

**ADMINISTRATIVE SERVICES AGREEMENT  
SUMMARY SHEET**

**PAYFLEX®**

**PARTIES**

**Company Name ("Company")** Lee County Board of  
County Commissioners  
**2115 Second Street, 1<sup>st</sup> Floor**  
**Fort Myers, FL 33901**  
**Attn: Daniel Goggin, Contracts Analyst,**  
**Procurement Management Department**

**PayFlex Systems USA, Inc. ("PayFlex")**  
**11819 Miami Street, Suite 200**  
**Omaha, NE 68164**  
**Attn: Contracts**

**SERVICES**

**Reimbursement Administrative Services**

- Flexible Spending Account:**  Healthcare  Dependent Care  Limited Purpose  
 **Reimbursement Accounts:**  Adoption Assistance  Tuition Reimbursement  Premium Only Plan  
 **Health Reimbursement Arrangement:**  Retiree Reimbursement  Limited Health Reimbursement  
 **Health Savings Account**  
 **Online Commuter Benefit**

**Benefit Eligibility Services**

- COBRA Administration**  
 **Direct Billing Administration**

**CONTRACT TERMS**

The Company, or its delegate, is serving as the Plan Administrator for the above referenced Company-sponsored employee benefits for certain employees and their eligible dependents (collectively the "Members"). The Company desires to engage PayFlex to provide the Services checked above in connection with the Company-sponsored employee benefits.

The following documents, all of which are attached and incorporated herein by this reference, collectively comprise the "Agreement" between the parties:

1. This Summary Sheet;
2. The Financial Account Terms Exhibit;
3. The Fee and Expense Exhibit(s);
4. The Terms and Conditions; and
5. The Administrative Services Exhibit(s) for each Service selected above.

**Effective Date:** January 1, 2023

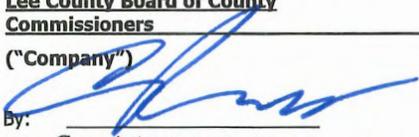
**Initial Term of the Agreement:** Four (4) Years

**SIGNATORY SECTION**

The authorized representatives of the parties have executed this Summary Sheet and hereby acknowledge and agree to the terms and conditions of the Agreement as defined above.

**Lee County Board of County  
Commissioners**

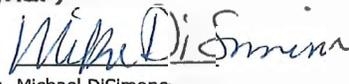
**("Company")**

By:   
Name: Commissioner Cecil L. Pendergrass, Chairman  
Lee County Board of County Commissioners  
Title: District 2  
Date: 9-4-22

ADMINISTRATIVE SERVICES AGREEMENT SUMMARY SHEET  
ASA-SS-1-17

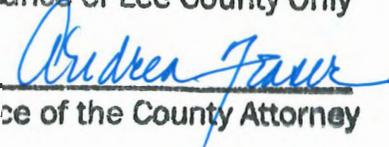
**PayFlex Systems USA, Inc.**

**("PayFlex")**

By:   
Name: Michael DiSimone  
Title: President  
Date: 9/26/22

**PAYFLEX**

Approved as to Form for the  
Reliance of Lee County Only

By:   
Office of the County Attorney

# FINANCIAL ACCOUNT TERMS EXHIBIT

## PAYMENT AND FUNDING FOR REIMBURSEMENT ADMINISTRATIVE SERVICES

Financial Account Terms Exhibit is agreed to by the parties and is an attachment to the Administrative Services Agreement (the "Agreement") and is hereby incorporated by reference.

In conformity with the intent of the parties in the Agreement, this Exhibit prescribes the financial terms and conditions relating to the payment of fees and funding.

### Obligations of the Company

1.1 The Company shall promptly review and verify the accuracy of each fee invoice and notify PayFlex in writing of any inaccuracy or discrepancy with respect to any amount referenced therein within ten (10) business days after receipt of such invoice. The Company shall have thirty (30) calendar days from the date of invoice to provide supporting documentation.

1.2 Such invoice shall be deemed final, complete, and correct for all purposes if the Company has not provided such notice within ten (10) business days or fails to provide supporting documentation within thirty (30) calendar days of receipt of the fee invoice.

### Obligations of PayFlex

2.1 Funding Notification Reports shall be sent to the Company based on the established funding notification schedule.

2.2 Fee invoices shall be sent to the Company on a monthly basis.

### Payment of Fees

3.1 The Company agrees to pay PayFlex the fees set forth in the Fee and Expense Exhibit. Such amounts are payable as set forth in Section 3.2 below.

3.2 The Company shall not combine the payment of such fees with any funding (as outlined in the Funding of Reimbursement Claims Section and/or Funding of Member Health Saving Accounts Section as applicable to Service elected by the Company). The Company understands and agrees to the method of paying fees outlined in Section 3.2.1. The Company understands and agrees that PayFlex does not accept international wire transfers.

3.2.1 An ACH debit which shall be initiated by PayFlex on or about the 23rd day of each month after invoice is delivered to the Company. PayFlex shall initiate the ACH debit against an account designated for this purpose by the Company. This may be the same account

designated for ACH claims, or may be a unique account, at the Company's discretion.

3.3 Any fee payments which are not timely paid within thirty (30) calendar days shall, at the option of PayFlex, bear interest at a rate of twelve percent (12%) per annum or, if less, the maximum amount permitted by law, until paid.

3.4 The Company shall pay any fee balance due PayFlex as outlined in this Agreement within ten (10) banking days of termination of this Agreement. Balances remaining after such day shall be assessed late fees and interest, at the option of PayFlex; bearing interest at a rate of twelve percent (12%) per annum or, if less, the maximum amount permitted by law, until paid.

### Funding of Reimbursement Claims

4.1 The Company's obligation to fund claims shall be effective as of the date PayFlex issues Member reimbursements (Fund on Payment).

4.2 The Company shall fund claims, as outlined in section 4.1, with a PayFlex initiated Automated Clearing House (ACH) debit in accordance with the Banking Consent Form, which shall be initiated within three (3) banking days of the weekly receipt of the Funding Notification Report.

