

## Professional Services Agreement

This is an Agreement between Ramsey County, a political subdivision of the State of Minnesota, on behalf of Human Resources, 121 7th Place East, Suite 4000, Saint Paul, MN 55101 ("County") and WEX Health Inc., 82 Hopmeadow Street, Suite 220, Simsbury, CT 06089, registered as a Corporation in the State of Minnesota ("Contractor").

### 1. Term

#### 1.1.

The original term of this Agreement shall be from October 4, 2023 through December 31, 2026, and may be renewed for up to two (2) additional one year period(s).

The account administrative services will begin on January 1, 2024.

##### 1.1.1.

Contract renewals shall be made by way of a written Amendment to the original contract and signed by authorized representatives.

### 2. Scope of Service

The County agrees to purchase, and the Contractor agrees to furnish, services described as follows:

#### 2.1.

The County agrees to purchase, and the Contractor agrees to furnish, services described in Attachment 2, The Scope of Reimbursement Account Administrative Services, and Attachment 3, The Scope of the Health Savings Account Administrative Services. Attachments 2 and 3 are attached and made a part of this agreement.

The Contractor shall provide all personnel, materials, software, and equipment necessary to assist the County in providing administrative services for the County's Health Care Flexible Spending Accounts (HC FSA), Dependent Care Expense Accounts (DCEA), Transportation Expense Reimbursement Accounts (TERA), and Health Savings Accounts (HSA), and shall maintain and administer the County's HC FSA and DCEA, TERA, and the HSA in accordance with the following requirements.

**2.1.1 Services:** The contractor shall provide, at minimum, the following services for HC FSA, DCEA, TERA and HSA:

A. Assist the County in managing the HC FSA, DCEA, TERA and HSA and maintain and administer the HC FSA, DCEA, TERA, and HSA by receiving bi-weekly payroll deductions, managing reimbursement requests from participant accounts and providing day-to-day oversight of system accessibility and issue resolution.

B. Provide quarterly year-to-date forfeiture reports for Ramsey County to review for accuracy prior to the Contractor finalizing the forfeiture amount.

C. Review and verify reimbursement claims for eligibility, accuracy and completeness based on applicable laws, the County's Cafeteria Plan provisions, and other criteria that may be established in advance by the successful proposer and the County.

- D. Generate reimbursement checks/direct deposits for participants at least once per week.
- E. Generate for each program participant HC FSA, DCEA and TERA account summaries prior to the end of the plan year that indicate any funds still available for reimbursement. These account summaries should be provided no later than thirty (30) days prior to the end of the plan year.
- F. Provide an account representative(s) to respond to County questions and requests concerning claims, complaints, laws, rules or regulations.
- G. Provide a toll-free customer service phone line for responding to employee questions.
- H. Provide a reimbursement request process that includes the ability to submit both electronic and paper reimbursement requests.
- I. In conjunction with the County, provide a welcome packet annually to participants, including the Summary Plan Description for the HC FSA, DCEA, TERA and HSA.
- J. Provide a website where participants can obtain all necessary forms, program information, and secure employee account information. Provide electronic access to County representatives of participant balances and claim payment totals.
- K. Maintain records of all pertinent reimbursement account data.
- L. Create and provide all necessary WEX standard forms and written program information for County employees enrolled in the HC FSA, DCEA, TERA, and HSA.
- M. Provide debit card services to include, but not be limited to: 1) set-up of eligible expenses in accordance with Ramsey County's HC FSA and DCEA plan specifications for electronic reimbursement of expenses; 2) provision of debit cards; and 3) any and all other related services necessary for the set-up and administration of HC FSA, DCEA and HSA debit card services.

### **2.1.2 Service Requirements**

- A. All services must be provided in compliance with all current federal, state, and local laws or ordinances and all applicable rules, regulations, and standards as they relate to the maintenance and administration of flexible spending accounts and transportation expense reimbursement accounts. The Contractor must be authorized to provide flexible spending account program administration services in the State of Minnesota and agree to provide financial reports necessary to establish transparency in the administration of Ramsey County plan participant funds.
- B. Contractor shall inform the Benefits Unit of the Ramsey County Human Resources Department on an ongoing and timely basis of any changes in laws, ordinances, rules, regulations, or standards that may impact the HC FSA, DCEA, TERA, and HSA. The successful proposer must possess a robust data management system and online programs that can provide account enrollment processing, claims processing, employee reimbursement, account maintenance, employee reporting, employer reporting, discrimination testing, and storage of pertinent account data.

