, within the fees.
- 3.8 The period during which interest may be earned begins on the date Employer funds are deposited into the Custodial Account and continues for as long as Employer funds remain in the Custodial Account. Funds shall be disbursed on a first-in, first-out basis.
- 3.9 Upon Employer's written request, WEX shall provide Employer with information relating to all Employer assets, transfers, and transactions activity involving the Custodial Account, including a description of all receipts, disbursements, and other transactions.

#### **ARTICLE 4 CONFIDENTIAL COMPANY INFORMATION AND INTELLECTUAL PROPERTY**

##### 4.1 General Obligations

For purposes of this Article 4, "confidential company information" shall mean any company information identified by either party as "confidential" and/or "proprietary", or which, under the circumstances, ought to be treated as confidential or proprietary, including non-public information related to the disclosing party's business, service methods, software, documentation, financial information, prices, and product plans. Neither WEX nor Employer shall disclose confidential company information of the other party. The receiving party shall use reasonable care to protect the confidential company information and ensure it is maintained in confidence, and in no event use less than the same degree of care as it employs to safeguard its own confidential company information of like kind. The foregoing obligation shall not apply to any information that: (a) is at the time of disclosure, or thereafter becomes, part of the public domain through a source other than the receiving party; (b) is subsequently learned from a third party that does not impose an obligation of confidentiality on the receiving party; (c) was known to the receiving party at the time of disclosure; (d) was generated independently by the receiving party; or (e) is required to be disclosed by law, subpoena or other process.

WEX may disclose Employer's or the Plan's confidential company information to a governmental agency or other third party to the extent necessary for WEX to perform its obligations under this Agreement or if Employer has given WEX written authorization to do so.

Although WEX may have confidential company information processed, managed, and/or stored with subcontractors or third parties, it remains fully responsible to Employer for the confidentiality obligations set forth herein.

##### 4.2 WEX Sensitive Information

If Employer requests access to WEX confidential and/or proprietary security resources and assessments, service organization controls audit reports or other audit information for the purpose of reviewing the operating and business condition of WEX, Employer's acceptance of or access to such information shall constitute its agreement with the following:

- Employer shall maintain the information (whether communicated by means of oral, electronic or written disclosures) in confidence and shall not use the same for its own benefit, or for any purpose other than the furtherance of its review, or disclose the same to any third party.
- Employer may disclose the information to its own officers, employees, and agents on a need-to-know basis for the purposes of its review.
- Employer shall use reasonable care to protect the information and to ensure that it is maintained in confidence, and in no event use less than the same degree of care as Employer uses to safeguard its own confidential information.

- If Employer is a state agency or otherwise subject to a freedom of information type statute, the information shall be treated as confidential and exempt from disclosure in accordance with the applicable law and the information contains sensitive proprietary information and data defined as trade secret information that would not otherwise be publicly available, and that disclosure of this information to the public, including WEX's competitors, would likely result in substantial harm to WEX's competitive positions and may also contain confidential supervisory information and personal information relating to directors, officers, and major shareholders of WEX, the disclosure of which would constitute an unwarranted invasion of personal privacy.

#### 4.3 Intellectual Property

All materials, including, without limitation, documents, forms (including data collection forms provided by WEX), brochures, and online content ("Materials") furnished by WEX to Employer are licensed, not sold. Employer is granted a personal, non-transferable, and nonexclusive license to use Materials solely for Employer's own internal business use. Employer does not have the right to copy, distribute, reproduce, alter, display or use these Materials or any WEX trademarks for any other purpose other than its own internal business use. Employer shall use commercially reasonable efforts to prevent and protect the content of Materials from unauthorized use. Employer's license to use Materials ends on the termination date of this Agreement.

Upon termination, Employer agrees to destroy Materials or, if requested by WEX, to return them to WEX, except to the extent Employer is required by law to maintain copies of such Materials.

WEX retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, and techniques acquired prior to or developed in the course of performing services under this Agreement.

Employer shall not permit any information regarding the systems of WEX or its subcontractors to be disseminated, sold, assigned, leased or licensed to any third party, nor otherwise used or commercially exploited in any way except as expressly set forth in this Agreement.