4.3 PayFlex shall periodically review past claims paid to Members and funding received from the Company for such claims. If these reviews reveal that PayFlex has not been fully funded for all claims that have been paid in accordance with section 4.1 the Company shall pay such claims within ten (10) banking days of receiving notice of such funding discrepancy. This right shall survive termination of the Agreement.

4.4 Any funding due PayFlex for claims paid on behalf of Company that remains unpaid after twenty (20) banking days shall be subject to a fee ("Failure to Fund Fee"). The Failure to Fund Fee shall be calculated as one-hundred twenty five (125) basis points above the three (3) month United States Dollar London Interbank Offered Rate. If such Failure to Fund Fee calculation is not permissible under applicable law then the Failure to Fund Fee shall be calculated at a rate not to exceed regulatory rates, based on the average daily balance outstanding across all non-funded days.

### Reimbursement Fees and Claim Funding upon Termination

# FINANCIAL ACCOUNT TERMS EXHIBIT

## PAYMENT AND FUNDING FOR REIMBURSEMENT ADMINISTRATIVE SERVICES

5.1 During the Runout Claims Period (as defined in the Agreement), the Company's obligation to fund claims shall remain as Fund on Payment.

5.2 The Company shall fund Runout Claims with a PayFlex initiated ACH debit in accordance with the Banking Consent Form, which shall be initiated within three (3) banking days of the receipt of the Funding Notification Report.

5.3 The Company shall keep the account listed on the Banking Consent Form open and available for PayFlex initiated debits for the entire Runout Claims Period. Following the Runout Claims Period, PayFlex shall audit for any funds still due from the Company. In the event that such audit reveals that the Company owes PayFlex for claims paid during such Runout Claims Period the Company shall submit payment to PayFlex by check within ten (10) banking days of notice.

5.4 The fees for processing Runout Claims shall be a lump sum amount equal to the number of months the Company has set for Runout Claims and shall be based on the Member census in effect at the time of termination. The Company shall pay such fees upon termination of the Agreement or within ten (10) banking days from the date of receipt of the invoice.

5.5 If the Company fails to fund Runout Claims or pay fees due at termination as outlined in this section, PayFlex has the right to cease paying claims and suspend services until the requested funds or fees have been provided. In no event shall the Company offset funding or fees due PayFlex because of any legal claims advanced by the Company.

### Funding of Member Health Saving Accounts

6.1 Funding for Health Saving Accounts (HSA) is on a deposit basis and takes the form of an ACH debit that PayFlex initiates against the Company's designated account on each day that HSA deposits are reported by the Company to PayFlex. This may be the same account designated for PayFlex administration fees, or may be a unique account, at the Company's discretion. In the

event the Company does not fund deposits within a reasonable amount of time (as set by PayFlex), the Company shall be subject to a Failure to Fund Claims fee as outlined in the Fees and Expenses Exhibit.

### Miscellaneous

7.1 If, during the term of the Agreement, any future and unforeseen tax (other than taxes based on the net income of PayFlex) shall be assessed against PayFlex which is directly related to the services provided to the Company under the Agreement, PayFlex shall report the payment of such amount to the Company in writing and the Company shall pay such amount directly or reimburse PayFlex.

7.2 Nothing in this Exhibit shall prohibit PayFlex from performing any service not enumerated for a reasonable fee. Any such service and corresponding fee shall be provided only if agreed to by the Company and PayFlex in writing, in advance of such performance.

7.3 If the Company, for any reason whatsoever, fails to make a required payment on a timely basis, PayFlex may (in addition to its other rights and remedies), suspend the performance of the Services until such time as the Company makes the proper remittance and otherwise delivers adequate assurance to PayFlex, as reasonably determined by PayFlex, concerning the Company's performance hereunder. PayFlex shall use reasonable efforts to provide the Company with up to three (3) calendar day's prior written notice of its intention to take such action.

7.4 If the Company forwards funds so that PayFlex can pay claims that have not yet been incurred or submitted (i.e., Company pre-funds claims), Company agrees that it will only provide PayFlex with funds from its general assets and will not forward to PayFlex any amounts: (i) previously withheld from its employees' pay; (ii) that might otherwise constitute "plan assets" under the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), or other applicable law; or (iii) that might otherwise belong to the employee or plan under applicable law.

# FINANCIAL ACCOUNT TERMS EXHIBIT

## PAYMENT FOR BENEFIT ELIGIBILITY SERVICES

# PAYFLEX®

Financial Account Terms Exhibit is agreed to by the parties and is an attachment to the Administrative Services Agreement (the "Agreement") and is hereby incorporated by reference.

In conformity with the intent of the parties in the Agreement, this Exhibit prescribes the financial terms and conditions relating to the payment of fees and funding.

### Obligations of the Company

1.1 The Company shall promptly review and verify the accuracy of each fee invoice and notify PayFlex in writing of any inaccuracy or discrepancy with respect to any amount referenced therein within ten (10) business days after receipt of such invoice. The Company shall have thirty (30) calendar days from the date of invoice to provide supporting documentation.

1.2 Such invoice shall be deemed final, complete, and correct for all purposes if the Company has not provided such notice within ten (10) business days or fails to provide supporting documentation within thirty (30) calendar days of receipt of the fee invoice.

### Obligations of PayFlex

2.1 Fee invoices shall be sent to the Company on a monthly basis.

### Payment of Fees

3.1 The Company agrees to pay PayFlex the fees set forth in the Fee and Expense Exhibit. Such amounts are payable as set forth in Section 3.2 below.

3.2 The Company understands and agrees to the method of paying fees outlined in Section 3.2.1. The Company understands and agrees that PayFlex does not accept international wire transfers.

3.2.1 An ACH debit which shall be initiated by PayFlex on or about the 23rd day of each month after invoice is delivered to the Company. PayFlex shall initiate the ACH debit against an account designated for this purpose by the Company. This may be the same account designated for ACH claims, or may be a unique account, at the Company's discretion.

