



**Contract Number**

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**SAP Number**

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## Human Resources

<b>Department Contract Representative</b>	<u>Sandra Wakcher, Benefits Chief</u>
<b>Telephone Number</b>	<u>909-387-5787</u>

<b>Contractor</b>	<u>WEX Health, Inc. d/b/a WEX</u>
<b>Contractor Representative</b>	<u>Cristi Rewenko</u>
<b>Telephone Number</b>	<u>860-784-3175</u>
<b>Contract Term</b>	<u>March 1, 2024- February 28,2029</u>
<b>Original Contract Amount</b>	<u>\$140,000</u>
<b>Amendment Amount</b>	<u> </u>
<b>Total Contract Amount</b>	<u>\$140,000</u>
<b>Cost Center</b>	<u> </u>

**IT IS HEREBY AGREED AS FOLLOWS:**

This Contract (the "Contract" or "Agreement") is made and entered into as of March 1, 2024, between San Bernardino County, a political subdivision of the State of California, ("County") and WEX Health, Inc., d/b/a WEX a Delaware Corporation ("WEX" or "Contractor"). Individually, the County and WEX may be referred to herein as a "Party" or collectively as the "Parties".

**WHEREAS**, San Bernardino County (County) desires to designate a Contractor to provide application software and technical support for the administration of the Medical Expense Reimbursement (FSA) and Dependent Care Assistance (DCAP) Plans; and

**WHEREAS**, the County conducted a competitive process to find Contractor(s) to provide these products and services, and has determined WEX, to have the necessary product lines required by the County to administer the FSA and DCAP Plans, and

**WHEREAS**, the County finds Contractor qualified to provide the application software and technical support; and

**WHEREAS**, the County desires that such services be provided by Contractor and Contractor agrees to perform these services as set forth below;

**NOW, THEREFORE**, the County and WEX mutually agree to the following terms and conditions:

This Contract shall govern the relationship between WEX and the County for the Contract period of March 1, 2024 through February 28, 2029. The Parties have entered this Contract for the provision of FSA and DCAP software application and benefit card services for Active County Employees and COBRA participants.

**A. DEFINITIONS**

- A.1 Application.** The WEX software, known as WEX Benefits Platform.
- A.2 Card.** The Prepaid Benefits Debit Card issued by WEX for purposes of benefit administration by the County and WEX.
- A.3 Bank.** The bank selected by WEX to be the issuer of the Card.
- A.4 County.** San Bernardino County.
- A.5 Human Resources.** The Department of Human Resources for San Bernardino County.
- A.6 FSA.** The Medical Expense Reimbursement Plan/Flexible Spending Account (FSA).
- A.7 DCAP.** The Dependent Care Assistance Plan (DCAP).
- A.8 Participant.** An individual who is enrolled in the FSA and/or DCAP Plan's benefits. Eligibility shall be determined by the County, in accordance with the County's plan documents. The County shall be responsible for updating WEX of a change in the status of all Participants.
- A.9 Required Collateral Standards.** The collateral account standards established and required by the Bank.

**B. CONTRACTOR RESPONSIBILITIES**

- B.1 Limited Warranty.** WEX shall perform its obligations hereunder in a good and workmanlike manner and shall use its commercially reasonable efforts to ensure that the Application and Services provided hereunder are provided in compliance with the terms of Appendix 6 – Service Level Agreement.

WEX specifically does not warrant that the Application or Services will meet all of the County's requirements, that the Application or Services will be uninterrupted or error-free, or that patches or workarounds will be able to be provided on every occasion. WEX does warrant (i) that it shall make commercially reasonable efforts to resolve errors or interrupted service and (ii) that the Application will operate without error after testing. WEX disclaims any and all liability resulting from or related to any breach of Internet security or disruption of the County's own technology or its connections to the Internet.

The warranties and remedies stated above in this Article B, Section 1 are exclusive. No other warranties or remedies express, implied, or statutory, apply to the application or services to be provided by WEX under this contract, including, but not limited to, any implied warranties of merchantability, non-infringement, or fitness for a particular purpose or warranties of quality or performance, all of which WEX expressly disclaims.

- B.2 Service Level Agreement.** WEX shall perform the Services identified in this Contract in an amount or level equal to or greater than described in Appendix 6 - Service Level Agreement. Degraded performance levels shall be subject to fee reductions or refunds according to the terms outlined in Appendix 6 – Service Level Agreement.
- B.3 Feature Release Notification.** WEX will notify the County of all features to be included in any subsequent release of the application in accordance with the terms specified in Appendix 6 – Service Level Agreement.
- B.4 Application Upgrade Notification.** WEX will notify the County of all upgrades of the Application in accordance with the terms specified in Appendix 6 – Service Level Agreement.

- B.5 Maintenance and Scheduling.** WEX agrees not to perform maintenance or upgrades that would materially and adversely affect County's use of the Application. Maintenance or upgrades shall be **(i)** performed during the hours identified in Appendix 6 – Service Level Agreement (the "Routine Window"), or **(ii)** when the deferral of such maintenance or upgrades to a Routine Window would materially and adversely affect the security or performance of the Application or other WEX clients. WEX shall perform maintenance or upgrades in such a manner as to utilize the redundancy of any Services, to minimize the adverse impact on the Services and shall notify the County as far in advance as practicable of any maintenance or upgrades. At a minimum, WEX will send a maintenance email notification to the County at least three (3) business days prior to scheduled maintenance in accordance with the terms specified Appendix 6 – Service Level Agreement.
- B.6 Infrastructure.** WEX shall provide the infrastructure necessary for the WEX systems that are required for operation of the Application and delivery of the Services, including a secure, temperature-controlled environment with power and HVAC redundancy. WEX reserves the right to use a commercially suitable third-party hosting service and shall ensure that any such hosting service complies with the terms and conditions of this Contract.
- B.7 Network Availability.** WEX shall provide all necessary hardware and communications facilities in connection with the delivery of Application and any associated Services, including routers, switches, and cabling. WEX agrees to use reasonable commercial efforts to monitor and maintain these hosting services to ensure continuous connectivity, availability and operation of the Application to the Internet.
- B.8 Hardware.** WEX shall provide all necessary hardware components in support of the Application, including web servers, application servers, and database servers (collectively, "Servers"). WEX shall employ reasonable commercial efforts to monitor and maintain this hardware to ensure continuous operation of the Servers.
- B.9 Security and Backups.** WEX shall offer the County access to the Application using the Internet. WEX shall restrict access to the Servers to qualified employees of WEX, its hosting partner, or persons designated by the County. WEX shall employ its reasonable commercial efforts to ensure the security, confidentiality and integrity of all of the County's Data and other proprietary information transmitted through or stored on the Servers, including, without limitation: **(i)** maintenance of daily and weekly independent archival and backup copies of the Application and all of the County's Data, and **(ii)** protection from any network attack and other malicious, harmful, or disabling data, work, code, or program.
- B.10 Browser Compatibility.** WEX shall employ its reasonable commercial efforts to ensure compliance with web browser versions identified as supported by the Application for access by various user types, including County Human Resources employees and plan participants as identified in Appendix 6 – Service Level Agreement. WEX reserves the right to discontinue support for accessing the Application using browser versions that are no longer supported by their respective vendors.
- B.11 Application Downtime.** The County understands and acknowledges that from time-to-time the Application may be inaccessible or inoperable for various reasons, including equipment malfunctions, upgrades or modifications, or causes beyond the control of WEX which are not reasonably foreseeable by WEX, including interruption or failure of telecommunications or digital transmission links, hostile network attacks or network congestion or other failures. WEX shall use its reasonable commercial efforts to minimize any disruption, inaccessibility and/or inoperability of the Application. Notwithstanding the above, the Application Availability Service Level Penalties shall apply to Application Downtime as set forth in Appendix 6 – Service Level Agreement.
- B.12 Application Support.** Provided that the County is current in its payment of fees under this Contract, WEX shall provide to the County support for the Application, including telephone, email, and web portal-based support as provided in Appendix 6 – Service Level Agreement and Appendix 3 –WEX Responsibilities – Card.
- B.13 Implementation and Training Services.** As part of the County's initial implementation, WEX shall perform the services outlined in Appendix 1 – Benefits Administration Services, which may include implementation planning and management, data conversion, and training.

**B.14 County-Requested Modifications.** In the event the County requests modifications to the Application, and WEX makes a reasonable business determination that the requested modifications or technical support entail specialized modifications or Services different from the kind or amount provided to other similarly situated customers of the Application (including, but not limited to, assistance to enable interfacing with a non-supported, unusual, or proprietary system), WEX shall notify the County that the requested support is considered an additional service (“Additional Services”). Additional Services shall be subject to additional fees, to be proposed by WEX following receipt of the County’s written specifications and mutually agreed upon prior to commencement of the Additional Services. WEX at its sole discretion may accept or decline any modifications to the Application that impact other WEX customers. Any Additional Services shall be subject to a separate Additional Services Agreement which will be subject to the terms of conditions hereof.

**C. GENERAL CONTRACT REQUIREMENTS**

**C.1 Recitals**

The recitals set forth above are true and correct and incorporated herein by this reference.

**C.2 Contract Amendments**

Contractor agrees any alterations, variations, modifications, or waivers of the provisions of the Contract, shall be valid only when reduced to writing, executed and attached to the original Contract and approved by the person(s) authorized to do so on behalf of Contractor and County.

**C.3 Contract Assignability**

Neither Party may assign this Contract without the written consent of the other Party. Any attempt otherwise to sublicense, assign, rent, lease, network, loan, publish, translate, distribute, or transfer the Application, the user documentation, or this Contract shall be a material breach of this Contract and void. Contractor may assign this Contract, in whole as part of a corporate reorganization, consolidation, merger, or sale of all of its assets, provided that Contractor provides County with ten (10) days’ prior written notice of such assignment, or if legally prohibited from providing prior notice, within 10 days after the effective date of the assignment, and County has the right to terminate this Contract immediately, if required by applicable law.

**C.4 Contract Exclusivity**

The County agrees that WEX will be its exclusive consumer-driven health care administration system for application software and benefit card administrative services for the County Human Resources Department. This exclusivity provision will not apply to transition of services by the County to a new vendor upon termination of the Contract or to other County departments or Board-governed districts.

**C.5 Attorney’s Fees and Costs**

If any legal action is instituted to enforce any party’s rights hereunder, each party shall bear its own costs and attorney’s fees, regardless of who is the prevailing party. This paragraph shall not apply to those costs and attorney’s fees directly arising from a third-party legal action against a party hereto and payable under Indemnification and Insurance Requirements.

**C.6 Background Checks for Contractor Personnel**

Contractor shall ensure that its personnel (a) are authorized to work in the jurisdiction in which they are assigned to perform Services; (d) do not use legal or illegal substances in any manner which will impact their ability to provide Services to the County; and (c) are not otherwise disqualified from performing the Services under applicable law. If requested by the County and not in violation of applicable law, Contractor shall conduct a background check, at Contractor’s sole expense, on all its personnel providing Services. If requested by the County, Contractor shall advise the County whether any individual passed the background check. Such background check shall be in the form generally used by Contractor in its initial hiring of employees or contracting for contractors or, as applicable, during the employment-screening process. Contractor personnel who do not meet the County’s hiring criteria, in County’s sole discretion, shall not be assigned to work on County property or Services, and County shall have the right, at its sole option, to refuse access to any Contract personnel to any County facility.

**C.7 Change of Address**

Contractor shall notify the County in writing, of any change in mailing address within ten (10) business days of the change.

**C.8 Choice of Law**

This Contract shall be governed by and construed according to the laws of the State of California.

**C.9 Compliance with County Policy**

In performing the Services and while at any County facilities, Contractor personnel (including subcontractors) shall (a) conduct themselves in a businesslike manner; (b) comply with the policies, procedures, and rules of the County regarding health and safety, and personal, professional and ethical conduct that are disclosed to Contractor in advance; (c) comply with the finance, accounting, banking, Internet, security, and/or other applicable standards, policies, practices, processes, procedures, and controls of the County that are disclosed to Contractor in advance; and (d) abide by all laws applicable to the County facilities and the provision of the Services, and all amendments and modifications to each of the documents listed in subsections (b), (c), and (d) (collectively, "County Policies"). County Policies, and additions or modifications thereto, may be communicated orally or in writing to Contractor or Contractor personnel or may be made available to Contractor or Contractor personnel by conspicuous posting at a County facility, electronic posting, or other means generally used by County to disseminate such information to its employees or contractors. Contractor shall be responsible for the promulgation and distribution of County Policies to Contractor personnel to the extent necessary and appropriate.

County shall have the right to require Contractor's employees, agents, representatives and subcontractors to exhibit identification credentials issued by County in order to exercise any right of access under this Contract.