### **2.1.3 Information Data Security**

- A. Due to interfaces and/or integrations with County systems and transmission and storage of private county employee data, Contractor and Contractor's information technology systems will

comply with the County's Hosting and/or Cloud Services Security Standards. The Hosting Security Exhibit is attached and made a part of this Agreement as Attachment 1.

B. Contractor shall at all times maintain compliance with the most current Payment Card Industry Data Security Standards (PCI DSS). Contractor shall provide a current copy of the attestation of compliance (AOC) and shall provide annually.

C. Contractor agrees to implement the necessary processes, and data sharing procedures and protections for auto substantiation of employee flex spending accounts following execution of any necessary data sharing agreements addressing the data exchange, protection of data and non-disclosure obligations. The Parties agree that any resulting data sharing agreements or non-disclosure agreements may be with the County and the County's contractors for employee benefits and flex spending accounts.

**2.1.4 Additional Documents and Order of Governance:** In the event of a conflict between the terms of the Contract documents, the order of precedence shall be:

1. This PSA
2. Attachment 1 – Hosting and/or Cloud Services Security Standards
3. Exhibit 1 – BAA
4. Attachment 2 – Reimbursement Account Administrative Services
5. Attachment 3 – Health Savings Account Administrative Services
6. Attachment 4 – Fee Schedule

**2.2.**

During the term of the contract, the County reserves the right to add similar in scope goods/services, via written amendment, to accommodate accidental omissions, unanticipated needs, or new offerings.

**2.3.**

The Contractor shall make every reasonable effort to provide services in a universally accessible, multi-cultural and/or multi-lingual manner to persons of diverse populations.

**2.4.**

The Contractor agrees to furnish the County with additional programmatic and financial information it reasonably requires for effective monitoring of services. Such information shall be furnished within a reasonable period, set by the County, upon request. Programmatic information is specific information needed based on the FSA program for the County.

**3. Schedule**

The Contractor shall provide services as and if requested by the County, it being understood that the County might not purchase any services under this Agreement.

**4. Cost**

**4.1.**

The County shall pay the Contractor the following unit rates:  
Rates are set forth in Attachment 4, which is attached and made a part of this Agreement.

**5. Contracting for Equity**

**5.1. Commitment to Advancing Racial Equity**

The county is committed to advancing racial equity for its residents. The commitment is captured in the county's Advancing Racial Equity policy which states that "Racial equity is

achieved when race can no longer be used to predict life outcomes, and outcomes for all are improved."

Consistent with the Advancing Racial Equity policy, contractors will take all reasonable measures to advance racial equity during contract performance. Contractors will recognize and acknowledge this requires deconstructing barriers and changing systems, structures, policies and procedures. Contractors will be equitable, inclusive, transparent, respectful and impactful in serving and engaging residents. Contractors will have meaningful and authentic engagement with community and employees to strengthen the administration, development and implementation of policies and procedures to advance racial equity and ensure that all residents in need have awareness of and access to contracted services.

Please review Ramsey County's [Advancing Racial Equity policy](#) to learn more about Ramsey County's commitment to racial equity.

## **5.2. Non-Discrimination (In accordance with Minn. Stat. § 181.59)**

Contractors will comply with the provisions of Minn. Stat. § 181.59 which require:

"Every contract for or on behalf of the state of Minnesota, or any county, city, town, township, school, school district, or any other district in the state, for materials, supplies, or construction shall contain provisions by which the contractor agrees:

(1) that, in the hiring of common or skilled labor for the performance of any work under any contract, or any subcontract, no contractor, material supplier, or vendor, shall, by reason of race, creed, or color, discriminate against the person or persons who are citizens of the United States or resident aliens who are qualified and available to perform the work to which the employment relates;

(2) that no contractor, material supplier, or vendor, shall, in any manner, discriminate against, or intimidate, or prevent the employment of any person or persons identified in clause (1) of this section, or on being hired, prevent, or conspire to prevent, the person or persons from the performance of work under any contract on account of race, creed, or color;

(3) that a violation of this section is a misdemeanor; and

(4) that this contract may be canceled or terminated by the state, county, city, town, school board, or any other person authorized to grant the contracts for employment, and all money due, or to become due under the contract, may be forfeited for a second or any subsequent violation of the terms or conditions of this contract."