3.3 Any fee payments which are not timely paid within thirty (30) calendar days shall, at the option of PayFlex, bear interest at a rate of twelve percent (12%) per annum or, if less, the maximum amount permitted by law, until paid.

### Fees upon Termination

4.1 The Company shall pay any fee balance due PayFlex as outlined in this Agreement within ten (10) banking days of termination of this Agreement. Balances remaining after such day shall be assessed late fees and interest, at the option of PayFlex; bearing interest at a rate of twelve percent (12%) per annum or, if less, the maximum amount permitted by law, until paid.

### Miscellaneous

5.1 If, during the term of the Agreement, any future and unforeseen tax (other than taxes based on the net income of PayFlex) shall be assessed against PayFlex which is directly related to the services provided to the Company under the Agreement, PayFlex shall report the payment of such amount to the Company in writing and the Company shall pay such amount directly or reimburse PayFlex.

5.2 Nothing in this Exhibit shall prohibit PayFlex from performing any service not enumerated for a reasonable fee. Any such service and corresponding fee shall be provided only if agreed to by the Company and PayFlex in writing, in advance of such performance.

5.3 If the Company, for any reason whatsoever, fails to make a required payment on a timely basis, PayFlex may (in addition to its other rights and remedies), suspend the performance of the Services until such time as the Company makes the proper remittance and otherwise delivers adequate assurance to PayFlex, as reasonably determined by PayFlex, concerning the Company's performance hereunder. PayFlex shall use reasonable efforts to provide the Company with up to three (3) calendar day's prior written notice of its intention to take such action.

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## FEE AND EXPENSE EXHIBIT

### FLEXIBLE SPENDING ACCOUNT

<b>Flexible Spending Account – FSA (Health or Dependent Care Spending) Administration Services Pricing</b>	
<b>Implementation and Annual Fees</b>	
Implementation Fee	Waived
*Annual Fee	Waived
<b>**Monthly Administration Fees Per Member</b>	\$3.75
<b>Minimum Monthly Billing – Per Employer</b>	\$0.00 per month
<b>Additional Services – New Plan Sponsor</b>	
Dependent Care Pamphlet	First 10,000 free, then \$0.50 each
Health Care Pamphlet	First 10,000 free, then \$0.50 each
Collating	Priced out per job.
<b>Optional Service Fees - NOTE: Optional Service Fees <b>only apply</b> if the service is requested by the plan sponsor and performed by PayFlex. Optional Service Fee pricing is fixed during the Initial Term of the Agreement and are listed below for transparency.</b>	
<b>Types of Communication Assistance</b>	
Onsite Enrollment Meeting Support (Less than 500 eligible or more than one meeting for groups with 500 plus eligibles)	\$500.00 per day
Customized website (With or without Single Sign On from another site) Lead-time: 90 days Cut-off for 1/1 business is 9/15	\$150.00 per hour. Statement of work required.
Single Sign On (SSO) to generic PayFlex member website (Assumes PayFlex standard for web service call) Lead-time: 60 days	No charge
Customized Member Flyers (Revisions to generic member flyers) Lead-time: 5 weeks	\$1,000.00 per flyer (Including 2 rounds of edits.)
Customized Member Letters Lead-time: 5 weeks *System-generated • Welcome Letter	\$1,500.00 per letter plus mailing costs (Including 2 rounds of edits.)
Co-branded debit card Lead-time: 5 weeks Cut-off for 1/1 business is 10/15	\$750.00 flat fee  Rush request and /or requests after 10/15 for 1/1 fulfillment is an additional \$150.00 per hour. Minimum of 3 hours charged.  \$10.00 per card for plan sponsor requested re-issues due to plan changes.
Customized welcome flyers to accompany PayFlex Card® Lead-time: 5 weeks Cut-off for 1/1/ business is 10/15 *Quantity determined based on number of	\$3,000 flat fee (Including 2 rounds of edits.) Plus recurring printed / fulfillment fees. (Minimum order is 10k.) Quantity* Price per Thousand

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## FEE AND EXPENSE EXHIBIT

members. Upon re-stocking, quantity may be re-evaluated.	<p>10,000 to 24,000     \$250.00 / M  25,000 to 50,000     \$150.00 / M  51,000 +                 \$100.00 / M</p> <p>Rush requests and/or requests after 10/15 for 1/1/ fulfillment is an additional \$150.00 per hour.  Minimum of 3 hours charged.</p>
Election Confirmation (Reimbursement products) Lead-time: Done at the time of implementation/renewal.	\$0.12 per member per month
***Account Statements Lead-time: Done at the time of implementation / renewal.	<p>\$1.50 per member per month for <u>monthly</u> Statements - (Reimbursement)  \$ 0.50 per member per month for <u>quarterly</u> Statements - (Reimbursement)</p>
Customized KnowledgeVision Presentation Lead-time: 6 weeks	Statement of Work required. (Typically 20 slides, 5 minutes of content, 3 rounds of script reviews.)
Development of Customized Communications (Brochures, flyers, email campaigns) Lead-time: Varies based on type of communication	Statement of Work required plus mailing costs if applicable.
<b>Miscellaneous Fees</b>	
Customized Reporting	\$150.00 per hour Statement of Work required.
Takeover Administration (Previous Plan Year)	<b>\$1,000.00</b>
Rejected/NSF Customer Funding ACH transactions	\$50.00 per occurrence of any plan sponsor funding ACH pull that is rejected.
Custom 800 Number	\$3,500.00 Statement of Work required.
Failure to Fund Release Claim	Any funding due PayFlex for claims paid on behalf of Company that remains unpaid after twenty (20) banking days shall be subject to a fee ("Failure to Fund Fee"). The Failure to Fund Fee shall be calculated as one-hundred twenty five (125) basis points above the three (3) month United States Dollar London Interbank Offered Rate. If such Failure to Fund Fee calculation is not permissible under applicable law then the Failure to Fund Fee shall be calculated at a rate not to exceed regulatory rates, based on the average daily balance outstanding across all non-funded days
<p>*Annual Fee includes upon written request:</p> <ul style="list-style-type: none"> <li>• Standard Enrollment Materials, limited to the number of eligible employees</li> <li>• Electronic sample of a Plan Document and Summary Plan Description</li> </ul> <p>**Members are defined as:</p> <ul style="list-style-type: none"> <li>• An employee in active status.</li> <li>• A terminated employee with a balance greater than \$10.00. Billing for terminated employees continues for three billing cycles after termination, or until the member's balance drops below \$10.00.</li> </ul> <p>*** Available <i>FREE</i> online.</p> <ul style="list-style-type: none"> <li>• Fee shall remain unchanged during the initial forty-eight (48) months of the term of the Agreement; thereafter fees are subject to change every twelve (12) months and shall not exceed a three (3) percent net increase per year after the Initial Term of the Agreement.</li> </ul>	
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## FEE AND EXPENSE EXHIBIT