**C.10 HIPAA Compliance**

Pursuant to the Health Insurance Portability and Accountability Act of 1996 (HIPAA) and the Health Information Technology for Economic and Clinical Health (HITECH) Act, regulations have been promulgated governing the privacy of individually identifiable health information. The HIPAA Privacy Rule and Security Rule specify requirements with respect to contracts between a Covered Entity and its Business Associates. Contractor shall comply with the attached Business Associate Agreement (Attachment A). Contractor further agrees to comply with the requirements of other federal and state law that applies to the information collected and maintained by Contractor for Services performed pursuant to Contract.

**C.11 Primary Point of Contact**

Contractor will designate an individual to serve as the primary point of contact for the Contract. Contractor or designee must respond to County inquiries within two (2) business days. Contractor shall not change the primary contact without written acknowledgement to the County. Contractor will also designate a back-up point of contact in the event the primary contact is not available.

**C.12 County Representative**

The Human Resources Benefits Chief shall represent the County in all matters pertaining to the services to be rendered under this Contract, including termination and assignment of this Contract, and shall be the final authority in all matters pertaining to the Services/Scope of Work by Contractor. If this contract was initially approved by the San Bernardino County Board of Supervisors, then the Board of Supervisors must approve all amendments to this Contract.

**C.13 Damage to County Property**

Contractor shall repair, or cause to be repaired, at its own cost, all damages to County vehicles, facilities, buildings or grounds caused by the willful or negligent acts of Contractor or its employees or agents. Such repairs shall be made immediately after Contractor becomes aware of such damage, but in no event later than thirty (30) days after the occurrence.

If the Contractor fails to make timely repairs, the County may make any necessary repairs. The Contractor, as determined by the County, shall repay all costs incurred by the County for such repairs, by cash payment upon demand, or County may deduct such costs from any amounts due to the Contractor from the County, as determined at the County's sole discretion.

**C. 14 Debarment and Suspension**

Contractor certifies that neither it nor its principals or subcontractors is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any federal department or agency. Contractor further certifies that if it or any of its subcontractors are business entities that must be registered with the California Secretary of State, they are registered and in good standing with the Secretary of State.

**C.15 Drug and Alcohol Free Workplace**

In recognition of individual rights to work in a safe, healthful and productive work place, as a material condition of this Contract, the Contractor agrees that the Contractor and the Contractor's employees, while performing service for the County, on County property, or while using County equipment:

- C.15.1** Shall not be in any way impaired because of being under the influence of alcohol or an illegal or controlled substance.
- C.15.2** Shall not possess an open container of alcohol or consume alcohol or possess or be under the influence of an illegal or controlled substance.
- C.15.3** Shall not sell, offer, or provide alcohol or an illegal or controlled substance to another person, except where Contractor or Contractor's employee who, as part of the performance of normal job duties and responsibilities, prescribes or administers medically prescribed drugs.

The Contractor shall inform all employees that are performing service for the County on County property, or using County equipment, of the County's objective of a safe, healthful and productive work place and the prohibition of drug or alcohol use or impairment from same while performing such service for the County.

The County may terminate in accordance with Section C.38 Termination for Convenience, if the Contractor or Contractor's employees are determined by the County not to be in compliance with above.

**C.16 Duration of Terms**

This Contract, and all of its terms and conditions, shall be binding upon and shall inure to the benefit of the heirs, executors, administrators, successors, and assigns of the respective parties, provided no such assignment is in violation of the provisions of this Contract.

**C.17 Employment Discrimination**

During the term of the Contract, Contractor shall not discriminate against any employee or applicant for employment because of race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, genetic information, marital status, sex, gender, gender identity, gender expression, sexual orientation, age, or military and veteran status. Contractor shall comply with Executive Orders 11246, 11375, 11625, 12138, 12432, 12250, 13672, Title VI and Title VII of the Civil Rights Act of 1964, the California Fair Employment and Housing Act and other applicable Federal, State and County laws and regulations and policies relating to equal employment and contracting opportunities, including laws and regulations hereafter enacted.

**C.18 Environmental Requirements**

In accordance with County Policy 11-08, the County prefers to acquire and use products with higher levels of post-consumer recycled content. Environmentally preferable goods and materials must perform satisfactorily and be available at a reasonable price. The County requires Contractor to use recycled paper for any printed or photocopied material created as a result of

this Contract. Contractor is also required to use both sides of paper sheets for reports submitted to the County whenever practicable.

To assist the county in meeting the reporting requirements of the California Integrated Waste Management Act of 1989 (AB 939), Contractor must be able to annually report the County's environmentally preferable purchases. Contractor must also be able to report on environmentally preferable goods and materials used in the provision of their service to the County, utilizing a County approved form.

**C.19 Improper Influence**

Contractor shall make all reasonable efforts to ensure that no County officer or employee, whose position in the County enables him/her to influence any award of the Contract or any competing offer, shall have any direct or indirect financial interest resulting from the award of the Contract or shall have any relationship to the Contractor or officer or employee of the Contractor.

**C.20 Improper Consideration**

Contractor shall not offer (either directly or through an intermediary) any improper consideration such as, but not limited to cash, discounts, service, the provision of travel or entertainment, or any items of value to any officer, employee or agent of the County in an attempt to secure favorable treatment regarding this Contract.

The County, by written notice, may immediately terminate this Contract if it determines that any improper consideration as described in the preceding paragraph was offered to any officer, employee or agent of the County with respect to the proposal and award process. This prohibition shall apply to any amendment, extension or evaluation process once a contract has been awarded.

Contractor shall immediately report any attempt by a County officer, employee or agent to solicit (either directly or through an intermediary) improper consideration from Contractor. The report shall be made to the supervisor or manager charged with supervision of the employee or the County Administrative Office. In the event of a termination under this provision, the County is entitled to pursue any available legal remedies.

**C.21 Informal Dispute Resolution**

In the event the County determines that service is unsatisfactory, or in the event of any other dispute, claim, question or disagreement arising from or relating to this Contract or breach thereof, the parties hereto shall use their best efforts to settle the dispute, claim, question or disagreement. To this effect, they shall consult and negotiate with each other in good faith and, recognizing their mutual interests, attempt to reach a just and equitable solution satisfactory to both parties.

**C.22 Legality and Severability**

The parties' actions under the Contract shall comply with all applicable laws, rules, regulations, court orders and governmental agency orders. The provisions of this Contract are specifically made severable. If a provision of the Contract is terminated or held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining provisions shall remain in full effect.

**C.23 Licenses, Permits and/or Certifications**

Contractor shall ensure that it has all necessary licenses, permits and/or certifications required by the laws of Federal, State, County, and municipal laws, ordinances, rules and regulations. The Contractor shall maintain these licenses, permits and/or certifications in effect for the duration of this Contract. Contractor will notify County immediately of loss or suspension of any such licenses, permits and/or certifications. Failure to maintain a required license, permit and/or certification may result in immediate termination of this Contract.

**C.24 Material Misstatement/Misrepresentation**

If during the course of the administration of this Contract, the County determines that Contractor has made a material misstatement or misrepresentation or that materially inaccurate information has been provided to the County, this Contract may be immediately terminated. If this Contract is terminated according to this provision, the County is entitled to pursue any available legal remedies.

**C.25 Mutual Covenants**

The parties to this Contract mutually covenant to perform all of their obligations hereunder, to exercise all discretion and rights granted hereunder, and to give all consents in a reasonable manner consistent with the standards of “good faith” and “fair dealing”.

**C.26 Nondisclosure**

Contractor shall hold as confidential and use reasonable care to prevent unauthorized access by, storage, disclosure, publication, dissemination to and/or use by third parties of, confidential information that is either: (1) provided by the County to Contractor or an agent of Contractor or otherwise made available to Contractor or Contractor’s agent in connection with this Contract; or, (2) acquired, obtained, or learned by Contractor or an agent of Contractor in the performance of this Contract. For purposes of this provision, confidential information means any data, files, software, information or materials in oral, electronic, tangible or intangible form and however stored, compiled or memorialize and includes, but is not limited to, technology infrastructure, architecture, financial data, trade secrets, equipment specifications, user lists, passwords, research data, and technology data.

**C.27 Notice of Delays**

Except as otherwise provided herein, when either party has knowledge that any actual or potential situation is delaying or threatens to delay the timely performance of this contract, that party shall, within one (1) business day, give notice thereof, including all relevant information with respect thereto, to the other party.

**C.28 Ownership of Application**

**C.28.1** The County acknowledges and agrees that this Contract grants the County no title, interest, or right of ownership in the Application or in any Internal aspect or component thereof, or to any associated materials or intellectual property or design, or In or to any enhancements, modifications or improvements which may be added thereto from time to time, or to other trade secrets, including but not limited to all copyrights, patents, trademark rights, and other proprietary rights therein. The County shall not remove, modify, or tamper with the Application (or any component or subsystem thereof), copyrights, branding, or trademark notifications displayed in the Application.

**C.28.2** Contractor acknowledges and agrees that this Contract grants the Contractor no title, interest, or right of ownership in any Internal aspect or component thereof, or to any associated materials or intellectual property or design, or In or to any enhancements, modifications or improvements which may be added thereto from time to time, or to other trade secrets, including but not limited to all copyrights, patents, trademark rights, and other proprietary rights therein.

**C.29 Reserved**

**C.30 Air, Water Pollution Control, Safety and Health**

Contractor shall comply with all air pollution control, water pollution, safety and health ordinances and statutes, which apply to the work performed pursuant to this Contract.

**C.31 Records**

Contractor shall maintain all records and books pertaining to the delivery of services under this Contract and demonstrate accountability for contract performance. All records shall be complete



and current and comply with all Contract requirements. Failure to maintain acceptable records shall be considered grounds for withholding of payments for invoices submitted and/or termination of the Contract.

All records relating to the Contractor's personnel, consultants, subcontractors, Services/Scope of Work and expenses pertaining to this Contract shall be kept in a generally acceptable accounting format. Records should include primary source documents. Fiscal records shall be kept in accordance with Generally Accepted Accounting Principles and must account for all funds, tangible assets, revenue and expenditures. Fiscal records must comply with the appropriate Office of Management and Budget (OMB) Circulars, which state the administrative requirements, cost principles and other standards for accountancy.

**C.32 Relationship of the Parties**

Nothing contained in this Contract shall be construed as creating a joint venture, partnership, or employment arrangement between the Parties hereto, nor shall either Party have the right, power or authority to create an obligation or duty, expressed or implied, on behalf of the other Party hereto.

**C.33 Release of Information**

No news releases, advertisements, public announcements or photographs arising out of the Contract or Contractor's relationship with County may be made or used without prior written approval of the County. Each Party agrees that it will consider in good faith the other's reasonable periodic requests for testimonials, references, and public relations efforts undertaken by the other Party.

**C.34 Representation of the County**

In the performance of this Contract, Contractor, its agents and employees, shall act in an independent capacity and not as officers, employees, or agents of the San Bernardino County.

**C.35 Strict Performance**

Failure by a party to insist upon the strict performance of any of the provisions of this Contract by the other party, or the failure by a party to exercise its rights upon the default of the other party, shall not constitute a waiver of such party's right to insist and demand strict compliance by the other party with the terms of this Contract thereafter.

**C.36 Subcontracting**

At County's request, Contractor shall provide a listing of subcontractors. Contractor shall remain directly responsible to County for its subcontractors and shall indemnify County for the actions or omissions of its subcontractors under the terms and conditions specified in Section G. All subcontractors shall be subject to the provisions of this Contract applicable to Contractor Personnel.

For any subcontractor, Contractor shall:

**C.36.1** Be responsible for subcontractor compliance with the Contract and the subcontract terms and conditions; and

**C.36.2** Ensure that the subcontractor follows County's reporting formats and procedures as specified by County.

**C.36.3** Include in the subcontractor's subcontract substantially similar terms as are provided in Sections B. Contractor Responsibilities and C. General Contract Requirements.

Upon expiration or termination of this Contract for any reason, County will have the right to enter into direct Contracts with any of the Subcontractors. Contractor agrees that its arrangements with Subcontractors will not prohibit or restrict such Subcontractors from entering into direct Contracts with County.

**C. 37 Subpoena**

In the event that a subpoena or other legal process commenced by a third party in any way concerning the Goods or Services provided under this Contract is served upon Contractor or County, such party agrees to notify the other party in the most expeditious fashion possible following receipt of such subpoena or other legal process. Contractor and County further agree to cooperate with the other party in any lawful effort by such other party to contest the legal validity of such subpoena or other legal process commenced by a third party as may be reasonably required and at the expense of the party to whom the legal process is directed, except as otherwise provided herein in connection with defense obligations by Contractor for County.