#### 4.4 Application

Each party agrees that its obligations contained in this Article 4 apply also to its parent, subsidiary, and affiliated companies, if any, and to similarly bind all successors, employees, and representatives.

### **ARTICLE 5 TERM OF THE AGREEMENT**

5.1 The term of this Agreement shall commence as of the Effective Date and shall continue for a period of twelve (12) months (the "Initial Term").

5.2 This Agreement shall automatically renew for another twelve (12) months at the end of the Initial Term and every twelve (12) months thereafter, unless terminated pursuant to Section 5.3 or Section 5.4 or Section 5.5.

5.3 This Agreement may be terminated at any time during the Initial Term or any renewal term by Employer or by WEX without cause and without liability with written notice of the intention to terminate to be effective as of a date certain set forth in the written notice, not be fewer than sixty (60) days from the date of such notice.

5.4 This Agreement may be terminated upon written notice:

- (a) If any law is enacted or interpreted to prohibit the continuance of this Agreement, upon the effective date of such law or interpretation;
- (b) If any fee (to the extent not subject to a good faith dispute) for any service provided by WEX to Employer remains unpaid to WEX beyond thirty (30) days past the due date, upon written notification by WEX to Employer that WEX intends to exercise its option to enforce this provision; or

(c) Due to (i) a party's filing for bankruptcy, (ii) a party's making any assignment for the benefit of creditors, (iii) a party's consenting to the appointment of a trustee or receiver, (iv) a party's insolvency, as defined by applicable law, or (v) the filing of an involuntary petition against Employer under the Federal Bankruptcy Code or any similar state or federal law which remains un-dismissed for a period of forty-five (45) days.

5.5 If either party is in default under any provision of this Agreement other than a payment default, the other party may give written notice to the other party of such default. If the defaulting party has not used good faith efforts to cure such breach or default within thirty (30) days after it receives such notice, or if good faith efforts to cure have begun within thirty (30) days but such cure is not completed within sixty (60) days after receipt of the notice, the other party shall have the right by further written notice (the "Termination Notice") to terminate this Agreement as of any future date designated in the Termination Notice.

5.6 Employer shall pay all fees not subject to a good faith dispute that have accrued up to the date of the termination within thirty (30) days after the date of the termination.

5.7 Upon termination of this Agreement, any funds in the Custodial Account that have not been disbursed to Employer in accordance with the terms and conditions of this Agreement shall be returned to Employer less any applicable undisputed fees, costs or expenses as set forth in this Agreement. However, the return of such funds shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. As necessary, WEX shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to WEX as of the date of termination pursuant to the terms of this Agreement or any other agreement between the parties.

5.8 When this Agreement is terminated under Section 5.3 or Section 5.4, WEX will immediately cease the performance of any further services under this Agreement unless both parties agree that WEX shall continue performing services for an additional period. Upon prepayment, if requested by WEX, of the fees for this additional period or continued monthly invoicing, WEX will continue the processing, collection, and tracking of Member premiums and contributions, forwarding premiums and contributions to Employer, and processing and reporting of Direct Bill elections and terminations. However, the return of such funds shall remain subject to the completion of a final accounting of all account activities, as well as the deduction of undisputed unpaid fees and other expenses under this Agreement or any other agreement between the parties. As necessary, WEX shall have the immediate right to demand and pursue collection of any unpaid fees, reimbursements or other amounts that are due and owing to WEX as of the date of termination pursuant to the terms of this Agreement or any other agreement between the parties.

## **ARTICLE 6 COST OF SERVICES**

### 6.1 Plan Administrative Services Fees

(a) Employer shall pay WEX a fee for its services under this Agreement. This fee shall be payable in accordance with the fee schedule attached hereto. Fees are invoiced monthly and are due within thirty (30) days of the invoice date. If Employer disputes in good faith any portion of the fees invoiced, Employer shall provide WEX with written notice of any disputed fees together with a complete written explanation of the reasons for the dispute (the "Dispute Notice") within thirty (30) days of the invoice date. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice. The parties shall work together in good faith to reach a mutually agreeable resolution of the dispute identified in the Dispute Notice for a period of ten (10) days following the date of the Dispute Notice.