### COBRA Per Event

<b>COBRA Per Event Administration Services Pricing</b>	
<b>Implementation and Annual Fees</b>	Waived
<b>Ongoing Service Fees</b>	
Qualifying Event Notification	\$12.00 per event
<b>Minimum Monthly Billing – Per Employer</b>	\$150.00 per month
<b>Optional Service Fees - NOTE: Optional Service Fees <b>only apply</b> if the service is requested by the plan sponsor and performed by PayFlex. Optional Service Fee pricing is fixed during the Initial Term of the Agreement and are listed below for transparency.</b>	
Annual Open Enrollment Services (*Per package with a \$300.00 minimum plus postage, available after PayFlex has been providing administration for a minimum of 90 days.)	\$15.00 per package plus postage*
Annual Open-Enrollment Election Form Processing (Service offered if the plan sponsor administers the open-enrollment but wants the Open Enrollment form returned to PayFlex for processing.)	\$5.00 per form processed
Custom Mailings (Non-Standard Notices)	\$5.00 per notice
Custom Mailings (Set Up Fee)	\$150.00 per hour
Manual Notification Form Processing	\$10.00 per form
Summary of Benefits and Coverage Form	\$0.60 per page plus postage
Late Payment Notice	\$3.00 per notice
New Hire COBRA/HIPAA General Rights Notice and Renotification	\$3.00 per notice
COBRA Participant Termination Notice	\$4.50 per notice
Non-Commencement Notice	\$3.00 per notice
Optional Government Mandated Notice	\$10.00 per notice
Custom Letter Fee	\$250.00 flat charge (cannot be waived or reduced)
Premium Disbursement to Carriers (No Fee for remittance to Aetna)	\$50.00 per carrier per remittance
Customized Reporting and Web Development	\$150.00 per hour - \$2,500 Minimum
Special Requests	As mutually agreed upon by the Plan Administrator and PayFlex
Rejected/NSF Client Funding ACH Transactions	\$50.00 per occurrence of any client funding ACH pull that is rejected
By the 5th working day of each month, PayFlex will provide a bill for all administration from the prior month. Reports detailing the prior month's activity will also be provided for your records.	
Company shall retain the 2% administrative fee on the total premium administered for COBRA Participants.	
Fee shall remain unchanged during the initial forty-eight (48) months of the term of the Agreement; thereafter fees are subject to change every twelve (12) months and shall not exceed a three (3) percent net increase per year after the Initial Term of the Agreement.	
PFS_COBRA Per Event_Pricing_06-03-2020	

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## FEE AND EXPENSE EXHIBIT

Company may change election to PPPM pricing upon sixty (60) days written notice to PayFlex prior to annual renewal.

### COBRA Per Eligible Participant Per Month

COBRA Per Eligible Participant Per Month - PPPM Administration Services Pricing	
<b>Implementation and Annual Fees</b>	Waived
<b>COBRA Fee Per Eligible Participant Per Month</b>	\$0.30 PPPM
<b>Service Included in PPPM Fees</b>	
COBRA Administration	Included
New Hire COBRA/HIPAA General Rights Notice	Included
Qualifying Event Notification	Included
COBRA Participant Termination	Included
<b>Minimum Monthly Billing – Per Employer</b>	\$150.00 per month
<b>Optional Service Fees - NOTE: Optional Service Fees <b>only apply</b> if the service is requested by the plan sponsor and performed by PayFlex. Optional Service Fee pricing is fixed during the Initial Term of the Agreement and are listed below for transparency.</b>	
Annual Open Enrollment Services (*Per package with a \$300.00 minimum plus postage, available after PayFlex has been providing administration for a minimum of 90 days.)	\$15.00 per package plus postage*
Annual Open-Enrollment Election Form Processing (Service offered if the plan sponsor administers the open-enrollment but wants the Open Enrollment form returned to PayFlex for processing.)	\$5.00 per notice
Re-notification New Hire COBRA/ HIPAA General Right Notice	\$3.00 per notice
Custom Mailings (Non-Standard Notices)	\$5.00 per notice
Custom Mailings (Set Up Fee)	\$150.00 per hour
Manual Notification Form Processing	\$10.00 per form
Summary of Benefits and Coverage Form	\$0.60 per page plus postage
Late Payment Notice	\$3.00 per notice
Non-Commencement Notice	\$3.00 per notice
Custom Letter Fee	\$250.00 flat charge (cannot be waived or reduced)
Optional Government Mandated Notice	\$10.00 per notice
Premium Disbursement to Carriers (No Fee for remittance to Aetna)	\$50.00 per carrier per remittance per month
Customized Reporting and Web Development	\$150.00 per hour - \$2,500 Minimum
Special Requests	As mutually agreed upon by the Plan Administrator and PayFlex
Rejected/NSF Client Funding ACH Transactions	\$50.00 per occurrence of any client funding ACH pull that is rejected

\*Participant means Member as defined on the Administrative Services Summary Sheet

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## FEE AND EXPENSE EXHIBIT

By the 5th working day of each month, PayFlex will provide a bill for all administration from the prior month. Reports detailing the prior month's activity will also be provided for your records. Prior to issuing the monthly invoice for the COBRA administration fees, PayFlex will provide the plan sponsor with an email as a reminder to update the COBRA eligible employee count on the plan sponsor website that will be used for the current month's Monthly Fee Per COBRA-Eligible fee. The plan sponsor agrees to update this count prior to the end of the current billing month. If PayFlex is not provided an updated number of COBRA eligible employees by the end of the current billing month, the plan sponsor agrees to pay the fee based on the count used the previous month. A COBRA eligible employee is defined as an active employee who is enrolled in one or more COBRA eligible plans (medical, dental, vision, FSA, EAP, etc.). If an employee is enrolled in more than one plan, the employee is only counted once.