**C.38 Termination for Convenience**

C.38.1 If the term of this Contract extends into fiscal years subsequent to that in which it is approved, such continuation of the Contract is contingent on the appropriation of funds for such purpose by the County Board of Supervisors, and may be dependent on other State and Federal funds. If County does not approve or otherwise receive funds sufficient to continue payments set forth in this Contract, the County may immediately terminate the Contract upon written notice to Contractor. The County may terminate this Contract immediately under the provisions of Sections C.20 - Improper Consideration, C.24 - Material Misstatement/Misrepresentation, C.41 – Conflict of Interest, and 1.2 (regarding non-cured breach).

C.38.2 The Contract may be terminated upon ninety (90) days' prior written notice by either Party if a change in the laws, regulations, guidelines or regulatory rulings or notices (collectively, "Laws") relating to the County's Plans make compliance with such Laws infeasible for either Party. The Parties shall have the right to terminate the entire Contract, or terminate it only with respect to the Plan(s) affected by such changes in Laws.

C.38.3 This Contract may be terminated upon ninety (90) days' prior written notice by either Party should such Party commit a material breach of its obligations. Either Party may, at Its option, Initiate a notice of its intent to terminate, which notice shall describe the basis for such termination and specify a date ninety (90) days or longer by which the breach must be cured or, If not cured, on which termination shall be effective immediately. Should WEX fail to cure a breach, the County reserves the right to enforce provisions specified In Article I - Correction of Performance Deficiencies.

C.38.4 This Contract may be terminated by WEX for the County's failure to make payment of any undisputed amount in the manner required by Article F, provided the County has been notified of such failure as set forth therein and fails to remit within ten (10) days from receipt of such notice. Upon such termination, there shall be no refund, in whole or in part, of any payments already made, and the County shall make all payments which were due prior to the termination date.

C.38.5 Upon such termination, payment will be made to Contractor for all undisputed fees for services rendered and expenses reasonably incurred prior to the effective date of termination. Contractor shall not be reimbursed for costs incurred after the date of termination.

**C.39 Time of the Essence**

Time is of the essence in performance of this Contract and of each of its provisions.

**C.40 Venue**

The parties acknowledge and agree that this Contract was entered into and intended to be performed in San Bernardino County, California. The parties agree that the venue of any action or claim brought by any party to this Contract will be the Superior Court of California, San Bernardino County, San Bernardino District. Each party hereby waives any law or rule of the court, which would allow them to request or demand a change of venue. If any action or claim concerning this Contract is brought by any third party and filed in another venue, the parties hereto agree to use their best efforts to obtain a change of venue to the Superior Court of California, San Bernardino County, San Bernardino District.

**C.41 Conflict of Interest**

Contractor shall make all reasonable efforts to ensure that no conflict of interest exists between its officers, employees, or subcontractors and the County. Contractor shall make a reasonable effort to prevent employees, Contractor, or members of governing bodies from using their positions for purposes that are or give the appearance of being motivated by a desire for private gain for themselves or others such as those with whom they have family business, or other ties. Officers, employees, and agents of cities, counties, districts, and other local agencies are subject to applicable conflict of interest codes and state law. In the event the County determines a conflict-of-interest situation exists, any increase in costs, associated with the conflict of interest situation, may be disallowed by the County and such conflict may constitute grounds for termination of the Contract. This provision shall not be construed to prohibit employment of persons with whom Contractor's officers, employees, or agents have family, business, or other ties so long as the employment of such persons does not result in increased costs over those associated with the employment of any other equally qualified applicant.

**C.42 Former County Administrative Officials**

Contractor agrees to provide or has already provided information on former San Bernardino County administrative officials (as defined below) who are employed by or represent Contractor. The information provided includes a list of former County administrative officials who terminated County employment within the last five years and who are now officers, principals, partners, associates or members of the business. The information also includes the employment with or representation of Contractor. For purposes of this provision, "County administrative official" is defined as a member of the Board of Supervisors or such officer's staff, County Executive Officer or member of such officer's staff, County department or group head, assistant department or group head, or any employee in the Exempt Group, Management Unit or Safety Management Unit.

**C.43 Disclosure of Criminal and Civil Procedures**

The County reserves the right to request the information described herein from the Contractor. Failure to provide the information may result in a termination of the Contract. The County also reserves the right to obtain the requested information by way of a background check performed by an investigative firm. The Contractor also may be requested to provide information to clarify initial responses. Negative information discovered may result in Contract termination.

Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees (as that term is defined herein), within the last ten years, has been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense arising directly or indirectly from the conduct of the firm's business, or whether the firm, or any of its partners, principals, members, associates or key employees, has within the last ten years, been indicted on or had charges brought against it or them (if still pending) or convicted of any crime or offense involving financial misconduct or fraud. If the response is affirmative, the Contractor will be asked to describe any such indictments or charges (and the status thereof), convictions and the surrounding circumstances in detail.

In addition, the Contractor is required to disclose whether the firm, or any of its partners, principals, members, associates or key employees, within the last ten years, has been the subject of legal proceedings as defined herein arising directly from the provision of services by the firm or those individuals. "Legal proceedings" means any civil actions filed in a court of competent jurisdiction, or any matters filed by an administrative or regulatory body with jurisdiction over the firm or the individuals. If the response is affirmative, the Contractor will be asked to describe any such legal proceedings (and the status and disposition thereof) and the surrounding circumstances in detail.

For purposes of this provision "key employees" includes any individuals providing direct service to the County. "Key employees" do not include clerical personnel providing service at the firm's offices or locations.

**C.44 Copyright**

County shall have a royalty-free, non-exclusive and irrevocable license to publish, disclose, copy, translate, and otherwise use, copyright or patent, now and hereafter, all reports, studies, information, data, statistics, forms, designs, plans, procedures, systems, and any other materials or properties developed under this Contract including those covered by copyright, and reserves the right to authorize others to use or reproduce such material. All such materials developed under the terms of this Contract shall acknowledge the San Bernardino County as the funding agency and Contractor as the creator of the publication. No such materials, or properties produced in whole or in part under this Contract shall be subject to private use, copyright or patent right by Contractor in the United States or in any other country without the express written consent of County. Copies of all educational and training materials, curricula, audio/visual aids, printer material, and periodicals, assembled pursuant to this Contract must be filed with the County prior to publication.

**C.45 Artwork, Proofs and Negatives**

All artwork, proofs, and/or negatives in either print or digital format provided by the County to WEX are the property of the County. These items must be returned to the County within ten (10) days, upon written notification to the Contractor in a format usable by the County and at no charge to the County. In the event of a failure to return the documents, the County is entitled to pursue any available legal remedies. In addition, the Contractor will be barred from all future solicitations, for a period of at least six (6) months.

**C.46 Reserved**

**C.47 Reserved**

**C.48 California Consumer Privacy Act**

To the extent applicable, if Contractor is a business that collects the personal information of a consumer(s) in performing Services pursuant to this Contract, Contractor must comply with the provisions of the California Consumer Privacy Act (CCPA). (Cal. Civil Code §§1798.100, et seq.). For purposes of this provision, “business,” “consumer,” and “personal information” shall have the same meanings as set forth at Civil Code section 1798.140. Contractor must contact the County immediately upon receipt of any request by a consumer submitted pursuant to the CCPA that requires any action on the part of the County, including but not limited to, providing a list of disclosures or deleting personal information. Contractor must not sell, market or otherwise disclose personal information of a consumer provided by the County unless specifically authorized pursuant to terms of this Contract. Contractor must immediately provide to the County any notice provided by a consumer to Contractor pursuant to Civil Code section 1798.150(b) alleging a violation of the CCPA, that involves personal information received or maintained pursuant to this Contract. Contractor must immediately notify the County if it receives a notice of violation from the California Attorney General pursuant to Civil Code section 1798.155(b).

**C.49 Reserved**

**C.50 Campaign Contribution Disclosure (SB 1439)**

Contractor has disclosed to the County using Attachment B - Campaign Contribution Disclosure Senate Bill 1439, whether it has made any campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, Auditor-Controller/Treasurer/Tax Collector and the District Attorney] within the earlier of: (1) the date of the submission of Contractor’s proposal to the County, or (2) 12 months before the date this Contract was approved by the Board of Supervisors. Contractor acknowledges that under Government Code section 84308, Contractor is prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer for 12 months after the County’s consideration of the Contract.

In the event of a proposed amendment to this Contract, the Contractor will provide the County a written statement disclosing any campaign contribution(s) of more than \$250 to any member of the Board of Supervisors or other County elected officer within the preceding 12 months of the date of the proposed amendment.

Campaign contributions include those made by any agent/person/entity on behalf of the Contractor or by a parent, subsidiary or otherwise related business entity of Contractor.

**C.51 Reserved**

**C.52 County's Right of Use**

WEX grants the County and the County agrees to accept a non-transferable and non-exclusive right to access and to use the Application and the associated services described in Appendix 1 – Benefit Administration Services that assists with on-line processing and administration of employee benefit plans, including pre-tax flexible spending accounts, and dependent care assistance plans solely for the County's use by employees in accordance with the terms of this Contract. As part of this Contract, the County can access the Application through the internet using equipment and internet connectivity provided by the County.

**C.53 Ownership of County Data; Trademarks.**

Ownership of material data of the County ("County Data") used for the Application shall remain with the County. The County retains any and all right, title, interest and ownership in and to any data imported or entered directly into County Data. Such data includes County's corporate data, including employee information, operational data, user information, or other information supplied and input by or on behalf of the County. WEX agrees not to use any County Data that is identifiable to any individual, employer, administrator or client of WEX, including the County, except for the specific purpose of performing the services and fulfilling its obligations under this Contract, offering additional services, or for use in aggregated form for purposes of evaluating and modifying the performance of the Application and its delivery of the services. WEX further agrees not to make County Data available to any third party without the County's prior written consent. Provided that the County is current in its payment of fees described in Appendix 1 – Benefit Administration Services, WEX agrees to provide the County with access to all existing County Data upon termination of this Contract for a period of sixty (60) days. The County may extract the data into any format it chooses at no additional cost to County or request that WEX extract the data at its then-current hourly rate for professional services. Except as expressly agreed in this Contract, each Party shall retain all right, title and interest in and to its products, technology, and trademarks.

**C.54 Confidential Information.**

The Parties define confidential information as any and all non public technical information, know-how, inventions or business information, including third party information, furnished or disclosed by one party (a "Disclosing Party") to the other (a "Receiving Party"), in whatever form or medium including, but not limited to, product plans, product/service specifications, business strategies and plans, prototypes, computer programs, models, drawings, marketing plans, financial data, County records and personnel statistics, which are marked as confidential or proprietary by the Disclosing Party or, for information which is orally disclosed, the Disclosing Party indicates to the other at the time of disclosure the confidential or proprietary nature of the information and provides a summary of the orally disclosed information in writing to the Receiving Party within ten (10) days after such disclosure, which summary is also marked as confidential or proprietary. For the purposes of this Contract, the Application and all related descriptions, specifications, or documentation shall be considered Confidential Information of WEX whether so marked or not. Upon termination of this Contract for any reason, all Confidential Information, together with any copies of same as may be authorized herein, shall be returned to the Disclosing Party or certified destroyed by the Receiving Party if feasible. If it is not feasible to return or destroy the Confidential Information, then the Receiving Party shall (i) so notify the Disclosing Party within thirty (30) days after the effective date of termination of the Contract; and (ii) maintain the Confidential Information in accordance with the terms of this Section C.47.

Each Party will use the Confidential Information solely for the purposes of this Contract and not disclose the Confidential Information to others, unless otherwise allowed herein or by written permission of the Disclosing Party or otherwise required by law. Each Party agrees not to copy such Confidential Information of the other unless specifically authorized by the Disclosing Party. Notwithstanding the above, disclosure may be made to subcontractors of a Party but only if such subcontractor has previously signed a confidentiality agreement in which the subcontractor agrees to be bound by provisions at least as restrictive as those contained in this Contract. Each Party also agrees that it will make requests for Confidential Information of the other Party only if necessary to accomplish the purposes set forth in this Contract. The obligations set forth herein shall be satisfied by each party through the exercise of the highest degree of care used to restrict disclosure and use of its own information.

Each party agrees that in the event permission is granted by the other to copy Confidential Information, each such copy shall contain and state the same confidential or proprietary notices or legends which appear on the original.