## **5.3. Equal Employment Opportunity and Civil Rights**

### **5.3.1.**

Contractors agree that no person shall, on the grounds of race, color, religion, age, sex, sexual orientation, disability, marital status, public assistance status, criminal record (subject to the exceptions contained in Minn. Stat. §§299C.67 to 299C.71 and Minn. Stat. §144.057), creed or national origin, be excluded from full employment rights in, participation in, be denied the benefits of, or be otherwise subjected to discrimination under any program, service, or activity under the provisions of any and all applicable federal and state laws against discrimination, including the Civil Rights Act of 1964. Contractors will furnish all information and reports required by the county or by Executive Order No. 11246 as amended, and by the rules and regulations and orders of the Secretary of Labor for purposes of investigation to ascertain compliance with such rules, regulations and orders.

**5.3.2.**

Contractors shall comply with any applicable licensing requirements of the Minnesota Department of Human Services in employment of personnel.

**5.3.3.**

Contractors shall agree that no qualified individual with a disability as defined by the Americans with Disabilities Act, 42 U.S.C. §§12101-12213 or qualified handicapped person, as defined by United States Department of Health and Human Services regulations, Title 45 Part 84.3 (j) and (k) which implements Section 504 of the Rehabilitation Act of 1973, 29 U.S.C. §794, under Executive Order No. 11914 (41FR17871, April 28, 1976) shall be:

**5.3.3.1.**

Denied access to or opportunity to participate in or receive benefits from any service offered by contractors under the terms and provisions of this agreement; nor

**5.3.3.2.**

Subject to discrimination in employment under any program or activity related to the services provided by contractors.

**5.3.3.3.**

If it is discovered that a contractor is not in compliance with applicable regulations as warranted, or if the contractor engages in any discriminatory practices, as described above, then the county may cancel said agreement as provided by the cancellation clause of this agreement.

**5.4. Diverse Workforce Inclusion Resources**

For information and assistance in increasing the participation of women and minorities, contractors are encouraged to access the websites below:

1. <http://www.ramseycounty.us/jobconnect>
2. <http://www.ramseycounty.us/constructionconnect>

Job Connect and the Construction Connect provide a recruiting source for employers and contractors to post job openings and source diverse candidates.

Ramsey County's Job Connect links job seekers, employers and workforce professionals together through our website, networking events and community outreach. The network includes over 10,000 subscribed job seekers ranging from entry-level to highly skilled and experienced professionals across a broad spectrum of industries.

Employers participate in the network by posting open jobs, meeting with workforce professionals and attending hiring events. Over 200 Twin Cities community agencies, all working with job seekers, participate in the network.

Ramsey County's Construction Connect is an online and in-person network dedicated to the construction industry. Construction Connect connects contractors and job seekers with employment opportunities, community resources and skills training related to the construction industry. Construction Connect is a tool for contractors to help meet diversity hiring goals. Additional assistance is available through [askworkforcesolutions@ramseycounty.us](mailto:askworkforcesolutions@ramseycounty.us) or by calling 651-266-9890.

## **6. General Contract/Agreement Terms and Conditions**

### **6.1. Payment**

#### **6.1.1.**

No payment will be made until the invoice has been approved by the County.

#### **6.1.2.**

Payments shall be made when the materials/services have been received in accordance with the provisions of the resulting contract.

### **6.2. Application for Payments**

#### **6.2.1.**

The Contractor shall submit an invoice once a month.

#### **6.2.2.**

Invoices for any goods or services not identified in this Agreement will be disallowed. Any further services, such as County requested custom communication or add-ons, shall be invoiced only per mutual agreement.

#### **6.2.3.**

Each application for payment shall contain the order/contract number, an itemized list of goods or services furnished and dates of services provided, cost per item or service, and total invoice amount.

#### **6.2.4.**

Payment shall be made within thirty-five (35) calendar days after the date of receipt of a detailed invoice and verification of the charges. At no time will cumulative payments to the Contractor exceed the percentage of project completion, as determined by the County.

#### **6.2.5.**

WEX reserves the right to charge a 1.5% finance fee on unpaid balances that are ninety (90) days or more past due. Payment of interest and disputes regarding payment shall be governed by the provisions of Minnesota Statutes §471.425.