Company shall retain the 2% administrative fee on the total premium administered for COBRA Participants.

Note: The above fees are based on approximately 4,444 benefit covered employees with approximately 2% annual turnover. Should there be a variance in turnover exceeding +/- 10%; the fees outlined above are subject to negotiation.

Services included in the PEPM fee include; COBRA Administration, New Hire COBRA / HIPAA General Rights Notice, Qualifying Event Notification, and COBRA Participant Termination Notice.

Fee shall remain unchanged during the initial forty-eight (48) months of the term of the Agreement; thereafter fees are subject to change every twelve (12) months and shall not exceed a three (3) percent net increase per year after the Initial Term of the Agreement.

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# ADMINISTRATIVE SERVICES AGREEMENT

## TERMS AND CONDITIONS

# PAYFLEX<sup>®</sup>

### ARTICLE I DUTIES OF THE PARTIES

#### PayFlex's Responsibilities

**1.1** The Company hereby appoints PayFlex Systems USA, Inc. ("PayFlex"), and PayFlex agrees to provide administrative services checked on the Summary Sheet (the "Services"). Such Services shall be performed in a good and workmanlike manner consistent with industry standards.

**1.2** PayFlex shall, at its expense, maintain adequate and necessary records on each Member related to the Services. The Company shall furnish PayFlex with complete and accurate information necessary for the preparation of such records, including, but not limited to, proper accounting of all Members, specific coverages and any changes or corrections thereto. PayFlex shall not be responsible for verifying the accuracy or completeness of the information provided by the Company and the Company shall indemnify, subject to the monetary limits established in Section 768.28, Florida Statutes, and hold PayFlex harmless from and against any claim, damage, loss or expense arising out of the inaccuracy or incompleteness of such information.

**1.3** The Company understands and agrees that PayFlex does not provide legal, tax or accounting advice or services in connection with any company-sponsored employee benefits. The Company shall be responsible for obtaining any legal, tax or accounting advice they deem advisable in connection with any company-sponsored employee benefits from its counsel or advisor.

**1.4** PayFlex shall hold all funds received from the Company, Member or on behalf of a Member as applicable, in an account established for client funds and separate from PayFlex operational funds at a financial institution of PayFlex's choosing. PayFlex shall pay all fees associated with said account. PayFlex shall not commingle Company funds with any PayFlex operational funds.

**1.5** During the term of this Agreement, PayFlex shall maintain the following insurance and will provide a certificate of insurance naming Lee County Board of County Commissioners as the certificate holder and including as an additional insured::

- (a) Commercial General Liability – \$2,000,000 / Each Occurrence;
- (b) Excess/Umbrella Liability – \$5,000,000 / Each Occurrence;

- (c) Crime – \$5,000,000 / Each Loss;
- (d) Managed Care Errors & Omissions / Professional – \$5,000,000 / Each Occurrence; and
- (e) Combined Cyber Risk Insurance - \$5,000,000 / Each Occurrence.

#### Company's Responsibilities

**1.6** The Company shall be liable for any delay in the performance of the Services caused by the failure of the Company to promptly furnish necessary information or funds, as required, to PayFlex.

**1.7** If elected by the Company and as applicable, PayFlex shall provide Member account balance information to the Member via a third party as designated by the Company. Company shall inform Members and make available single sign on access and inform the Member they may opt out of receiving the account balance information via the third party site.

**1.8** The Company is responsible for maintaining reasonable internal control mechanisms as they relate to the Services that PayFlex provides, including, but not limited to:

(a) The Company having its own administration functions and controls so users are removed promptly when they no longer need access to system resources.

(b) The Company having controls to ensure that all PayFlex-generated reports and information received from PayFlex are reviewed for accuracy and Member activity on a timely basis, with any inaccuracies or discrepancies being communicated in writing to PayFlex no later than thirty (30) calendar days after such report or information is first generated on the employer website portal by PayFlex.

(c) The Company having controls to ensure that any erroneous data is re-submitted to PayFlex within thirty calendar (30) days from the time it is first inputted erroneously.

(d) Unless otherwise detailed within the Agreement, the Company shall reconcile all cash activity to PayFlex-generated reports as soon as reasonably possible (and in any event within ten (10) banking days after such report is first delivered by PayFlex to the Company). Company shall advise PayFlex in writing of any discrepancies or inaccuracies in connection with such reconciliation within twenty (20) calendar days thereafter.

# ADMINISTRATIVE SERVICES AGREEMENT

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## TERMS AND CONDITIONS

(e) Notwithstanding any term herein to the contrary, PayFlex shall in no event be liable or otherwise responsible for (and Company hereby releases and discharges PayFlex and agrees to defend, indemnify and hold PayFlex harmless from and against) any and all claims, damages, losses and expenses arising out of or otherwise related to Company's failure to notify PayFlex in writing of any discrepancies or inaccuracies in any information, report or data provided by PayFlex, within thirty (30) calendar days after such information, report or data is first provided by PayFlex or if earlier, the date provided in paragraph (d) above.

### ARTICLE II PAYMENTS

**2.1** The financial agreement of the parties, including payment of fees and funding, as applicable to the Services elected on the Summary Sheet, are outlined in the Financial Account Terms Exhibit and is herein incorporated into this Agreement by reference.