The obligations imposed in this Contract regarding Confidential Information shall not apply to any information which is (i) already in the possession of the Receiving Party and is documented in written records in its possession prior to such disclosure; (ii) independently developed by the Receiving Party without reliance on Confidential Information hereunder, and is documented in written records in its possession; (iii) is or becomes publicly available through no fault of the Receiving Party; or (iv) is obtained by the Receiving Party from a third person who is under no obligation of confidence to the Disclosing Party. Nothing in this Section will prevent the County's disclosure of information, whether or not designated Confidential, in compliance with public records and open public meetings laws, including without limitation, San Bernardino County Sunshine Ordinance, County Code of Ordinances Section 19.0101, California Government Code 54950, and California Public Records Act (Government Code Section 7920.005)

**C.55 Non-Competition.**

During the Term of this Contract and for a period of five years after its termination or expiration for any reason, the County shall not, directly or indirectly, utilize any WEX intellectual property to develop any product or service which is competitive with the Application or the services provided by WEX, without prior written approval from WEX.

**C.56 No Solicitation of Employees.**

Each Party agrees that it will not solicit, directly or indirectly, any employee of the other Party with whom it has direct contact regarding this Contract during the Term of this Contract and for a period of twelve (12) months after the last such contact. In the event of a breach of this provision, in addition to any other right the non-breaching Party may have in law or equity, the breaching Party shall make a one-time payment to the non-breaching Party equal to fifty percent (50%) of the employee's base salary for the most recent year.

**C.57 Provision of Data.**

The County, upon forty-five (45) business days' written notice prior to request due date from WEX, shall periodically provide WEX data necessary to evaluate substantiation protocols and the results of retrospective claim adjudication. The County consents to WEX's use of such data on a de-identified basis in its discussions, if any, with the Internal Revenue Service. Unless otherwise required by law to do so, WEX commits not to disclose the identity of the County in such discussions. The data shall not include Protected Health Information as defined in Attachment A – Business Associate Agreement of this Contract.

**C.58 Force Majeure.**

Neither Party shall be liable for delay or failure in performance resulting from acts beyond the control of such Party, including but not limited to, and whether similar or dissimilar, to acts of God, acts of war, terrorism (whether foreign or domestic in origin), riot, fire, flood or other disaster, acts of government, strike, lockout, or communication line or power failure or significant failure of the

internet. Either Party may delay delivery or performance occasioned by causes beyond the control of such Party in accordance with this Section. If such delay exists beyond a period of thirty (30) calendar days, either Party, at its option, shall have the right to terminate this Agreement.

**C.59 Construction.**

This Contract, and all Appendices and Exhibits thereto, is a negotiated agreement and each Party reviewed and had input into its contents. As such, this Agreement shall be construed in an even-handed manner as between the Parties so as to effectuate the intention of the Parties as expressed herein, and without regard to authorship.

**C.60 Headings.**

Headings are inserted for convenience of reference only and shall not be used for the purpose of interpreting this Contract.

**D. TERM OF CONTRACT**

**D.1** This Contract is effective as of March 1, 2024 and expires February 28, 2029 but may be terminated earlier in accordance with provisions of this Contract.

**D.2** To the extent that a provision in this Contract is inconsistent with any Appendices enclosed herein, the provisions of this Contract shall govern.

**E. COUNTY RESPONSIBILITIES**

**E.1 Electronic Interface.** The County shall establish and maintain an appropriate electronic interface for connectivity from the County's offices to WEX's data center via the Internet such that the Application and Services provided hereunder successfully function, as set forth in attached Appendix 6 – Service Level Agreement.

**E.2 Information Requests.** The County shall promptly provide to WEX all information and data reasonably requested by WEX to provide the Services and to aid WEX in meeting its commitments identified in Appendix 6 – Service Level Agreement. This includes, but is not limited to, data and information needed to import the County's Data into the Application.

**E.3 Data Transfer.** At the County's discretion, the County's Data may be exported, imported, or otherwise transferred from the Application to other Subscriber systems either manually or automatically based on methods available in the then current version of the Application. The County shall be solely responsible for the purchase of software, at the County's sole cost, that allows for importation of the County's Data into related systems from the Application.

**E.4 Third-Party Software.** The County's use of third party vendors, software, services, and other products is governed by the terms of any license or other agreement between the County and the third party. WEX is not responsible for any use of the Application or Services in connection with any third-party software or services except as expressly agreed by WEX in a Service Level Agreement or other written agreement executed by the Parties. The County shall indemnify WEX against any claims, suits, or actions arising out of material breach by the County, and any intentional or negligent harmful acts by the County related to such third-party software, systems, or services, or any infringement of a United States, State or foreign copyright, patent, trademark, or trade secret of a third party resulting from the County's use of such third party software, systems, or services. WEX shall have no responsibilities related to and makes no representation or warranty whatsoever regarding such third-party products and related software and services.

**F. FISCAL PROVISIONS**

**F.1 Payments.**

**Fees:** The County will pay all fees payable under Appendix 1 – Benefits Administration Services within sixty (60) calendar days of the invoice date. WEX will invoice the County, via email, on or about the fifth (5<sup>th</sup>) business day of the following month end. Payments to WEX shall be made in US dollars via electronic funds transfer or check to an account designated by WEX.

**Benefit Card Funding:** The County will provide funding as described under Appendix 2 – County Responsibilities §4 within five (5) business days of the end of each settlement week. WEX will provide a weekly benefit card summary and detailed report Monday of each week for payment remittance.

## **F.2 Late Payments.**

**Fees:** WEX agrees to a ten (10) business day grace period before County payments are considered delinquent for fees described in Appendix 1 – Benefits Administration Services. If the County fails to pay fees when due as described in Article F – Fiscal Provisions - Fees, WEX may at its option and in addition to any other right, including deactivation of benefit cards that it has under this Contract at law or in equity, terminate this Agreement under Article C. 37, Termination and Appendix 1 – Benefits Administration Services – Card Shut Off (pg. 3).

**Benefit Card Funding:** Each week, WEX will send the County a notification of the amount of funding required for the Collateral Account (defined in Appendix 2), and if the County fails to meet that funding requirement within five (5) business days, WEX will issue a notification to the County in which the County has two (2) business days to cure the deficiency. If the deficiency is not cured, then WEX or Bank may take the actions described in Appendix 2 – County Responsibilities §4.5, including without limitation deactivating benefit cards and charging a reactivation fee per participant account as set forth in Appendix 1 – Benefits Administration Services – Card Shut Off (pg.4) and Appendix 2 – County Responsibilities §4.5.

**F.3 Recordkeeping.** Each Party agrees to maintain separate records with respect to the services it provides hereunder for eight (8) calendar years following any year in which it performs said services, or if longer, such period as provided under applicable law.

**F.4 Electronic Fund Transfer Program.** Contractor shall accept all payments from County via electronic funds transfer (EFT) directly deposited into the Contractor's designated checking or other bank account. Contractor shall promptly comply with directions and accurately complete forms provided by County required to process EFT payments.

**F.5 Taxes.** County is exempt from Federal excise taxes and no payment shall be made for any personal property taxes levied on Contractor or on any taxes levied on employee wages. The County shall only pay for any State or local sales or use taxes on the services rendered or equipment and/or parts supplied to the County pursuant to the Contract.

## **G. INDEMNIFICATION AND INSURANCE REQUIREMENTS**

### **G.1 Indemnification**

WEX agrees to defend, indemnify and hold harmless the County, its officers, employees and agents from and against any and all claims, losses, actions, damages and/or liability arising out of uncured breach of this Contract, including any reasonable costs or expenses incurred by County, except as prohibited by law. In addition, WEX will indemnify, defend, and hold harmless County and its officers, employees, agents and volunteers, from any and all third party claims, costs (including reasonable attorneys' fees), and losses for infringement of any United States patent, copyright, trademark or trade secret (Intellectual Property Rights) by the Application.

If a credible claim is made or threatened, including without limitation the filing of a lawsuit against County, or County receives a demand or notice claiming actual or potential infringement or misappropriation of any Intellectual Property Rights, County will use reasonable efforts to notify Contractor promptly of such lawsuit, claim or election. However, County's failure to provide or delay in providing such notice will relieve Contractor of its obligations only if and to the extent that such delay or failure materially prejudices Contractor's ability to defend such lawsuit or claim. County will give Contractor sole control of the defense and settlement of such claim; provided that Contractor may not settle the claim or suit absent the written consent of County unless such settlement (a) includes a release of all claims pending against County, (b) contains no admission of liability or wrongdoing by County, and (c) imposes no obligations upon County other than an obligation to stop using the goods or services that are the subject of the claim. In the event that Contractor fails to or elects not to defend County against any claim for which County is entitled to indemnity by Contractor, then Contractor shall reimburse County for all reasonable attorneys' fees and expenses within thirty (30) days from date of invoice or debit memo from County. After thirty



(30) days, County will be entitled to deduct any unpaid invoice or debit memo amount from any amounts owed by County to Contractor. This shall not apply to any judgment or settlement amount, which amounts County shall be entitled to notify, invoice or debit Contractor's account at any time; and County, at its sole discretion, may settle the claim or suit.

**G.2 Additional Indemnification**

The Parties have agreed to additional indemnification provisions in Attachment A – Business Associate Agreement.

**G.3 Policies Primary and Non-Contributory**

All policies required herein are to be primary and non-contributory with any insurance or self-insurance programs carried or administered by the County.

**G.4 Severability of Interests**

The Contractor agrees to ensure that coverage provided to meet these requirements is applicable separately to each insured and there will be no cross liability exclusions that preclude coverage for suits between the Contractor and the County or between the County and any other insured or additional insured under the policy.

**G.5 Proof of Coverage**

The Contractor shall furnish Certificates of Insurance to the County Department administering the Contract evidencing the insurance coverage at the time the contract is executed. Contractor shall maintain such insurance from the time Contractor commences performance of services hereunder until the completion of such services.

**G.6 Acceptability of Insurance Carrier**

Unless otherwise approved by Risk Management, insurance shall be written by insurers authorized to do business in the State of California and with a minimum "Best" Insurance Guide rating of "A- VII".

**G.7 Failure to Procure Coverage**

In the event that any policy of insurance required under this contract does not comply with the requirements, is not procured, or is canceled and not replaced, the County has the right but not the obligation or duty to cancel the contract or obtain insurance if it deems necessary and any premiums paid by the County will be promptly reimbursed by the Contractor or County payments to the Contractor will be reduced to pay for County purchased insurance.

**G.8 Insurance Review**

Insurance requirements are subject to periodic review by the County. The Director of Risk Management or designee is authorized, but not required, to reduce, waive or suspend any insurance requirements whenever Risk Management determines that any of the required insurance is not available, is unreasonably priced, or is not needed to protect the interests of the County. In addition, if the Department of Risk Management determines that heretofore unreasonably priced or unavailable types of insurance coverage or coverage limits become reasonably priced or available, the Director of Risk Management or designee is authorized, but not required, to change the above insurance requirements to require additional types of insurance coverage or higher coverage limits, provided that any such change is reasonable in light of past claims against the County, inflation, or any other item reasonably related to the County's risk.

Contractor agrees to negotiate in good faith regarding any change in insurance requirements requested by the Department of Risk Management.

Any failure, actual or alleged, on the part of the County to monitor or enforce compliance with any of the insurance and indemnification requirements will not be deemed as a waiver of any rights on the part of the County.

- G.9** The Contractor agrees to provide insurance set forth in accordance with the requirements herein. If the Contractor uses existing coverage to comply with these requirements and that coverage does not meet the specified requirements, the Contractor agrees to amend, supplement or endorse the existing coverage to do so.

Without in anyway affecting the indemnity herein provided and in addition thereto, the Contractor shall secure and maintain throughout the contract term the following types of insurance with limits as shown:

- G.9.1** Workers' Compensation/Employer's Liability – A program of Workers' Compensation insurance or a state-approved, self-insurance program in an amount and form to meet all applicable requirements of the Labor Code of the State of California.

If Contractor has no employees, it may certify or warrant to the County that it does not currently have any employees or individuals who are defined as "employees" under the Labor Code and the requirement for Workers' Compensation coverage will be waived by the County's Director of Risk Management.

With respect to Contractors that are non-profit corporations organized under California or Federal law, volunteers for such entities are required to be covered by Workers' Compensation insurance.

- G.9.2** Commercial/General Liability Insurance – The Contractor shall carry General Liability Insurance covering all operations performed by or on behalf of the Contractor providing coverage for bodily injury and property damage with a combined single limit of not less than one million dollars (\$1,000,000), per occurrence. The policy coverage shall include:

- a. Premises operations and mobile equipment.
- b. Products and completed operations.
- c. Broad form property damage (including completed operations).
- d. Explosion, collapse and underground hazards.
- e. Personal injury.
- f. Contractual liability.
- g. \$2,000,000 general aggregate limit.

- G.9.3** Automobile Liability Insurance – Primary insurance coverage shall be written on ISO Business Auto coverage form for all owned, hired and non-owned automobiles or symbol 1 (any auto). The policy shall have a combined single limit of not less than one million dollars (\$1,000,000) for bodily injury and property damage, per occurrence.