#### **6.2.6.**

The Contractor shall pay any subcontractor within ten days of the Contractor's receipt of payment from the County for undisputed services provided by the subcontractor. The Contractor shall pay interest of 1 1/2 percent per month or any part of a month to the subcontractor on any undisputed amount not paid on time to the subcontractor. The minimum monthly interest penalty payment for an unpaid balance of \$100.00 or more is \$10.00. For an unpaid balance of less than \$100.00, the Contractor shall pay the actual penalty due to the subcontractor. A subcontractor who prevails in a civil action to collect interest penalties from the Contractor must be awarded its costs and disbursements, including attorney's fees, incurred in bringing the action.

### **6.3. Independent Contractor**

The Contractor is and shall remain an independent contractor throughout the term of this Agreement and nothing herein is intended to create, or shall be construed as creating, the relationship of partners or joint ventures between the parties or as constituting the Contractor as an employee of the County.

## **6.4. Successors, Subcontracting and Assignment**

### **6.4.1.**

The Contractor binds itself, its partners, successors, assigns and legal representatives to the County in respect to all covenants and obligations contained in this Agreement.

### **6.4.2.**

The Contractor shall not assign or transfer any interest in this Agreement without prior written approval of the County unless to an affiliate or in connection with a change in control, merger, acquisition or sale of all or substantially all of the Contractor's assets and provided that the surviving entity has agreed to be bound by this Agreement and has notified Ramsey County in writing within thirty (30) days following the date of the assignment. Any such assignments may be subject to such reasonable conditions and provisions County may deem necessary. If consent is required, Ramsey County shall not unreasonably withhold or delay consent. The County reserves the right to termination of the Agreement in the event consent is not provided.

### **6.4.3.**

The Contractor shall not enter into any subcontract solely and exclusively for performance of any services under this Agreement without the prior written approval of the County. The Contractor shall be responsible for the performance of all subcontractors.

## **6.5. Compliance With Legal Requirements**

### **6.5.1.**

The Contractor shall comply with all applicable federal, state and local laws and the rules and regulations of any regulatory body acting thereunder and all licenses, certifications and other requirements necessary for the execution and completion of the contract.

### **6.5.2.**

Unless otherwise provided in the agreement, the Contractor, at its own expense, shall secure and pay for all permits, fees, charges, duties, licenses, certifications, inspections, and other requirements and approvals necessary for the execution and completion of the contract, including registration to do business in Minnesota with the Secretary of State's Office.

## **6.6. Data Practices**

### **6.6.1.**

All data collected, created, received, maintained or disseminated for any purpose in the course of the Contractor's performance under this Agreement is subject to the provisions of the Minnesota Government Data Practices Act, Minn. Stat. Ch. 13, any other applicable state statutes, any state rules adopted to implement the Act and statutes, as well as federal statutes and regulations on data privacy.

### **6.6.2.**

The Contractor designates Andy Doeden as its Responsible Designee, pursuant to the Minnesota Government Data Practices Act, Minnesota Statutes Chapter 13.02 Subdivision 6, as the individual responsible for any set of data collected to be maintained by Contractor in the execution of this Agreement.

### **6.6.3.**

The Contractor shall take all reasonable measures to secure the computers or any other storage devices in which County data is contained or which are used to access County data in the course of providing services under this Agreement. Access to County data shall be limited to those

persons with a need to know for the provision of services by the Contractor. Contractor maintains one or more backup copies of information for auditing, data management, and other related purposes. Contractor has determined that destruction of all copies of the information that it maintains is infeasible and shall continue to observe its confidentiality obligations under this Agreement.

## **6.7. Security**

### **6.7.1.**

The Contractor is required to comply with all Contractor Information Technology Security Policies as referenced in Attachment 1 Hosting Security Exhibit and Contractor's Security Package Offering Copyright 2022, a copy of which has been provided to the County. During the term of this Agreement, Contractor shall not degrade their Information Technology Security Policies or Contractor's Security Package Offering Copyright 2022 in any way to downgrade Information Technology Security.