### ARTICLE III DURATION OF THIS AGREEMENT

**3.1** This Agreement shall have an Initial Term and Effective Date as referenced on the Summary Sheet. This Agreement shall renew for succeeding twelve (12) month periods thereafter upon mutual agreement of the parties; provided, this Agreement may be terminated by either party following the end of the Initial Term or any twelve (12) month period thereafter, if a party has given at least ninety (90) calendar days prior written notice of termination to the other party prior to the commencement of the first renewal term or any subsequent renewal term, as applicable.

Except as referenced on the applicable Fee and Expense Exhibit(s), the amounts set forth on the applicable Fee and Expense Exhibit(s) shall remain unchanged during the initial forty-eight (48) months of the term of the Agreement; thereafter fees are subject to change every twelve (12) months and shall not exceed a three (3) percent net increase per year for the Initial Term of the agreement.

### ARTICLE IV TERMINATION OF THIS AGREEMENT

**4.1** In the event of a material breach by PayFlex of the terms hereof, the Company shall provide PayFlex with written notice and an opportunity to cure the breach within thirty (30) calendar days thereafter. If PayFlex does not cure the breach within such time

period, this Agreement shall, at the option of the Company, terminate upon written notice to PayFlex within ten (10) business days thereafter.

**4.2** This Agreement shall, at the option of PayFlex, terminate in the event of:

(a) The Company's failure to pay the amounts referenced in the applicable Fee and Expense Exhibit(s) by the due date;

(b) Failure of the Company to either timely fund a claim payment or reject the claim in writing, in either case within three (3) banking days after receipt by the Company of the demand or history with respect to such claim;

(c) Commencement of a bankruptcy proceeding of the Company or the insolvency of the Company;

(d) Failure of the Company to promptly deliver any data necessary for the proper performance of PayFlex's duties hereunder within five (5) business days following the request therefore;

(e) Merger, sale or consolidation of the Company, unless written consent has been given by PayFlex to continue Services in advance of such event, such consent shall not be unreasonably withheld;

(f) The enactment or change of any law or regulation which makes the continuance of this Agreement illegal or commercially impracticable; or

(g) Any other breach of this Agreement by the Company which is not cured (if curable) within thirty (30) calendar days following written notice from PayFlex.

**4.3** Upon termination of this Agreement, PayFlex shall, upon written request and within a mutually agreed upon timeframe, destroy Company records with notice to the Company, and provide a complete and final accounting as it relates to this Agreement. All records in PayFlex's possession with respect member claim files and member information pertaining to the Services will be maintained by PayFlex for the greater of (1) a period of seven (7) years following their processing hereunder; or (2) such period as required under applicable law. All administration systems, computer systems and software developed by PayFlex in connection with the Services performed hereunder constitute the sole property of PayFlex and shall be retained by PayFlex upon the termination of this Agreement. The Company hereby disclaims any interest in or to such items. This

# ADMINISTRATIVE SERVICES AGREEMENT

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## TERMS AND CONDITIONS

Agreement is subject to Chapter 119, Florida Statutes, the Florida Public Records Law.

**4.4** All funds for payment by the Company under this Agreement are subject to the availability of an annual appropriation for this purpose by the County. In the event of non-appropriation of funds by the County for the services provided under this Agreement, the Company will terminate the contract, without termination charge or other liability, on the last day of the then current fiscal year or when the appropriation made for the then-current year for the services covered by this Agreement is spent, whichever event occurs first. If at any time funds are not appropriated for the continuance of this Agreement, cancellation shall be accepted by PayFlex on thirty (30) days' prior written notice, but failure to give such notice shall be of no effect and the Company shall not be obligated under this Agreement beyond the date of termination.

## ARTICLE V INDEMNITY/DAMAGE LIMITS/MISCELLANEOUS

**5.1** Except to the extent otherwise agreed to in writing by PayFlex, PayFlex is not and shall not under any circumstances be deemed the "Company," a "named fiduciary" or a "fiduciary", as defined in ERISA, of any Company plan or for any other purpose under any federal, state or local law applicable to or otherwise affecting or regulating any company-sponsored employee benefits, and the Company acknowledges such fact and otherwise releases and discharges PayFlex from any such obligation, position or role. PayFlex shall not be required to advance its funds for the reimbursement requests or payments under any Company plan except to the extent otherwise agreed to in writing by PayFlex. PayFlex shall not be considered the insurer or underwriter of the liability of the Company to provide benefits for the Members. The Company shall have the sole responsibility and liability for the payment of all reimbursement requests. The Company shall also be responsible for all expenses incidental to or otherwise related to the operation of any Company plan.

**5.2** Each party agrees to defend, indemnify and hold the other harmless from and against any and all third-party claims, damages, losses and expenses which are incurred or suffered by a party and directly relate to the other party's performance under this Agreement, except in relation to matters as to which the indemnified party shall be finally adjudged to be liable as a result of their willful misconduct or breach of the applicable

standard of care in the performance of their duties hereunder; provided that, under no circumstances shall PayFlex be liable or otherwise responsible (and the Company agrees to defend, indemnify and hold PayFlex harmless) if PayFlex's action was based on directions or instructions given by the Company or its designee to PayFlex. The Company's liability is subject to the monetary limits established by Section 768.28, Florida Statutes.

**5.3** PayFlex makes no commitment or guarantee that any amounts paid to or for the benefit of a Member will be (or continue to be) excludable from the Member's gross income for federal, state or local tax purposes. Pursuant to local, state and federal law it is the obligation of each Member to determine whether a payment under the Services provided is excludable from the Member's gross income for federal, state and local tax purposes.

**5.4** This Agreement (comprising all of the documents referenced on the Summary Sheet), constitutes the entire agreement of the parties with respect to the subject matter hereof, and supersedes all previous agreements and discussions (whether written or oral) relating to the subject matter hereof. In the event of a conflict between any of the provisions of this Agreement, such conflict shall be resolved in favor of the more specific provision over a more general provision. No terms that are additional to or different from the terms of this Agreement (including, without limitation, the terms of any purchase order) shall be binding on either party hereto. This Agreement shall be governed by the internal substantive laws of the State of Florida except to the extent superseded by federal law, including but not limited to ERISA and the Internal Revenue Code of 1986, as amended (the "Code").