If the Contractor is transporting one or more non-employee passengers in performance of contract services, the automobile liability policy shall have a combined single limit of two million dollars (\$2,000,000) for bodily injury and property damage per occurrence.

If the Contractor owns no autos, a non-owned auto endorsement to the General Liability policy described above is acceptable.

- G.9.4** Umbrella Liability Insurance – An umbrella (over primary) or excess policy may be used to comply with limits or other primary coverage requirements. When used, the umbrella policy shall apply to bodily injury/property damage, personal injury/advertising injury and shall include a "dropdown" provision providing primary coverage for any liability not covered by the primary policy. The coverage shall also apply to automobile liability.

**G.9.5** Professional Liability – Professional Liability Insurance with limits of not less than one million (\$1,000,000) per claim and two million (\$2,000,000) aggregate limits

If insurance coverage is provided on a “claims made” policy, the “retroactive date” shall be shown and must be before the date of the state of the contract work. The claims made insurance shall be maintained or “tail” coverage provided for a minimum of five (5) years after contract completion.

**G.9.6** **Cyber Liability Insurance** - Cyber Liability Insurance with limits of no less than \$1,000,000 for each occurrence or event with an annual aggregate of \$2,000,000 covering privacy violations, information theft, damage to or destruction of electronic information, intentional and/or unintentional release of private information, alteration of electronic information, extortion and network security. The policy shall protect the involved County entities and cover breach response cost as well as regulatory fines and penalties.

**G.9.7** **Limitation of Liability**

Except as arising under Contractor’s indemnification obligations, or from a party’s gross negligence, willful misconduct, or violation of law, the total cumulative liability of each party, its employees, officers, directors, representatives, and agents for costs, losses, or damages from all claims, actions or suits howsoever caused or arising out of or in connection with this Contract shall not exceed the greater of the total contract value in past 12 months or two hundred thousand dollars (US \$200,000) In no event shall any party or any member thereof be liable for any special, consequential, Incidental, exemplary, punitive, or other indirect damages, for loss of profits, loss of use or loss of data, howsoever caused or arising and regardless of legal theory or foreseeability.

**H. RIGHT TO MONITOR AND AUDIT**

**H.1** The County, State and Federal government shall have absolute right to review and audit all records, books, papers, documents, corporate minutes, and other pertinent items as requested, and shall have absolute right to monitor the performance of Contractor in the delivery of services provided under this Contract. Contractor shall give full cooperation, in any auditing or monitoring conducted. Contractor shall cooperate with the County in the implementation, monitoring, and evaluation of this Contract and comply with any and all reporting requirements established by the County.

**H.2** All records pertaining to services delivered and all fiscal, statistical and management books and records shall be available for examination and audit by County representatives for a period of three years after final payment under this Contract or until all pending County, State and Federal audits are completed, whichever is later.

**H.3** Subject to the requirements of applicable law, the terms of this Contract, a signed Business Associate Agreement between the County and WEX, and a signed Confidentiality Contract, the County shall permit WEX to examine records pertaining to the County’s Medical Expense Reimbursement (FSA) and Dependent Care Assistance (DCAP) Plans described herein during normal business hours and upon forty-five (45) days’ notice from WEX. All costs of inspection shall be borne by WEX.

**I. CORRECTION OF PERFORMANCE DEFICIENCIES**

**I.1** Failure by Contractor to comply with any of the provisions, covenants, requirements or conditions of this Contract shall be a material breach of this Contract.

**I.2** In the event of a non-cured breach, County may, at its sole discretion and in addition to any other remedies available at law, in equity, or otherwise specified in this Contract:

a. Afford Contractor thereafter a time period within which to cure the breach, which period shall be established at the sole discretion of County but be no less than thirty (30) days; and/or

- b. Discontinue reimbursement to Contractor for the noncompliant services for and during the period in which Contractor is in breach, which reimbursement shall not be entitled to later recovery; and/or
- c. Withhold funds pending duration of the breach; and/or
- d. Offset against any monies billed by Contractor but yet unpaid by County those monies disallowed pursuant to Item "b" of this paragraph; and/or
- e. Terminate this Contract immediately and be relieved of the payment of any consideration to Contractor. In the event of such termination, the County may proceed with the work in any manner deemed proper by the County. The cost to the County shall be deducted from any sum due to the Contractor under this Contract and the balance, if any, shall be paid by the Contractor upon demand.

**J. NOTICES**

All written notices provided for in this Contract or which either party desires to give to the other shall be deemed fully given, when made in writing and either served personally, or by overnight delivery service; or by facsimile, or deposited in the United States mail, postage prepaid, and addressed to the other party as follows:

Attn: Benefits Chief  
 San Bernardino County  
 Department Human Resources  
 Employee Benefits and Services Division  
 157 West Fifth Street, First Floor  
 San Bernardino, CA 92415-0440

Attn: VP, Partner Growth & Engagement  
 WEX, Inc.  
 1 Hancock Street  
 Portland, ME 04101  
 cc: General Counsel  
 Email: LegalNotice@WEXinc.com

Notice shall be deemed communicated upon receipt, or five (5) days from the time of mailing if mailed as provided in this paragraph, whichever is earlier

**K. ENTIRE AGREEMENT**

This Contract, including all Exhibits and other attachments, which are attached hereto and incorporated by reference, and other documents incorporated herein, represents the final, complete and exclusive agreement between the parties hereto. Any prior agreement, promises, negotiations or representations relating to the subject matter of this Contract not expressly set forth herein are of no force or effect. This Contract is executed without reliance upon any promise, warranty or representation by any party or any representative of any party other than those expressly contained herein. Each party has carefully read this Contract and signs the same of its own free will.

The following documents are attached to this Contract and made a part hereof:

- Attachment A – Business Associate Agreement
- Attachment B - Campaign Contribution Disclosure
- Appendix 1 – Benefits Administration Services
- Appendix 2 – County Responsibilities
- Appendix 3 – WEX Responsibilities – Card
- Appendix 4 – Joint Responsibilities
- Appendix 5 – Subscriber Information and Contacts
- Appendix 6 – Service Level Agreement

If there is a conflict between the documents comprising the Contract, the following order of precedence shall apply:

- a) Applicable federal and State laws, regulations and policies;
- b) The terms and conditions in the body of this Contract;
- c) The Business Associate Agreement (Attachment A);
- d) The terms of the Appendices attached to this Contract, provided that no order of precedence shall be applied among such Appendices;

e) The Documentation.

**L. ELECTRONIC SIGNATURES**

This Agreement may be executed in any number of counterparts, each of which so executed shall be deemed to be an original, and such counterparts shall together constitute one and the same Agreement. The parties shall be entitled to sign and transmit an electronic signature of this Agreement (whether by facsimile, PDF or other mail transmission), which signature shall be binding on the party whose name is contained therein. Each party providing an electronic signature agrees to promptly execute and deliver to the other party an original signed Agreement upon request.

**IN WITNESS WHEREOF**, the San Bernardino County and the Contractor have each caused this Contract to be subscribed by its respective duly authorized officers, on its behalf.

SAN BERNARDINO COUNTY

WEX Health, Inc. d/b/a WEX

*(Print or type name of corporation, company, contractor, etc.)*

►  
\_\_\_\_\_  
Dawn Rowe, Chair, Board of Supervisors

By ► \_\_\_\_\_  
*(Authorized signature - sign in blue ink)*

Dated: \_\_\_\_\_  
SIGNED AND CERTIFIED THAT A COPY OF THIS  
DOCUMENT HAS BEEN DELIVERED TO THE  
CHAIRMAN OF THE BOARD

Cristi Rewenko  
Name \_\_\_\_\_  
*(Print or type name of person signing contract)*

Lynna Monell  
Clerk of the Board of Supervisors  
of the San Bernardino County

Vice President, Partner Growth &  
Title Engagement \_\_\_\_\_  
*(Print or Type)*

By \_\_\_\_\_  
Deputy

Dated: \_\_\_\_\_

Address 1 Hancock St Portland, ME 04101  
\_\_\_\_\_

**FOR COUNTY USE ONLY**

Approved as to Legal Form  
►  
Bonnie Uphold, Supervising Deputy County  
Counsel  
Date \_\_\_\_\_

Reviewed for Contract Compliance  
►  
Gina King, Assistant Director, Human  
Resources  
Date \_\_\_\_\_

Reviewed/Approved by Department  
►  
Leonardo Gonzalez, Director, Human  
Resources  
Date \_\_\_\_\_

## ATTACHMENT A

### BUSINESS ASSOCIATE AGREEMENT

This Business Associate Agreement (Agreement) supplements and is made a part of the contract (Contract) by and between the San Bernardino County Human Resources Department, Employee Benefits and Services Division (hereinafter Covered Entity) and WEX Health, Inc. (hereinafter Business Associate). This Agreement is effective as of the effective date of the Contract.

#### RECITALS

**WHEREAS**, Covered Entity (CE) wishes to disclose certain information to Business Associate (BA) pursuant to the terms of the Contract, which may include Protected Health Information (PHI); and

**WHEREAS**, CE and BA intend to protect the privacy and provide for the security of the PHI disclosed to BA pursuant to the Contract in compliance with the Health Insurance Portability and Accountability Act of 1996, Public Law 104-191 (HIPAA), the Health Information Technology for Economic and Clinical Health Act, Public Law 111-005 (HITECH Act), their implementing regulations, and other applicable laws; and

**WHEREAS**, The Privacy Rule and the Security Rule require CE to enter into a contract containing specific requirements with BA prior to the disclosure of PHI, as set forth in, but not limited to, Title 45, sections 164.314, subdivision (a), 164.502, subdivision (e), and 164.504, subdivision (e) of the Code of Federal Regulations (C.F.R.) and contained in this Agreement;

**WHEREAS**, CE and BA entered into a Business Associate Agreement as Attachment A to the contract between them made and entered into as of March 1, 2019; and

**WHEREAS**, Pursuant to HIPAA and the HITECH Act, BA shall fulfill the responsibilities of this Agreement by being in compliance with the applicable provisions of the HIPAA Standards for Privacy of PHI set forth at 45 C.F.R. sections 164.308 (Administrative Safeguards), 164.310 (Physical Safeguards), 164.312 (Technical Safeguards), 164.316 (Policies and Procedures and Documentation Requirements), and, 164.400, et seq. and 42 United States Code (U.S.C.) section 17932 (Breach Notification Rule), in the same manner as they apply to a CE under HIPAA;

**NOW THEREFORE**, in consideration of the mutual promises below and the exchange of information pursuant to this Agreement, the parties agree as follows:

#### A. Definitions

Unless otherwise specified herein, capitalized terms used in this Agreement shall have the same meanings as given in the Privacy Rule, the Security Rule, the Breach Notification Rule, and HITECH Act, as and when amended from time to time.

1. Breach shall have the same meaning given to such term under the HIPAA Regulations [45 C.F.R. §164.402] and the HITECH Act [42 U.S.C. §§17921 et seq.], and as further described in California Civil Code section 1798.82.
2. Electronic Protected Health Information (ePHI) means PHI that is maintained in or transmitted by electronic media as defined in the Security Rule, 45 C.F.R. section 164.103.
3. Privacy Rule means the regulations promulgated under HIPAA by the United States Department of Health and Human Services (HHS) to protect the privacy of Protected Health Information, including, but not limited to, 45 C.F.R. Parts 160 and 164, subparts A and E.
4. Protected Health Information (PHI) shall have the same meaning given to such term under 45 C.F.R. section 160.103, limited to the information received from, or created or received by Business Associate from or on behalf of, CE.
5. Security Rule means the regulations promulgated under HIPAA by HHS to protect the security of ePHI, including, but not limited to, 45 C.F.R. Part 160 and 45 C.F.R. Part 164, subparts A and C.

6. Unsecured PHI shall mean PHI as defined in this Agreement that is unsecured as such term is defined under the HITECH Act and any guidance issued pursuant to such Act, including, but not limited to 42 U.S.C. section 17932, subdivision (h).

## **B. Obligations and Activities of BA**

### **1. Permitted Uses and Disclosures**

BA may disclose PHI: (i) for the proper management and administration of BA; (ii) to carry out the legal responsibilities of BA; (iii) for purposes of Treatment, Payment and Operations (TPO); (iv) as required by law; (v) as necessary to provide services under the Contract; (vi) as permitted or required by this Agreement; or (vii) for Data Aggregation purposes for the Health Care Operations of CE. Prior to making any other disclosures, BA must obtain a written authorization from the Individual.

If BA discloses PHI to a third party, BA must obtain, prior to making any such disclosure, (i) reasonable written assurances from such third party that such PHI will be held confidential as provided pursuant to this Agreement and only disclosed as required by law or for the purposes for which it was disclosed to such third party, and (ii) a written agreement from such third party to immediately notify BA of any breaches of confidentiality of the PHI, to the extent it has obtained knowledge of such breach.