### **6.7.2.**

Contractors shall report to Ramsey County any privacy or security incident regarding the information of which it becomes aware. "Security Incident" means the successful unauthorized access, use, disclosure, modification, or destruction of information or interference with System operations in an information system. "Privacy incident" means violation of the Minnesota Government Data Practices Act (MGDPA) and/or the HIPAA Privacy Rule (45 C.F.R. Part 164, Subpart E), including, but not limited to, improper and/or unauthorized use or disclosure of protected information, and incidents in which the confidentiality of the information maintained by it has been breached. This report must be in writing and sent to the County not more than ten (10) business days after learning of such non-permitted use or disclosure that constitutes a breach under HIPAA or other applicable law or regulation. Such a report will at least: (1) Identify the nature of the non-permitted use or disclosure; (2) Identify the data used or disclosed; (3) Identify who made the non-permitted use or disclosure and who received the non-permitted or violating disclosure; (4) Identify what corrective action was taken or will be taken to prevent further non-permitted uses or disclosures; (5) Identify what was done or will be done to mitigate any deleterious effect of the non-permitted use or disclosure; and (6) Provide such other information, including any written documentation, as the County may reasonably request. The Contractor is responsible for notifying all affected individuals whose sensitive data may have been compromised as a result of the Security or Privacy incident.

### **6.7.3.**

Contractors must ensure that any agents (including contractors and subcontractors), analysts, and others to whom it provides protected information, agree in writing to be bound by the same restrictions and conditions that apply to it with respect to such information.

### **6.7.4.**

Contractor will share its security practices via questionnaire response, SOC audit reports, certifications, white paper materials, and executive summaries upon County request. Contractor does not share actual policy documents, test results, or plans externally.

### **6.7.5.**

All County data and intellectual property stored in the Contractor's system is the exclusive property of the County. Contractor retains exclusive ownership rights to and reserves the right to independently use its experience and know-how, including processes, ideas, concepts, techniques, and software acquired prior to or developed in the course of performing services under this Agreement. Employer shall not permit any information regarding the systems of WEX or its subcontractors to be disseminated, sold, assigned, leased or licensed to any third



party, nor otherwise used or commercially exploited in any way except as expressly set forth in this Agreement.

## **6.8. HIPAA Compliance**

### **6.8.1.**

The Contractor agrees to comply with the Health Insurance Portability and Accountability Act of 1996 (HIPAA, public law #104-191) and its amendments. The Contractor also agrees to comply with the HIPAA Privacy requirements, the HIPAA Standards for Electronic Transactions, the HIPAA Security requirements, the HIPAA Enforcement Rule, the HIPAA Breach Notification requirements, and any other applicable HIPAA laws, standards and requirements now or as they become law, including any future guidance issued by the Secretary of Health and Human Services.

### **6.8.2.**

Because the Contractor's function or service, described in Section I, Scope of Services, will involve the disclosure of Protected Health Information (PHI) by the County, or the creation, use or disclosure of PHI by the Contractor on behalf of the County, the County (Covered Entity) is required to enter into a separate Business Associate Agreement (BAA) with the Contractor (Business Associate). The BAA ensures that the Contractor's performance under this contract (the Covered Agreement) complies with the privacy and security requirements under HIPAA and the Health Information Technology for Economic and Clinical Health Act of 2009 (HITECH ACT). Consequently, the Contractor agrees to the terms and conditions of the BAA, attached hereto and incorporated herein by reference as Exhibit 1, and the parties further agree that the electronic approval of this contract also constitutes approval of the BAA.

## **6.9. Indemnification and Limitation of Liability**

### **6.9.1 Indemnification**

Subject to the limitations stated in this Section 6.9, the Contractor shall indemnify, hold harmless and defend the County, its officials, agents, and employees against any and all liability, losses, costs, damages, expenses, claims or actions, including reasonable attorney's fees, which the County, its officials, agents, or employees may hereafter sustain, incur or be required to pay, to the extent arising out of or by reason of any act or omission of the Contractor, or its subcontractors, and their officers, agents or employees, in the execution, performance, or failure to adequately perform the Contractor's obligations pursuant to this Agreement. The indemnification obligations of this section do not apply in the event the claim or cause of action is the result of the County's sole negligence. This clause will not be construed to bar any legal remedies the Contractor may have for the County's failure to fulfill its obligation under this Contract.

### **6.9.2 Limitation of Liability**

Contractor is liable only for:

Direct damages for bodily injury (including death) to the extent caused by Contractor's acts or omissions in the performance of this Agreement, provided however that in no event shall Contractor's liability associated with these damages exceed 4x the annual contract obligation amount under this Agreement for the twelve (12) months prior to the occurrence of the event giving rise to any such claims, actions, or suits.

Direct damages to real property and tangible personal property to the extent caused by Contractor's acts or omissions in the performance of this Agreement.

Direct damages for a privacy breach or security incident as described in this Agreement or a material breach of Attachment A (Hosting and/or Cloud Services and Security Standards) to the extent caused by Contractor's acts or omissions in the performance of this Agreement, provided however that in no event shall Contractor's liability exceed \$3,000,000.