**5.5** EXCEPT IN CASES OF NEGLIGENCE, IN NO EVENT SHALL EITHER PARTY BE LIABLE OR OTHERWISE RESPONSIBLE FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY OR PUNITIVE DAMAGES, INCLUDING, BUT NOT LIMITED TO, LOST PROFITS AND ATTORNEYS' FEES, REGARDLESS OF THE NATURE OR BASIS OF THE CLAIM AND REGARDLESS OF WHETHER SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. PAYFLEX'S MAXIMUM LIABILITY UNDER THIS AGREEMENT TO THE COMPANY OR ANY PARTICIPANT FOR ANY CLAIMS, DAMAGES, LOSSES OR EXPENSES (INCLUDING, BUT NOT LIMITED TO, THOSE ARISING UNDER THIS AGREEMENT), REGARDLESS OF THE NATURE OR BASIS OF THE CLAIM, SHALL IN NO EVENT EXCEED THE TOTAL AMOUNT OF THE FEES

# ADMINISTRATIVE SERVICES AGREEMENT

## TERMS AND CONDITIONS

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PAID BY THE COMPANY TO PAYFLEX DURING THE PRIOR TWELVE (12) MONTHS. EACH PROVISION OF THIS AGREEMENT THAT PROVIDES FOR A LIMITATION OF LIABILITY OR EXCLUSION OF DAMAGES IS INTENDED TO ALLOCATE THE RISKS OF THIS AGREEMENT BETWEEN THE PARTIES. THIS ALLOCATION IS REFLECTED IN THE PRICING OFFERED BY PAYFLEX TO THE COMPANY AND IS AN ESSENTIAL ELEMENT OF THE BASIS OF THE BARGAIN BETWEEN THE PARTIES. EACH OF THESE PROVISIONS IS SEVERABLE AND INDEPENDENT OF ALL OTHER PROVISIONS OF THIS AGREEMENT, AND EACH OF THESE PROVISIONS WILL APPLY EVEN IF THE REMEDIES IN THIS AGREEMENT HAVE FAILED OF THEIR ESSENTIAL PURPOSE.

**5.6** The failure of either party to strictly enforce any provision of this Agreement shall not be deemed to be a waiver of such provision (or of any other provision of this Agreement), nor shall such failure be deemed to be a waiver of any subsequent breach of such provision (or any other provision of this Agreement). No waiver of any provision of this Agreement shall be binding upon any party unless it is in writing and executed by both parties.

**5.7** Any litigation involving any claim (whether legal or equitable) which relates to or arises from the subject matter of this Agreement shall be brought exclusively in the appropriate state or federal courts located in Lee County, Florida. Each party hereby:

(a) Consents to submit itself to the exclusive personal jurisdiction of such state or federal courts;

(b) Expressly agrees to waive all challenges to the jurisdiction of and venue in such courts based on lack of jurisdiction and/or inconvenient or improper venue; and

(c) Agrees that it will not bring any action relating to the subject matter of this Agreement in any court other than the foregoing courts.

**5.8** Company shall be in default hereunder if the Company becomes directly acquired by a competitor of PayFlex, its parent or affiliates without PayFlex's express prior written consent. PayFlex's consent hereunder may be withheld in PayFlex's sole and absolute discretion.

**5.9** It is expressly agreed that the parties intend by this Agreement to establish between themselves the relationship of independent contractors. This Agreement is not intended to and shall not be construed to create between the parties, any affiliate relationship,

partnership, joint venture, employment relationship, agency, fiduciary or other special relationship. The provisions of this Agreement are only for the benefit of the parties hereto and not for any other person. This Agreement shall not provide any third person with any remedy, claim, reimbursement, cause or action or other right.

**5.10** Force Majeure. PayFlex will not be liable for, or be considered to be in breach of or default under this Agreement on account of, any delay or failure to perform as required by this Agreement, including performance guarantees if applicable, as a result of any cause or condition beyond PayFlex's reasonable control, so long as PayFlex uses commercially reasonable efforts to avoid or remove such causes of non-performance. Such causes include, but are not limited to: acts of God; acts of terrorism; pandemic; fires; wars; floods; storms; earthquakes; riots; labor disputes or shortages; and governmental laws, ordinances, rules, regulations, or the opinions rendered by any court, whether valid or invalid.

**5.11** If any part of this Agreement is found to be illegal, unenforceable, or invalid, such part shall be severed from this Agreement and the remaining provisions of this Agreement will remain in full force and effect.

**5.12** Financial Sanctions Exclusions. If benefits or reimbursements provided by this Agreement violate or will violate any economic or trade sanctions, the benefits are immediately considered invalid. PayFlex cannot make payments for claims or services if it violates a financial sanction regulation. This includes sanctions related to a blocked person or a country under sanction by the United States, unless permitted under a written Office of Foreign Asset Control (OFAC) license.

**5.13** This Agreement may not be amended or otherwise modified other than by a written instrument signed by the Company and PayFlex.

**5.14** Any and all notices shall be delivered by first class mail (postage pre-paid) or by overnight commercial delivery service (pre-paid) or delivered by hand to the party at their address referenced on the Summary Sheet.

**5.15** As applicable, PayFlex agrees to assist the Company as a business associate in complying with the requirements of the Health Insurance Portability and Accountability Act of 1996 and its implementing regulations (45 C.F.R. Parts 160-64) and the requirements of the Health Information Technology or

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Economic and Clinical Health Act, as incorporated in the American Recovery and Reinvestment Act of 2009, and the HIPAA Omnibus Final Rule at 78 Fed. Reg. 5566 (January 25, 2013), as they relate to the obligations of a business associate, and to this end, PayFlex and Company agree to execute a form of "Business Associate Agreement" mutually agreed to by both Parties in connection with the Services performed hereunder. Note: Business Associate Agreements are not applicable to Health Savings Account, Dependent Care Flexible Spending Accounts, Transit and Parking, Commuter, Adoption or Tuition Services.