(b) On or after the rate expiration date indicated on the fee schedule, WEX reserves the right to amend the fee schedule with at least sixty (60) days' advance written notice. If Employer is unwilling to accept the changes to the fee schedule, Employer may terminate this Agreement by providing notice to WEX no later than the effective date of the fee schedule amendment.

(c) Fees quoted assume that WEX standard software, procedures, and systems will be compatible with Employer's software and systems and with any prior service provider's software and systems so that the

services can be readily performed without any modifications or alterations of WEX's software and systems. If costs are incurred by WEX to enhance or integrate its services with Employer's software and systems and/or in migrating the data from the prior service provider to WEX's systems, those costs may be charged separately on a time and materials basis or as otherwise provided under a separate agreement between the parties.

(d) Notwithstanding the foregoing, WEX reserves the right to:

- Charge for the provision of additional services and/or proprietary technology that were neither included in nor contemplated by this Agreement on the Effective Date.
- Increase fees based on additional costs imposed on WEX, such as significant postal rate or bank fee increases or substantiated increased costs due to legislative or regulatory changes, foreign or domestic, actually incurred in performing its services; and
- Pass through any fees charged to WEX by a vendor of Employer.

WEX shall provide Employer with reasonable prior written notice of such charges or increases.

## 6.2 Non-Party Payment on Behalf of Employer and Compliance with Anti-Rebating Law

Employer represents and warrants that if someone other than Employer is paying WEX's fees on behalf of Employer, the making of such payment shall not violate any applicable anti-rebating law, and agrees to hold WEX harmless (including reasonable attorney's fees) from all losses that result from Employer's breach of this provision.

## 6.3 Past Due Fees

Notwithstanding anything in this Agreement or any other agreement between the parties to the contrary, if Employer fails to pay WEX any amount (except for amounts subject to a good faith dispute) that is due as a result of the services provided by WEX to Employer under this Agreement or any other agreement between the parties, WEX shall be permitted to deduct the amount from any funds received from Employer. This right of offset shall be in addition to any other remedies WEX may have at law or equity or in this Agreement or any other agreement between the parties with respect to such non-payment, including, without limitation, any right to terminate this Agreement or a right of recoupment, regardless of whether the past-due amount is paid in full as a result of the offset or recoupment rights provided herein.

# **ARTICLE 7 GENERAL**

## 7.1 Limitations of Liability

Notwithstanding any other provision in this Agreement to the contrary, the total cumulative liability of WEX to Employer for all claims, actions, or suits however caused arising out of or in connection with this Agreement shall be limited to direct damages and shall not exceed the greater of: (a) the amount of fees received by WEX from Employer under this Agreement for the twelve (12) months prior to the occurrence of the event giving rise to any such claims, actions or suits; or (b) amounts payable and actually paid to Employer or WEX resulting from Employer's claim, as applicable, under the insurance policies provided for under Section 7.2 of this Agreement.

In no event shall either party be liable to the other for consequential, special, exemplary, punitive, indirect or incidental damages, including, but not limited to, any damages resulting from loss of use or loss of profits arising out of or in connection with this Agreement, whether in an action based on contract, tort (including negligence) or any other legal theory whether existing as of the Effective Date or subsequently developed, even if the party has been advised of the possibility or foreseeability of such damages.

No action under this Agreement may be brought by either party more than two (2) years after the cause of action has accrued.

WEX and Employer expressly agree that the limitations of liability in this Section 7.1 represent an agreed allocation of the risks of this Agreement between the parties. This allocation is reflected in the pricing offered by WEX to Employer and is an essential element of the basis of the bargain between the parties.

## 7.2 Insurance

During the term of this Agreement, WEX shall maintain general liability insurance and cyber/E&O liability insurance policy limits of \$5,000,000 per occurrence and in the aggregate.

WEX shall also maintain commercial crime insurance policy limits of \$5,000,000, including employee dishonesty coverage.

Upon request, once per year, WEX shall provide Employer with a certificate or certificates of insurance reflecting the required coverage, initially and then upon policy renewals.