### **2. Prohibited Uses and Disclosures**

- i. BA shall not use, access or further disclose PHI other than as permitted or required by this Agreement and as specified in the attached Contract or as required by law. Further, BA shall not use PHI in any manner that would constitute a violation of the Privacy Rule or the HITECH Act. BA shall disclose to its employees, subcontractors, agents, or other third parties, and request from CE, only the minimum PHI necessary to perform or fulfill a specific function required or permitted hereunder.
- ii. BA shall not use or disclose PHI for fundraising or marketing purposes.
- iii. BA shall not disclose PHI to a health plan for payment or health care operations purposes if the patient has requested this special restriction, and has paid out of pocket in full for the health care item or service to which the PHI solely relates.
- iv. BA shall not directly or indirectly receive remuneration in exchange for PHI, except with the prior written consent of CE and as permitted by the HITECH Act; however, this prohibition shall not affect payment by CE to BA for services provided pursuant to this Agreement.

### **3. Appropriate Safeguards**

- i. BA shall implement appropriate safeguards to prevent the unauthorized use or disclosure of PHI, including, but not limited to, administrative, physical and technical safeguards that reasonably protect the confidentiality, integrity and availability of the PHI BA creates, receives, maintains, or transmits on behalf of the CE, in accordance with 45 C.F.R. sections 164.308, 164.310, 164.312 and 164.316.
- ii. In accordance with 45 C.F.R. section 164.316, BA shall maintain reasonable and appropriate written policies and procedures for its privacy and security program in order to comply with the standards, implementation specifications, or any other requirements of the Privacy Rule and applicable provisions of the Security Rule.
- iii. BA shall provide appropriate training for its workforce on the requirements of the Privacy Rule and Security Rule as those regulations affect the proper handling, use confidentiality and disclosure of the CE's PHI.

Such training will include specific guidance relating to sanctions against workforce members who fail to comply with privacy and security policies and procedures and the obligations of the BA under this Agreement.

### **4. Subcontractors**

BA shall enter into written agreements with subcontractors to whom BA provides CE's PHI that impose the same restrictions and conditions on such subcontractors that apply to BA with respect to such PHI, and that require compliance with all appropriate safeguards as found in this Agreement.

## 5. Reporting of Improper Access, Use or Disclosure or Breach

Every suspected and actual Breach shall be reported immediately, but no later than five (5) business days upon discovery, to CE's Office of Compliance, consistent with the regulations under HITECH Act. Upon discovery of a Breach or suspected Breach, BA shall complete the following actions:

- i. Provide CE's Office of Compliance with the following information, if known:
  - a) Date the Breach or suspected Breach occurred;
  - b) Date the Breach or suspected Breach was discovered;
  - c) Number of staff, employees, subcontractors, agents or other third parties and the names and titles of each person allegedly involved;
  - d) Number of potentially affected Individual(s) with contact information; and
  - e) Description of how the Breach or suspected Breach allegedly occurred.
- ii. Conduct and document a risk assessment by investigating without unreasonable delay and in no case later than five (5) business days of discovery of the Breach or suspected Breach to determine the following:
  - a) The nature and extent of the PHI involved, including the types of identifiers and likelihood of re-identification;
  - b) The unauthorized person who had access to the PHI;
  - c) Whether the PHI was actually acquired or viewed; and
  - d) The extent to which the risk to PHI has been mitigated.
- iii. Provide a completed risk assessment and investigation documentation to CE's Office of Compliance within ten (10) business days of discovery of the Breach or suspected Breach with a determination as to whether a Breach has occurred. At the discretion of CE, additional information may be requested.
  - a) If BA and CE agree that a Breach has not occurred, notification to Individual(s) is not required.
  - b) If a Breach has occurred, notification to the Individual(s) is required and BA must provide CE with affected Individual(s) name and contact information, if known, so that CE can provide notification.
- iv. Make available to CE and governing State and Federal agencies in a time and manner designated by CE or governing State and Federal agencies, any policies, procedures, internal practices and records relating to a Breach or suspected Breach for the purposes of audit or should the CE reserve the right to conduct its own investigation and analysis.

## 6. Access to PHI

To the extent BA maintains a Designated Record Set on behalf of CE, BA shall make PHI maintained by BA or its agents or subcontractors in Designated Record Sets available to CE for inspection and copying within fifteen (15) days of a request by CE to enable CE to fulfill its obligations under the Privacy Rule. If BA maintains ePHI, BA shall provide such information in electronic format to enable CE to fulfill its obligations under the HITECH Act. If BA receives a request from an Individual for access to PHI, BA shall promptly forward such request to CE.

## 7. Amendment of PHI

If BA maintains a Designated Record Set on behalf of the CE, BA shall make any amendment(s) to PHI in a Designated Record Set that the CE directs or agrees to, pursuant to 45 C.F.R. section 164.526, or take other measures as necessary to satisfy CE's obligations under 45 C.F.R. section 164.526, in the time and manner designated by the CE.

## 8. Access to Records

BA shall make internal practices, books, and records, including policies and procedures, relating to the use, access and disclosure of PHI received from, or created or received by BA on behalf of, CE



available to the Secretary of HHS, in a time and manner designated by the Secretary, for purposes of the Secretary determining CE's compliance with the Privacy Rule and Security Rule and patient confidentiality regulations. Any documentation provided to the Secretary shall also be provided to the CE upon request.

#### 9. Accounting for Disclosures

BA, its agents and subcontractors shall document disclosures of PHI and information related to such disclosures as required by HIPAA. This requirement does not apply to disclosures made for purposes of TPO. BA shall provide an accounting of disclosures to CE or an Individual, in the reasonable time and manner designated by the CE. BA agrees to implement a process that allows for an accounting to be collected and maintained by BA and its agents or subcontractors for at least six (6) years prior to the request. At a minimum, the information collected and maintained shall include: (i) the date of disclosure; (ii) the name of the entity or person who received PHI and, if known, the address of the entity or person; (iii) a brief description of PHI disclosed; and (iv) a brief statement of purpose of the disclosure that reasonably informs the individual of the basis for the disclosure, or a copy of the Individual's authorization, or a copy of the written request for disclosure.

#### 10. Termination

CE may immediately terminate this agreement, and any related agreements, if CE determines that BA has breached a material term of this agreement. CE may, at its sole discretion, provide BA an opportunity to cure the breach or end the violation within the time specified by the CE.

#### 11. Return of PHI

Upon termination of this Agreement, BA shall return all PHI required to be retained by the BA or its subcontractors, employees or agents on behalf of the CE. In the event the BA determines that returning the PHI is not feasible, the BA shall provide the CE with written notification of the conditions that make return not feasible. Additionally, the BA must follow established policies and procedures to ensure PHI is safeguarded and disposed of adequately in accordance with 45 C.F.R. section 164.310, and must submit to the CE a certification of destruction of PHI. For destruction of ePHI, the National Institute of Standards and Technology (NIST) guidelines must be followed. BA further agrees to extend any and all protections, limitations, and restrictions contained in this Agreement, to any PHI retained by BA or its subcontractors, employees or agents after the termination of this Agreement, and to limit any further use, access or disclosures.

#### 12. Breach by the CE

If the BA is aware of any activity or practice by the CE that constitutes a material Breach or violation of the CE's obligations under this Agreement, the BA must take reasonable steps to address the Breach and/or end eliminate the continued violation, if the BA has the capability of mitigating said violation. If the BA is unsuccessful in eliminating the violation and the CE continues with non-compliant activity, the BA must terminate the Agreement (if feasible) and report the violation to the Secretary of HHS.

#### 13. Mitigation

BA shall have procedures in place to mitigate, to the extent practicable, any harmful effect that is known to BA of a use, access or disclosure of PHI by BA, its agents or subcontractors in violation of the requirements of this Agreement.

#### 14. Costs Associated to Breach

BA shall be responsible for reasonable costs associated with a Breach. Costs shall be based upon the required notification type as deemed appropriate and necessary by the CE and shall not be reimbursable under the Agreement at any time. CE shall determine the method to invoice the BA for said costs. Costs shall incur at the current rates and may include, but are not limited to the following:

- Postage;
- Alternative means of notice;
- Media notification; and

- Credit monitoring services.

#### 15. Direct Liability

BA may be held directly liable under HIPAA for impermissible uses and disclosures of PHI; failure to provide breach notification to CE; failure to provide access to a copy of ePHI to CE or individual; failure to disclose PHI to the Secretary of HHS when investigating BA's compliance with HIPAA; failure to provide an accounting of disclosures; and, failure to enter into a business associate agreement with subcontractors.

#### 16. Indemnification

BA agrees to indemnify, defend and hold harmless CE and its authorized officers, employees, agents and volunteers from any and all claims, actions, losses, damages, penalties, injuries, costs and expenses (including costs for reasonable attorney fees) that are caused by or result from the acts or omissions of BA, its officers, employees, agents and subcontractors, with respect to the use, access, maintenance or disclosure of CE's PHI in breach of this Agreement, including without limitation, any Breach of PHI or any expenses incurred by CE in providing required Breach notifications.

#### 17. Judicial or Administrative Proceedings

CE may terminate the Contract, effective immediately, if (i) BA is named as a defendant in a criminal proceeding for a violation of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws or (ii) a finding or stipulation is made in any administrative or civil proceeding in which the BA has been joined that the BA has violated any standard or requirement of HIPAA, the HITECH Act, the Privacy Rule, Security Rule or other security or privacy laws.

#### 18. Assistance in Litigation or Administrative Proceedings

BA shall make itself, and any subcontractors, or employees, assisting BA in the performance of its obligations under the Agreement, reasonably available to CE, at no cost to CE, to testify as witnesses, or otherwise, in the event of litigation or administrative proceedings being commenced against CE, its directors, officers, or employees based upon a claimed violation of HIPAA, the HITECH Act, the Privacy Rule, the Security Rule, or other laws relating to security and privacy relating to BA or the Contract, except where BA or its subcontractor, employee or agent is a named adverse party.

### **C. Obligations of CE**

1. CE shall notify BA of any of the following, to the extent that such may affect BA's use, access, maintenance or disclosure of PHI:
  - i. Any limitation(s) in CE's notice of privacy practices in accordance with 45 C.F.R. section 164.520.
  - ii. Any changes in, or revocation of, permission by an individual to use, access or disclose PHI.
  - iii. Any restriction to the use, access or disclosure of PHI that CE has agreed to in accordance with 45 C.F.R. section 164.522.
2. In the event that CE agrees to any of limitations, changes, or restrictions described in Section C.1, CE agrees not to provide BA any PHI that is subject to any of those limitations, changes, or restrictions to the extent any may limit BA's ability to use and/or disclose PHI as permitted or required under this Agreement unless BA agrees to honor the limitation, change, or restriction.

### **D. General Provisions**

#### 1. Remedies

BA agrees that CE shall be entitled to seek immediate injunctive relief as well as to exercise all other rights and remedies which CE may have at law or in equity in the event of an unauthorized use, access or disclosure of PHI by BA or any agent or subcontractor of BA that received PHI from BA.

#### 2. Ownership

The PHI shall be and remain the property of the CE. BA agrees that it acquires no title or rights to the PHI.

#### 3. Regulatory References

A reference in this Agreement to a section in the Privacy Rule and Security Rule and patient confidentiality regulations means the section as in effect or as amended.

4. No Third-Party Beneficiaries

Nothing express or implied in the Contract or this Agreement is intended to confer, nor shall anything herein confer, upon any person other than CE, BA and their respective successors or assigns, any rights, remedies, obligations or liabilities whatsoever.

5. Amendment

The parties acknowledge that state and federal laws related to privacy and security of PHI are rapidly evolving and that amendment of the Contract or this Agreement may be required to ensure compliance with such developments. The parties shall negotiate in good faith to amend this Agreement when and as necessary to comply with applicable laws. If either party does not agree to so amend this Agreement within 30 days after receiving a request for amendment from the other, either party may terminate the Agreement upon written notice. Subject to the foregoing, this Agreement may not be modified, nor shall any provision hereof be waived or amended, except in a writing duly signed and agreed to by BA and CE.

6. Interpretation

Any ambiguity in this Agreement shall be resolved to permit CE to comply with the Privacy and Security Rules, the HITECH Act, and all applicable patient confidentiality regulations.

7. Compliance with State Law

In addition to HIPAA and all applicable HIPAA Regulations, BA acknowledges that BA and CE may have confidentiality and privacy obligations under State law, including, but not limited to, the California Confidentiality of Medical Information Act (Cal. Civil Code §56, et seq. ("CMIA")). If any provisions of this Agreement or HIPAA Regulations or the HITECH Act conflict with CMIA or any other California State law regarding the degree of protection provided for PHI and patient medical records, then BA shall comply with the more restrictive requirements.