Direct damages for any other claims, actions, or suits actual direct damages or loss to the extent caused by Contractor's acts or omissions in the performance of this Agreement, provided however that in no event shall Contractor's liability associated with these damages exceed the annual total paid or payable obligation of the County to Contractor under this Agreement.

No limitations referenced in this Section 6.9.2 shall apply to the extent caused by the contractor's gross or willful misconduct.

Items for Which Contractor is Not Liable:

- a. Under no circumstances is Contractor liable for special, incidental, or indirect damages or for any economic consequential damages (including lost profits or savings), even if Contractor is informed of their possibility.
- b. The County's liability is governed by the Municipal Tort Claims Act, Minn. Stat. Ch. 466 and other applicable laws.

## **6.10. Contractor's Insurance**

### **6.10.1.**

The Contractor shall purchase and maintain such insurance as will protect the Contractor from claims which may arise out of, or result from, the Contractor's operations under this Agreement, whether such operations are by the Contractor or by any subcontractor, or by anyone directly employed by them, or by anyone for whose acts or omissions anyone of them may be liable.

### **6.10.2.**

Throughout the term of this Agreement, the Contractor shall secure the following coverages and comply with all provisions noted. Certificates of Insurance shall be issued to the County contracting department evidencing such coverage to the County throughout the term of this Agreement.

### **6.10.3.**

Commercial general liability of no less than \$1,000,000 per occurrence, \$2,000,000 general aggregate, \$2,000,000 products/completed operations total limit, \$1,000,000 personal injury and advertising liability, cyber liability of no less than \$5,000,000 per occurrence and in the aggregate.

#### **6.10.3.1.**

All policies shall be written on an occurrence basis using ISO form CG 00 01 or its equivalent. Coverage shall include contractual liability and XCU. Contractor will be required to provide proof of completed operations coverage for 3 years after substantial completion.

### **6.10.4. Workers' Compensation**

Contractor certifies it is in compliance with Minnesota Statutes Ch. 176 (Workers' Compensation). The Contractor's employees, subcontractors and agents will not be considered County employees. Contractor must provide Workers' Compensation insurance for all its employees and, in case any work is subcontracted, Contractor will require the subcontractor to

provide Workers' Compensation insurance in accordance with the statutory requirements of the State of Minnesota.

Required minimum limits of \$500,000/\$500,000/\$500,000. Any claims that may arise under Minnesota Statutes Ch. 176 on behalf of these employees, subcontractors or agents and any claims made by any third party as a consequence of any act or omission on the part of these employees, subcontractors or agents are in no way the County's obligation or responsibility.

If Minnesota Statute 176.041 exempts Contractor from Workers' Compensation insurance or if the Contractor has no employees in the State of Minnesota, Contractor must provide a written statement, signed by an authorized representative, indicating the qualifying exemption that excludes Contractor from the Minnesota Workers' Compensation requirements. If during the course of the contract the Contractor becomes eligible for Workers' Compensation, the Contractor must comply with the Workers' Compensation Insurance requirements herein and provide the County with a certificate of insurance.

**6.10.5.**

A Crime and Fidelity Bond is required if the Contractor is handling money for the County or has fiduciary responsibilities. The required amount will be as set forth in the solicitation document.

**6.10.6.**

An umbrella or excess liability policy over primary liability insurance coverages is an acceptable method to provide the required commercial general liability and employer's liability insurance amounts. If provided to meet coverage requirements, the umbrella or excess liability policy must follow form of underlying coverages and be so noted on the required Certificate(s) of Insurance.

**6.10.7.**

The Contractor is required to add Ramsey County, its officials, employees, volunteers and agents as Additional Insured to the Contractor's Commercial General Liability, Auto Liability, Pollution and Umbrella policies with respect to liabilities caused in whole or part by Contractor's acts or omissions, or the acts or omissions of those acting on Contractor's behalf in the performance of the ongoing operations, services and completed operations of the Contractor under this Agreement. The coverage shall be primary and non-contributory.

**6.10.8.**

If the contractor is driving on behalf of the County but not transporting clients as part of the contractor's services under this contract, a minimum of \$500,000 combined single limit auto liability, including hired, owned and non-owned.

**6.10.9.**

Intentionally Omitted.