## 7.3 Indemnification

(a) Subject to the limitations in Section 7.1, WEX will indemnify, defend and hold harmless Employer (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against all Charges (as defined below in Section 7.3(e), liability, damages, costs, losses, penalties, expenses and reasonable attorney's fees (collectively, "Losses") incurred by Employer in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party to the extent arising out of WEX's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

(b) In addition to Sections 2.9, 2.14, 2.18, and 6.2, Employer will indemnify, defend and hold harmless WEX (and its respective officers, directors, employees, authorized representatives, successors, and permitted assigns) from and against all Losses incurred by WEX in connection with any threatened, pending or adjudicated claim, demand, action, suit or proceeding by any third party (including an action brought by or on behalf of an employee or a participant) to the extent arising out of Employer's (i) fraudulent or criminal actions or omissions or (ii) material breach of this Agreement or of any executed or applicable business associate agreement between the parties.

If Employer is a state agency or otherwise subject to a public entity/political subunit non-indemnification type statute and therefore unable to indemnify under this subsection, Employer agrees that WEX shall not be responsible for any injury or damage that occurs as a result of any negligent act or omission committed by Employer, including its employees or assigns.

(c) A party (the "Indemnified Party") seeking indemnification under Sections 7.3(a) or 7.3(b) above shall promptly notify the other party (the "Indemnifying Party") of any matters in respect of which the foregoing indemnity may apply and of which the Indemnified Party has knowledge, and give the Indemnifying Party the opportunity to control the response thereto and the defense thereof; provided, however, that the Indemnified Party shall have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at the Indemnified Party's sole cost and expense; and provided further, however, that no settlement or compromise of an asserted third-party claim may be made without the prior written consent of the Indemnifying Party.

(d) The Indemnified Party must notify the Indemnifying Party within thirty (30) days in writing of any actual or threatened claim, demand, action, suit or proceeding to which it claims such indemnification applies. Failure to so notify the Indemnifying Party shall not be deemed a waiver of the right to seek indemnification, unless the actions of the Indemnifying Party have been materially prejudiced by the failure of the Indemnified Party to provide notice within the required time period.

(e) For purposes of this Section 7.3, "Charges" means: (i) excise taxes imposed under Code Section 4980B (26 USC § 4980B), subject to the provisions of the aggregate limitations set forth in Code Section 4980B and the right of the assessed party to challenge the Internal Revenue Service with respect to all or part

of the imposition of such excise taxes; and/or (ii) penalties (in an amount up to \$110 per day) that are imposed by a court under Section 502(c)(1) of ERISA (29 USC § 1132) and that are paid. Charges shall not include the payment of the claims for benefits under the terms of the Plan.

## **ARTICLE 8 MISCELLANEOUS**

### **8.1 Number**

Where the context of this Agreement requires, the singular shall include the plural and vice versa.

### **8.2 Force Majeure**

Notwithstanding anything to the contrary contained herein, neither party shall be responsible or liable if the performance of its obligations hereunder is hindered or adversely affected or becomes impossible or impracticable, as a result of an event or effect that the party could not have anticipated or controlled or for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its reasonable control, including, without limitation, lockouts, strikes, work stoppages or other labor disruption, accidents, epidemics, pandemics, quarantines, war (whether declared or undeclared), acts of war or terrorism (whether foreign or domestic in origin), insurrection, sabotage, riot, a decree of health emergency, national emergencies or other man-made emergency, civil or military disturbances including any law, regulation, order or other action by any governmental authority, nuclear or natural disasters or acts of God, interruptions, loss or malfunctions of utility, transportation, communications or computer (software and hardware) services, including the disruption or outage of the Internet, or disruption of financial markets or banking functions (a "Force Majeure Event").

A party affected by a Force Majeure Event shall as soon as reasonably practicable after the occurrence of the Force Majeure Event or the occurrence of harm resulting from such a Force Majeure Event that causes the party to be unable to perform: (a) provide written notice to the other party of the nature and extent of any such Force Majeure Event; and (b) use commercially reasonable efforts to remedy any inability to perform due to such a Force Majeure Event.

### **8.3 Waiver**

If either party fails to enforce any right or remedy under this Agreement, that failure is not a waiver of the right or remedy for any other breach or failure by the other party.