8. Survival

The respective rights and obligations and rights of CE and BA relating to protecting the confidentiality or a patient's PHI shall survive the termination of the Contract or this Agreement.

9. Prior Agreement

The Parties agree that this Business Associate Agreement represents the final, complete and exclusive agreement between the Parties hereto with respect to the subject matter thereof and replaces and supersedes any prior agreement, including, without limitation, Attachment A of the contract made and entered into as of March 1, 2019 between the County of San Bernardino and WEX, Inc.



ATTACHMENT B
Campaign Contribution Disclosure (Senate
Bill 1439)

DEFINITIONS

Actively supporting the matter: (a) Communicate directly with a member of the Board of Supervisors or other County elected officer [Sheriff, Assessor-Recorder-Clerk, District Attorney, Auditor-Controller/Treasurer/Tax Collector] for the purpose of influencing the decision on the matter; or (b) testifies or makes an oral statement before the County in a proceeding on the matter for the purpose of influencing the County’s decision on the matter; or (c) communicates with County employees, for the purpose of influencing the County’s decision on the matter; or (d) when the person/company’s agent lobbies in person, testifies in person or otherwise communicates with the Board or County employees for purposes of influencing the County’s decision in a matter.

Agent: A third-party individual or firm who, for compensation, is representing a party or a participant in the matter submitted to the Board of Supervisors. If an agent is an employee or member of a third-party law, architectural, engineering or consulting firm, or a similar entity, both the entity and the individual are considered agents.

Otherwise related entity: An otherwise related entity is any for-profit organization/company which does not have a parent-subsiary relationship but meets one of the following criteria:

- (1) One business entity has a controlling ownership interest in the other business entity;
(2) there is shared management and control between the entities; or
(3) a controlling owner (50% or greater interest as a shareholder or as a general partner) in one entity also is a controlling owner in the other entity.

For purposes of (2), “shared management and control” can be found when the same person or substantially the same persons own and manage the two entities; there are common or commingled funds or assets; the business entities share the use of the same offices or employees, or otherwise share activities, resources, or personnel on a regular basis; or there is otherwise a regular and close working relationship between the entities.

Parent-Subsidiary Relationship: A parent-subsidiary relationship exists when one corporation has more than 50 percent of the voting power of another corporation.

Contractors must respond to the questions on the following page. If a question does not apply respond N/A or Not Applicable.

1. Name of Contractor:
2. Is the entity listed in Question No. 1 a non-profit organization under Internal Revenue Code section 501(c)(3)?
Yes [ ] If yes, skip Question Nos. 3 - 4 and go to Question No. 5.
No [ ]
3. Name of Principal (i.e., CEO/President) of entity listed in Question No. 1, if the individual actively supports the matter and has a financial interest in the decision:

4. If the entity identified in Question No.1 is a corporation held by 35 or less shareholders, and not publicly traded (“closed corporation”), identify the major shareholder(s):

5. Name of any parent, subsidiary, or otherwise related entity for the entity listed in Question No. 1 (see definitions above):

Company Name	Relationship

6. Name of agent(s) of Contractor:

Company Name	Agent(s)	Date Agent Retained (if less than 12 months prior)

7. Name of Subcontractor(s) (including Principal and Agent(s)) that will be providing services/work under the awarded contract if the subcontractor (1) actively supports the matter and (2) has a financial interest in the decision and (3) will be possibly identified in the contract with the County or board governed special district:

Company Name	Subcontractor(s):	Principal and/or Agent(s):

8. Name of any known individuals/companies who are not listed in Questions 1-7, but who may (1) actively support or oppose the matter submitted to the Board and (2) have a financial interest in the outcome of the decision:

Company Name	Individual(s) Name

9. Was a campaign contribution, of more than \$250, made to any member of the San Bernardino County Board of Supervisors or other County elected officer within the prior 12 months, by any of the individuals or entities listed in Question Nos. 1-8?

No  If **no**, please skip Question No. 10.      Yes  If **yes**, please continue to complete this form.

10. Name of Board of Supervisor Member or other County elected officer: \_\_\_\_\_ Name of  
Contributor: \_\_\_\_\_  
Date(s) of Contribution(s): \_\_\_\_\_  
Amount(s): \_\_\_\_\_

Please add an additional sheet(s) to identify additional Board Members or other County elected officers to whom anyone listed made campaign contributions.

By signing below, Contractor certifies that the statements made herein are true and correct. Contractor understands that the individuals and entities listed in Question Nos. 1-8 are prohibited from making campaign contributions of more than \$250 to any member of the Board of Supervisors or other County elected officer while this matter is pending and for 12 months after a final decision is made by the County.

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_  
Print Entity Name, if applicable

**WEX SERVICES AGREEMENT**  
**APPENDIX 1 – BENEFITS ADMINISTRATION SERVICES**

This Appendix 1 is attached to and made a part of the Contract between WEX Inc. (“WEX”) and the County.

This Appendix 1 sets forth the following:

- Monthly Service (Subscription) Fees for the WEX Benefits Platform
- Fees for Core Implementation and related Services, and
- Fees for Technical Support Service Plans.

**MONTHLY SERVICE (SUBSCRIPTION) FEES.**

The County will pay WEX the Fees per Participant commensurate with the number of Participants as of the bill date (the 25<sup>th</sup> of each month).

<b>Number of Participants</b>	<b>Per Participant Per Month (PPPM) fee for all Participants</b>	<b>Mobile Application</b>
0-2,000	\$0.90	\$150 per month
2,001-5,000	\$0.76	\$150 per month
5,001-7,500	\$0.74	\$250 per month
7,501-10,000	\$0.72	\$300 per month

The above pricing is conditioned on employees using the Card for a list of standard merchant category codes provided by WEX from time-to-time. WEX reserves the right to quote alternate pricing on a case-by case-basis should a Client wish to deviate from the standard code list.

The above pricing will include distribution of two (2) cards to new plan participants as described in Appendix 3 – WEX Responsibilities – Card.

Notwithstanding the above, upon termination of this Services Agreement, the County shall pay a monthly service fee for that period of time (“Interim Period”), if any, between the twenty-fifth (25<sup>th</sup>) day of the most recent month and the effective date of termination. The fee shall be calculated using the number of Participants as of that twenty-fifth (25<sup>th</sup>) day of the most recent month, and the fee shall be determined on a pro rata basis as compared to the standard full month fee. For example, if notice of termination is given to be effective on August 25, then there will be no Interim Period, and the final invoice will be calculated based on the number of Participants as of August 25. If notice of termination is given to be effective on August 31, then the monthly service fee for the Interim Period will be for 6 days of service (August 25 – August 31), calculated using the number of Participants as of August 25<sup>th</sup>. If notice of termination is given to be effective on September 15, then the monthly service fee for the Interim Period will be for twenty-one (21) days of service (August 25 – September 15), calculated using the number of Participants as of August 25<sup>th</sup>.

**Minimum Monthly Fee.** The County shall pay WEX the following minimum aggregate monthly service fee:

For the duration of the Contract term, a minimum monthly amount of \$1,500 will be charged.

**TECHNICAL SUPPORT SERVICE PLANS AND FEES.**

Standard Plan Included

Standard Plan services for WEX Cloud provided to the County via telephone, email, or fax includes:

- Self-service Service Request tool – including initial training of the tool
- Individual benchmark data (annually)

- Annual IT performance report
- 800 Service Requests per term year

**ADDITIONAL SYSTEM PRODUCTS AND SERVICES AS AGREED UPON.**

PRODUCT/SERVICE	PRICING/REFERENCE	SELECT (X)
<b>Portal Configuration</b>		
Custom URL – <i>varies due to the market cost of the SSL certificates</i> <sup>1</sup>	Requires Quote	
SSL Certification Renewal <sup>2</sup>	Requires Quote	
Single Sign On	\$2,500 per portal	
<b>Data Integration Services</b>		
Consumer Data Exchange	\$7,500 setup \$3/file, minimum \$500/month	
Claims Exchange	\$7,500 setup \$3/file, minimum \$500/month	
<b>Custom Reporting Solutions</b>		
Business User Access	Already included in implementation fee	X
Business User Report Development or Consulting	\$195/hr	
Technical User Access and Training	\$5,000 one-time fee	

**ADDITIONAL CARD SERVICES.**

**Lost/Stolen Replacement Cards:** A fee of ten dollars (\$10.00) per Card package (2 cards) will be electronically debited from Participant’s Plan account (for FSA and/or DCAP), or invoiced to the County if the County instructs WEX to do so.

**Additional Cards:** A fee of ten dollars (\$10.00) per Card package (2 cards) will be electronically debited from Participant’s Plan account (for FSA and/or DCAP), or invoiced to the County if the County instructs WEX to do so.

**Card Shut-Off:** WEX or Bank reserves the right to deactivate the Participants’ Cards for failure to pay some or all of the fees contained in this Appendix 1 or failure to transfer funds pursuant to the terms of Appendix 2, Section 4. Should WEX or Bank deactivate Cards for this reason, each reserves the right to notify Participants directly of this action if the County has not done so within twenty-four (24) hours of notice of deactivation. Upon such deactivation, a reactivation fee of one dollar (\$1) per account will be charged, payable prior to reactivation.

**Cards Issued after**



**Termination Notice:** Any new or renewal Cards issued after the County notifies WEX of its termination of this Services Agreement will bear a one-time charge of two dollars and fifty cents (\$2.50) per mailed Card package (2 cards).

**Card Branding/  
Customization Fees:** Are as follows:

- **Enrollment materials:** Design coordination and production costs quoted on request.
- **Co-branded Card:** A five hundred dollar (\$500) one-time charge per co-brand art. Additional one-time fee of ten cents (\$0.10) per cardholder (two Cards) at time of fulfillment. Two week lead time is required for Bank approval of Card design with the County logo.
- **Private-label Card:** A three thousand dollar (\$3,000) one-time charge for coordination. Allow four (4) to six (6) month lead-time. Plastics, design, production and print are charged back to the County - quotes available on request. The County is invoiced on order placement. Minimum order – ten thousand (10,000) Cards.  
**Cardholder materials** (required for private-label Cards): Design, coordination and production costs quoted on request. Invoicing is as for private label Cards above. WEX will issue a credit equivalent to its standard cost of materials on a quarterly basis as materials are used.

**Expedited Card Issuance  
("Pull and Send") Fees:** Actual fulfillment and shipping costs are passed through to the County. WEX will determine timeframes.

- Individual and bulk – quoted on a case-by case basis.

**Inserts:** Custom fulfillment of additional inserts will be quoted by WEX on a case-by-case basis upon request.

**Pull and Destroy Fees:** Pulling and destroying Cards will be quoted by WEX on a case-by-case basis.

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<sup>1</sup> **Custom URL** – Requires quote. *Variance is due to the market cost of the SSL certificates at the time of purchase and is roughly:*

- 1 year \$1,500 - \$2,000
- 2 years \$2,250 - \$2,750
- 3 years \$3,000 - \$3,500

<sup>2</sup> **SSL Certification Renewal** – Requires quote and is roughly:

- \$1,200 – 1 year renewal
- \$2,100 – 2 year renewal
- \$3,000 – 3 year renewal

**WEX SERVICES AGREEMENT**  
**APPENDIX 2 – COUNTY RESPONSIBILITIES**

1. **County Implementation.** The County will provide information, via WEX’s system, necessary to facilitate County implementation. The County shall provide WEX with such information no later than fifteen (15) days in advance of the desired Card production date. In addition, the County will provide, or cause to be provided, Participant eligibility election data no later than fifteen (15) business days prior to the proposed Card effective date.
2. **County Data.** The County shall be responsible for updating WEX of a change in the status of all Participants.
3. **Participant Support.** The County will be responsible for all support services to Participants, except as explicitly undertaken by WEX pursuant to Appendix 3. In particular, the County shall, upon notice that a Participant’s Card has been lost or stolen, promptly turn such Card off and notify WEX.
4. **Benefit Card Funding.** The County will provide all necessary and sufficient funding for benefits to permit WEX to meet Bank requirements.
  - 4.1 The County is responsible for providing funds for all payments made by means of the Card and all Card-related fees charged to Participants (“Card Payments”).
  - 4.2 The County will open and maintain one or more collateral accounts at the Bank (each a “Collateral Account”) for the purposes of replenishing Benefit Card Transactions, and in connection therewith will sign the Deposit Account Agreement required by Bank. The Collateral Account funds will belong to the County.
  - 4.3 The County will meet the Required Collateral Standards. Based on this Bank requirement, WEX will determine the amount required and will notify the County if the required amount changes.
  - 4.4 The County will remit payment via a wire transfer by Tuesday for the previous Monday through Sunday settlement week. Payment will be based on debit transactions recorded in the Weekly Benefit Card Summary and Detail Report provided by WEX. WEX will provide such reports to the County each Monday for the previous Monday through Sunday settlement week.
  - 4.5 Each week, WEX will send the County a notification of the amount of funding required for the Collateral Account, and if the County fails to meet that funding requirement within five (5) business days, WEX will issue a notification to the County in which the County has two (2) business days to cure the deficiency. If such balance deficiency is not cured within two (2) business days, WEX or the Bank may stop authorizing Card Payments and may suspend all services under this Contract for the period of time the required amounts are not provided. In the event services are suspended for a period of no less than five (5) business days, WEX can also elect to terminate this Contract as set forth in Article II – Term of Contract §4. The County will be responsible for all outstanding obligations relating to the County’s Collateral Account, including any Bank charges, penalties and interest in connection therewith. The County agrees to reimburse WEX immediately on demand for any transactions settled by WEX. If WEX or Bank deactivates Cards for any reason, it reserves the right to notify Participants directly of this action if the County has not done so within twenty-four (24) hours of notice of deactivation. Upon such deactivation, a reactivation fee of one dollar (\$1) per account will be charged, payable prior to reactivation.
  - 4.6 In the case of a Flexible Spending Account (FSA) plan, the County agrees to have a custodial agreement with a WEX Custodian, in effect at all times.
  - 4.7 The County agrees to communicate all settlement account information changes to the WEX contact listed in Appendix 5 – County Information and Contacts a minimum of five (5) business days prior to the new account’s effective date and prior to revoking access to the existing account.
5. **IIAS Participating Merchants.** For the FSA, the County will provide a link on its website to a standard industry list, specified by WEX, of merchants participating in an Inventory Approval System (“IIAS”).