**6.10.10.**

These are minimum insurance requirements. It is the sole responsibility of the Contractor to determine the need for and to procure additional insurance which may be needed in connection with this Agreement. Copies of policies and/or certificates of insurance shall be submitted to the County upon written request and within 10 business days.

**6.10.11.**

Certificates shall specifically indicate if the policy is written with an admitted or non-admitted carrier. Best's Rating for the insurer shall be noted on the Certificate, and shall not be less than an A-.

**6.10.12.**

The Contractor shall not commence work until it has obtained the required insurance and if required by this Agreement, provided an acceptable Certificate of Insurance to the County.

**6.10.13.**

All Certificates of Insurance shall provide that the insurer give the County prior written notice of cancellation or non-renewal of the policy as required by the policy provisions of Minn. Stat. Ch. 60A, as applicable. Further, all Certificates of Insurance to evidence that insurer will provide at least ten (10) days written notice to County for cancellation due to non-payment of premium.

**6.10.14.**

Nothing in this Agreement shall constitute a waiver by the County of any statutory or common law immunities, defenses, limits, or exceptions on liability.

**6.11. Audit**

Until the expiration of six years after the furnishing of services pursuant to this Agreement, the Contractor, upon request, shall make available to the County, the State Auditor, or the County's ultimate funding source, a copy of the Agreement, and the books, documents, records, and accounting procedures and practices of the Contractor relating to this Agreement.

**6.12. Notices**

All notices under this Agreement, and any amendments to this Agreement, shall be in writing and shall be deemed given when delivered by certified mail, return receipt requested, postage prepaid, when delivered via personal service or when received if sent by overnight courier. All notices shall be directed to the Parties at the respective addresses set forth below. If the name and/or address of the representatives changes, notice of such change shall be given to the other Party in accordance with the provisions of this section.

**County:**

Amber Kempe, Ramsey County, 121 7th Place East, Suite 4000, Saint Paul, MN 55101

**Contractor:**

WEX Health, Inc., 1 Hancock Street, Portland, ME 04101, Attn: Legal

**6.13. Non-Conforming Services**

The acceptance by the County of any non-conforming goods/services under the terms of this Agreement or the foregoing by the County of any of the rights or remedies arising under the terms of this Agreement shall not constitute a waiver of the County's right to conforming services or any rights and/or remedies in respect to any subsequent breach or default of the terms of this Agreement. The rights and remedies of the County provided or referred to under the terms of this Agreement are cumulative and not mutually exclusive.

**6.14. Setoff**

Notwithstanding any provision of this Agreement to the contrary, the Contractor shall not be relieved of liability to the County for damages sustained by the County by virtue of any breach of the contract by the Contractor. The County may withhold any payment to the Contractor for the purpose of setoff until such time as the exact amount of damages due the County from the Contractor is determined.

#### **6.15. Conflict of Interest**

The Contractor shall comply with all conflict of interest laws, ordinances, and regulations now in effect or hereafter to be enacted during the term of this Agreement. The Contractor warrants that it is not now aware of any facts that create a conflict of interest. If the Contractor hereafter becomes aware of any facts that might reasonably be expected to create a conflict of interest, it shall immediately make full written disclosure of such facts to the County. Full written disclosure shall include, but is not limited to, identification of all persons implicated and a complete description of all relevant circumstances. Failure to comply with the provisions of this subparagraph shall be deemed a material breach of this Agreement.

#### **6.16. Respectful Workplace and Violence Prevention**

The Contractor shall make all reasonable efforts to ensure that the Contractor's employees, officers, agents, and subcontractors do not engage in violence while performing under this Agreement. Violence, as defined by the Ramsey County Respectful Workplace and Violence Prevention Policy, is defined as words and actions that hurt or attempt to threaten or hurt people; it is any action involving the use of physical force, harassment, intimidation, disrespect, or misuse of power and authority, where the impact is to cause pain, fear or injury.

#### **6.17. Force Majeure**

Neither party shall be liable for any loss or damage incurred by the other party as a result of events outside the control of the party ("Force Majeure Events") including, but not limited to: war, storms, flooding, fires, strikes, legal acts of public authorities, or acts of government in time of war or national emergency.