### **8.4 Severability**

If any provision of this Agreement is determined to be unenforceable or invalid, such determination shall not affect any other provision, each of which shall be construed and enforced as if such invalid or unenforceable provision were not contained herein.

### **8.5 Governing Law**

This Agreement and the legal relations between the parties hereto shall be governed by and construed in accordance with the internal laws of the State of Connecticut (without regard to the laws of conflict that might otherwise apply) as to all matters, including without limitation, matters of validity, interpretation, construction, effect, performance, enforcement and remedies.

### **8.6 Dispute Resolution**

Excluding all matters pertaining to the collection of amounts due to WEX arising out of the services provided, any claim, controversy or dispute arising out of, or relating to, this Agreement, in addition to disputes about invoices per Section 6.1, first promptly shall be settled by managers with direct day-to-day responsibility under this Agreement, and if not so settled, promptly shall be addressed by executives of the parties who have authority to settle the dispute. A party wishing to raise a dispute shall give prompt written notice to the other party, and the good faith attempt to resolve the dispute, as described in the foregoing sentence, shall take



place within thirty (30) days thereafter. Engaging in the dispute resolution process described in this Section 8.6 shall be a condition precedent to proceeding with litigation.

Notwithstanding the foregoing, this provision shall not prevent either party from seeking injunctive relief (or any other provisional remedy) from any court having jurisdiction over the parties and the subject matter of their dispute relating to this Agreement.

To the extent this Agreement must be enforced in a court of law, the parties agree that it can only be brought in the United States District Court for the District of Connecticut, and both parties consent to such jurisdiction and venue.

#### 8.7 Notice

Any notice required or permitted to be given under this Agreement shall be deemed delivered to the address set forth in this Agreement or such other physical or electronic address as specified by the party: (a) when received if delivered by hand; (b) the next business day if placed with a reputable express carrier for delivery during the morning of the following business day; (c) three (3) days after deposit in the U.S. mail for delivery, postage prepaid; or (d) when received if delivered electronically. WEX: 82 Hopmeadow Street, Simsbury, CT 06089, Attention: General Counsel.

#### 8.8 Entire Agreement

This Agreement, together with the business associate agreement if so applicable, constitutes the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior or contemporaneous agreements and understandings, whether written or verbal. In the event of a conflict between the terms and conditions of this Agreement and the terms and conditions of any purchase order, payment processing agreement, or other document relating to the services provided by WEX herein, the terms and conditions of this Agreement shall control. Further, the terms and conditions of this Agreement shall prevail over any additional terms contained in any such purchase order, payment processing agreement, or other document. Any amendment to this Agreement must be in writing and consented to by authorized representatives of both parties. The provisions of this Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, permitted assigns, and successors in interest. Unless expressly set forth in this Agreement, nothing in this Agreement is intended to confer, and nothing herein shall confer upon any person other than the parties hereto, any rights, remedies, obligations or liabilities whatsoever.

#### 8.9 Assignment

This Agreement may not be assigned by either party without the prior written consent of the other unless to an affiliate or in connection with a change in control, merger, acquisition or sale of all or substantially all of the party's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified the other party in writing within thirty (30) days following the date of the assignment. If consent is required, the parties shall not unreasonably withhold or delay consent.

#### 8.10 Survival

Those provisions that by their nature are intended to survive termination or expiration of this Agreement shall so survive.

#### 8.11 Relationship of the Parties

The parties agree that in performing their responsibilities under this Agreement, they are in the position of independent contractors. This Agreement is not intended to create, nor does it create and shall not be construed to create, a relationship of partner or joint venture or any association for profit between Employer and WEX.

#### **8.12** **Press Release and Publicity**

Employer grants WEX the right to include Employer's name in WEX's published client list. Subject to Employer's consent to both content and timing (not to be unreasonably withheld), Employer grants WEX permission to issue and distribute a press release announcing the existence of the business relationship between the parties, and to engage in publicity concerning the same that may appear on the WEX website and in WEX publications, including proposal materials and/or presentations. Employer shall provide and grant WEX use of a company logo for use in the published materials.

#### **8.13** **Authority**

Neither WEX nor Employer, when dealing with the other party in relation to the Plan, shall be obliged to determine the other party's authority to act pursuant to this Agreement.

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