**WEX SERVICES AGREEMENT**  
**APPENDIX 3 –WEX RESPONSIBILITIES – CARD**

1. **Application Set-up.** WEX will perform application level set-up activities for the County based on information received from the County via WEX’s system.
2. **Service to the County.** WEX will provide the County service support via telephone and web portal. WEX will provide ongoing technical support for County technical staff telephonically and will train key County personnel, including customer service management and technical support personnel.
3. **Reporting.** WEX will provide standard program-level daily reporting via the WEX system.
4. **Participant Payments.** WEX will perform authorization and settlement of eligible Card payments to all providers of qualified goods and services. This will include the maintenance of systems and software necessary to perform these functions. As part of this process, WEX will interface with WEX- contracted Pharmacy Benefits Managers (“PBMs”) and perform auto-adjudication of pharmacy Card payment requests. WEX also will process payments to merchants using IAS where available based on rules specified by the County.
5. **Website.** WEX will establish and maintain a website allowing Participants to check their balances and Card status.
6. **Retrospective Review Support.** WEX will provide support for retrospective review of Card transactions, including:
  - 6.1 Identification of transactions for review;
  - 6.2 Generation of a letter file; and
  - 6.3 A program to track outstanding requests.
7. **Account Activation.** WEX will establish and maintain an Interactive voice response (IVR) and web page or web service to enable Participants to activate Cards.
8. **Card Production and Distribution.** WEX shall provide and distribute the two (2) Cards, Card carrier and Cardholder agreement to each new Participant upon enrollment at no additional cost to the County. Additional fees will apply to fulfill requests received for additional cards and/or replacement cards as described in Appendix 1 – Benefits Administration Services.
9. **Marketing Material.** WEX shall provide generic sales, enrollment and marketing material via website download, electronic file or hard copy. WEX shall provide private label customer materials at Client’s request for an additional fee.
10. **Communication with Participants.** WEX may communicate with Participants to encourage or remind them to activate their Cards.

**WEX SERVICES AGREEMENT**  
**APPENDIX 4 –JOINT RESPONSIBILITIES**

**1. MARKETING AND SALES**

- 1.1 **Review of Marketing Materials.** Neither Party may release, disclose or otherwise disseminate to any third party or to the public any marketing materials or other sales information of the other Party including but not limited to, service documentation, service announcements or sales collateral, in any manner whatsoever, without the prior review and approval of the other Party. Such review shall be completed within five (5) business days.
- 1.2 **Descriptive References Permitted.** The Parties may make descriptive references to the other Party's name and logo or other service marks in marketing or other material in the course of their sales and marketing efforts under this Contract and will supply the other Party with camera-ready artwork or logos.
- 1.3 **Compliance with Third-Party Requirements.** The County and Clients will comply with any payment association or bank requirements regarding review of marketing material and use of logos, designs or other trademarks. Nothing in this Contract shall grant either Party any right, title, interest or license in the other Party's names, logos, designs or other trademarks.

**2. DESIGNATED LIAISONS**

Each Party will designate a lead individual or liaison responsible for coordinating the implementation efforts of the Parties. In addition, the County will appoint liaisons for the areas of finance, operations, and technology to facilitate the coordination between the Parties in these areas. Further, each Party will designate a liaison for ongoing coordination during the term of this Contract.

**WEX HEALTH SERVICES AGREEMENT**  
**APPENDIX 5 – SUBSCRIBER INFORMATION AND CONTACTS**

This Exhibit C is attached to and made a part of the Agreement between WEX Health and Subscriber.

<b>WEX Health Accounting Dept</b>	WEX Health, Inc. Attn: General Manager - Benefits				
Mailing Address:	1 Hancock Street				
City:	Portland	State:	ME	Zip Code:	04101
Telephone:	860-784-3100	Fax:			
Web site:	<a href="http://www.wexhealthinc.com">www.wexhealthinc.com</a> Email: LegalNotice@wexinc.com				
<b>COMPANY INFORMATION</b>					
<b>Subscriber Company:</b>	San Bernardino County Human Resources Department – Employee Benefits and Services Division				
Mailing Address:	175 West Fifth Street, 1st Floor				
City:	San Bernardino	State:	CA	Zip Code:	92415-0440
Telephone:	(909) 387-5787	Fax:	(909) 387-5566		
Web site:	<a href="https://hr.sbcounty.gov/employee-benefits/">https://hr.sbcounty.gov/employee-benefits/</a>				
<b>BILLING INFORMATION</b>					
<b>Subscriber Billing Address:</b>	Same as company information				
City:		State:		Zip Code:	
Contact:					
Title:					
Telephone:		Fax:			
Email Address:					
<b>KEY CONTACTS</b>					
<b>Finance Contact:</b>	Jeanette Simonetti			Title:	Administrative Manager
Mailing Address:	Same as company information				
City:		State:		Zip Code:	
Telephone:	(909) 387-5622	Fax:	(909) 387-6151		
Email Address:	<a href="mailto:Jeanette.Simonetti@hr.sbcounty.gov">Jeanette.Simonetti@hr.sbcounty.gov</a>				
<b>Operations Contact:</b>	Alexander “Sandy” Meier			Title:	Benefits Chief
Mailing Address:	Same as company information				
City:		State:		Zip Code:	
Telephone:	(909) 387-9638	Fax:	(909) 387-5566		
Email Address:	<a href="mailto:Alexander.Meier@hr.sbcounty.gov">Alexander.Meier@hr.sbcounty.gov</a>				
<b>Implementation Contact:</b>	Mikayla Kissel			Title:	Benefits Analyst
Mailing Address:	Same as company information				
City:		State:		Zip Code:	
Telephone:	(909) 387-9671	Fax:	(909) 387-5566		
Email Address:	<a href="mailto:Mikayla.Kissel@hr.sbcounty.gov">Mikayla.Kissel@hr.sbcounty.gov</a>				
<b>Technology Contact:</b>	Mikayla Kissel			Title:	Benefits Analyst
Mailing Address:	Same as company information				
City:		State:		Zip Code:	
Telephone:	(909) 387-9671	Fax:	(909) 387-5566		
Email Address:	<a href="mailto:Mikayla.Kissel@hr.sbcounty.gov">Mikayla.Kissel@hr.sbcounty.gov</a>				

**WEX SERVICES AGREEMENT**  
**APPENDIX 6 – SERVICE LEVEL AGREEMENT**

This Appendix 6 is attached to and made a part of the Contract between WEX and the County. This Service Level Agreement (SLA) defines commitments for various services performed by WEX in support of the WEX Cloud Application (the “Application”) that is used to deliver benefit administration services.

1. **Maintenance** will be performed from time to time on the hardware and software used to deliver the Application services. WEX will notify the Operations and Technology Contacts identified in Exhibit C by email a minimum of three (3) business days prior to the scheduled maintenance.
2. **Future Release Notification** will be provided to all email contacts designated in Exhibit C a minimum of thirty (30) days prior to implementation.
3. **Application Upgrade Notification** will be provided to the Operations and Technology Contacts identified in Appendix 5 with the scheduled release date and time a minimum of five (5) days prior to implementation.
4. **Updates and Upgrades.** WEX shall deliver to County enhancements, updates and upgrades to the Application that WEX makes generally and commercially available to other similarly situated customers of the Application without any additional fee.
5. **The Routine Window** for hardware and software maintenance and upgrades shall be defined as nightly between 8:00 p.m. until 7:00 a.m. Central Time, and beginning on Saturday afternoon at 3:00 p.m. (1:00 p.m. Saturday afternoon once per year to accommodate disaster recovery testing) until 7:00 a.m. Central Time, Monday morning, and all day on holidays. Routine maintenance and upgrades will be scheduled to avoid business interruptions, even during the Routine Window, whenever practical.
6. **Application Availability** will be twenty-four (24) hours per day, three hundred and sixty-five (365) days per year (366 days for leap years) at levels at or above ninety-nine percent (99.0%) of the time as measured monthly, except during the Routine Window.
7. **Application Availability Service Level Penalties** will apply for any month where the Application Availability as measured by WEX drops below ninety-nine percent (99.0%). For each full one percent (1.0%) of Application Availability below ninety-nine percent (99.0%), the Service Level Penalty shall be equal to ten percent (10%) of that month’s Subscription Fees. If a Service Level Penalty exists, it shall be applied as a credit to the following month’s Subscription Fees. The maximum Service Level Penalty in any month shall not exceed the total monthly Subscription Fees for that month.
8. **Application Response Time**, defined herein as the time between when the County’s administrator user submits information to the Application and a response is provided, is a function of several factors controlled by the County, including the County’s hardware, software, network performance, Internet connection, and Internet Service Provider, as well as the Internet itself. In the event that Application Response Time exceeds one second (1.0) for more than twenty percent (20%) of user transactions under normal conditions, WEX will work with Subscriber to identify the primary cause(s) of degraded performance. If it is determined that the cause of the Application Response Time performance degradation is within the Application, WEX will make improvements to the Application within five (5) days to meet this performance level.
9. **Application Support** will be provided as follows:
  - a) **WEX Business Hours** are from 7:00 a.m. to 7:00 p.m. Central Time on Business Days, which are Monday through Friday, excluding holidays (the “Business Hours”).
  - b) **Severity Level One Problems** include unplanned outages where the County is unable to access the Application and are caused by an emergency or unplanned outage lasting more than fifteen (15) minutes (“Application Downtime”), or where the County is unable to perform key functions, including but not limited to enrollment or reimbursement processing. For problems other than Application Downtime, WEX reserves the right to make a final determination of severity level.
  - c) **Severity Level One Response** including acknowledgement of the Severity Level One Problem will be provided within one (1) Business Hour to the Operations and Technology contacts identified in Appendix 5 upon WEX detection or notification of the Severity Level One Problem. If the Severity Level One Problem is expected to last for more than four (4) Business Hours from the time the Severity Level One Problem is identified, a plan for resolution and an expected recovery time will also be communicated within four (4) Business Hours. WEX shall use its commercially reasonable efforts to resolve Severity Level One Problems within one (1) Business Day.

- d) **General Customer Support or Non-Severity Level One Application Problems** not classified as Severity Level One Problems (a “Non-Emergency Problem”) will be responded to within one (1) Business Day. In the event that a Non-Emergency Problem exists a plan and expected resolution time will be provided in five (5) Business Days.

**10. County Commitments**

- a) **County Technology.** The County shall provide computing and telecommunications equipment for its employees needed to access the Application. WEX will post technical requirements, including browser and software requirements, in the Application and may update them from time-to-time. The County acknowledges that its access to and use of the Application may be impacted if it does not meet the posted technical requirements.

- 11. County Reporting of Application Problems.** The County will make best efforts to report Severity Level One Problems it identifies to WEX’s Technical Services Support Desk within one (1) hour of identifying the Problem, or as soon as reasonably practicable thereafter. The County will make best efforts to report Non-Emergency Problems within one (1) Business Day.