#### **6.18. Unavailability of Funding - Termination**

The purchase of goods and/or labor services or professional and client services from the Contractor under this Agreement is subject to the availability and provision of funding from the United States, the State of Minnesota, or other funding sources, and the appropriation of funds by the Board of County Commissioners. The County may immediately terminate this Agreement if the funding for the purchase is no longer available or is not appropriated by the Board of County Commissioners. Upon receipt of the County's notice of termination of this Agreement the Contractor shall take all actions necessary to discontinue further commitments of funds to this Agreement. Termination shall be treated as termination without cause and will not result in any penalty or expense to the County.

#### **6.19. Termination**

##### **6.19.1.**

The County may immediately terminate this Agreement if any proceeding or other action is filed by or against the Contractor seeking reorganization, liquidation, dissolution, or insolvency of the Contractor under any law relating to bankruptcy, insolvency or relief of debtors. The Contractor shall notify the County upon the commencement of such proceedings or other action.

##### **6.19.2.**

If the Contractor violates any material terms or conditions of this Agreement the County may, without prejudice to any right or remedy, give the Contractor, and its surety, if any, ten (10) calendar days written notice of its intent to terminate this Agreement, specifying the asserted breach. If the Contractor fails to cure the deficiency within the ten (10) day cure period, this Agreement shall terminate upon expiration of the cure period.

##### **6.19.3.**

The County may terminate this Agreement without cause upon giving at least sixty (60) calendar days written notice thereof to the Contractor. In such event, the Contractor shall be

entitled to receive compensation for services provided in compliance with the provisions of this Agreement, up to and including the effective date of termination. In the event the County exercises this termination option earlier than the initial three-year term of this Agreement, the County shall be responsible to remit the remainder of the payments for anticipated services through December 31, 2026.

## **6.20. Interpretation of Agreement; Venue**

### **6.20.1.**

The Agreement shall be interpreted and construed according to the laws of the State of Minnesota. All litigation regarding this Agreement shall be venued in the appropriate State or Federal District Court in Ramsey County, Minnesota.

### **6.20.2.**

The provisions of this Agreement are severable. If any part of this Agreement is rendered void, invalid or unenforceable, such rendering shall not affect the validity and enforceability of the remainder of this Agreement.

## **6.21. Warranty**

The Contractor warrants that it has the legal right to provide the goods and services identified in this Agreement and further warrants that the goods and services provided shall be in compliance with the provisions of this Agreement.

## **6.22. Infringement**

### **6.22.1.**

Complementary to other "hold harmless" provisions included in this Agreement, the Contractor shall, without cost to the County, defend, indemnify, and hold the County, its officials, officers, and employees harmless against any and all claims, suits, liability, losses, judgments, and other expenses arising out of or related to any claim that the County's use or possession of the software, licenses, materials, reports, documents, data, or documentation from or through Contractor for the performance of services under the terms of this Agreement, violates or infringes upon any patents, copyrights, trademarks, trade secrets, or other proprietary rights or information, provided that the Contractor is promptly notified in writing of such claim. The Contractor will have the right to control the defense of any such claim, lawsuit, or other proceeding. The County will in no instance settle any such claim, lawsuit, or proceeding without the Contractor's prior written approval.

### **6.22.2.**

If, as a result of any claim of infringement of rights, the Contractor or County is enjoined from using, marketing, or supporting any product or service provided under the agreement with the County (or if the Contractor comes to believe such injunction imminent), the Contractor shall either arrange for the County to continue using the software, licenses, materials, reports, documents, data, or documentation at no additional cost to the County, or propose an equivalent, subject to County approval. The acceptance of a proposed equivalent will be at the County's sole discretion. If no alternative is found acceptable to the County acting in good faith, the Contractor shall provide for the removal of the enjoined product or services from use including software, licenses, materials, reports, documents, data, or documentation and refund any fees, as applicable, and any other costs paid by the County in conjunction with the use thereof.

## **6.23. Debarment and Suspension**

Ramsey County has enacted Ordinance 2013-330 [Ramsey County Debarment Ordinance](#) that prohibits the County from contracting with contractors who have been debarred or suspended by the State of Minnesota and/or Ramsey County.

**6.24. Alteration**

Any alteration, variation, modification, or waiver of the provisions of this Agreement shall be valid only after it has been reduced to writing and signed by both parties.

**6.25. Entire Agreement**

The written Agreement, including all attachments, represent the entire and integrated agreement between the parties hereto and supersede all prior negotiations, representations or contracts, either written or oral. No subsequent agreement between the County and the Contractor to waive or alter any of the provisions of this Agreement shall be valid unless made in the form of a written Amendment to this Agreement signed by authorized representatives of the parties.