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# ADMINISTRATIVE SERVICES EXHIBIT

## COBRA BENEFIT ADMINISTRATION

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This Exhibit details the services PayFlex will perform as it relates to COBRA continuation coverage.

### ARTICLE VI DUTIES OF THE PARTIES

**6.1** PayFlex shall undertake its obligations hereunder as directed by (and in accordance with instructions provided by) the Company. PayFlex shall at no time exercise any discretionary authority or control with regard to the management or administration of the Plan(s), or the management or disposition of any Plan assets. On all matters involving the exercise of discretion, PayFlex shall seek direction from the Company and shall be fully protected, held harmless, and indemnified in so acting consistent with such direction. The Company acknowledges that the timeliness of providing information and direction to PayFlex is critical to the successful completion of the services. All employee data and other relevant information will be supplied to PayFlex in a timely and accurate manner using a pre-approved PayFlex format. PayFlex is not responsible for the actions of the Company in processing or interpreting data provided by the Company or the Company's failure to provide the necessary data.

### ARTICLE VII INITIAL/GENERAL COBRA NOTICE

**7.1** Company will notify PayFlex in writing within thirty (30) calendar days of new members in a group health plan subject to COBRA, which notice will specify:

- (a) The date and type of enrollment;
- (b) The names and addresses of each new Member; and
- (c) The names and addresses of family members of Members.

**7.2** Within ten (10) business days after PayFlex receives the notice described in the paragraph above, PayFlex will send with proof of mailing, a letter notifying the appropriate qualified beneficiary(ies) of their right to COBRA continuation coverage upon the occurrence of a qualifying event.

**7.3** If agreed to between PayFlex and the Company in writing, PayFlex shall also include a "HIPAA Notice of Privacy Practices" statement on behalf of the Company. The notice shall be drafted by the Company and provided with the initial COBRA notice described above.

### ARTICLE VIII QUALIFYING EVENT NOTICE

**8.1** Company will notify PayFlex in writing within thirty (30) calendar days of a qualifying event occurring, which notice will specify:

- (a) The date and type of qualifying event (as set forth in Code Section 4980B(f)(3)(A) through (F);
- (b) The names, social security numbers, addresses and birth dates of all qualified beneficiaries (and the covered Member if not a qualified beneficiary) and their relationship to each other and to the covered Member; and
- (c) The specific group health plan(s) and combinations of such plans under which the qualified beneficiaries are entitled to COBRA continuation coverage.

Within ten (10) business days after PayFlex receives the notice of a qualifying event as described in the paragraph above, PayFlex will send, with proof of mailing, a letter notifying the appropriate qualified beneficiary(ies) of their right to COBRA continuation coverage, along with an election form specifying the group health plan(s) and the cost of coverage thereof to such qualified beneficiaries.

### ARTICLE IX NOTICE TO QUALIFIED BENEFICIARIES OF ENROLLMENT

**9.1** Within ten (10) business days after PayFlex receives a properly completed and signed election form for COBRA continuation coverage and initial payment from the qualified beneficiary(ies), PayFlex will send payment coupons or invoice to such qualified beneficiary(ies), provided the election form was returned to PayFlex by the qualified beneficiary within sixty (60) calendar days of the date the election form was mailed to the qualified beneficiary, or the loss of coverage date, whichever is later. The initial premium must be postmarked within forty five (45) calendar days after the COBRA election. PayFlex will also provide a method for automatic electronic premium payment from a qualified beneficiary's checking or savings account.

**9.2** If PayFlex receives an election form for COBRA continuation coverage after such sixty (60) calendar day period has expired, PayFlex will provide the affected qualified beneficiary(ies) with a notice of unavailability of coverage. Such notice shall be provided within ten (10)

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## COBRA BENEFIT ADMINISTRATION

business days after PayFlex receives the late election form.

### ARTICLE X NOTICE OF SUBSEQUENT QUALIFYING EVENT

**10.1** Qualified beneficiary(ies) must notify the Company in writing within sixty (60) calendar days of a subsequent qualifying event, which notice will specify:

- (a) Name and address of the COBRA Member entitled to extend the period of COBRA continuation coverage up to 36 months due to a second qualifying event; and
- (b) The type of qualifying event.

Within ten (10) business days after PayFlex receives the notice described in paragraph above, PayFlex will send, by proof of mailing, a letter notifying the appropriate qualified beneficiary(ies) of their right to such extended COBRA continuation coverage, along with an election form specifying the group health plans and the cost of coverage thereof. PayFlex will provide the affected qualified beneficiary(ies) with a notice of unavailability of coverage if the event does not qualify as a subsequent qualifying event.

### ARTICLE XI NOTICE OF TOTALLY DISABLED QUALIFIED BENEFICIARIES

**11.1** Qualified beneficiaries must notify the PayFlex within sixty (60) calendar days of the date they receive a determination letter regarding total disability. By providing PayFlex with this letter, the qualified beneficiary certifies that the qualified beneficiary is entitled to up to 29 months of COBRA continuation coverage.

Within ten (10) business days after receiving the abovementioned letter the Company will determine the qualified beneficiary's ability to extend coverage as described in Code Section 4980B(f)(2)(B)(i). Upon determination, PayFlex will send a letter notifying the totally disabled qualified beneficiary of their ability to extend the maximum period of continuation coverage to 29 months. PayFlex will also provide notice to the disabled qualified beneficiary of the increase in premiums to 150% for months 19 through 29 if the Company elects to charge the additional 48%. PayFlex will provide the affected qualified beneficiary with a denial notice if it is determined that the qualified beneficiary is unable to extend coverage. The Company and PayFlex agree that the Company and/or its plan

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retain responsibility for determining a qualified beneficiary's eligibility for COBRA on appeal.

### ARTICLE XII NOTICE OF EXPIRATION OR TERMINATION OF COBRA CONTINUATION COVERAGE

**12.1** PayFlex will notify COBRA Members of the date of termination of their COBRA continuation coverage within ten (10) business days following the date PayFlex learns of one or more of the following reasons for termination of COBRA continuation coverage:

- (a) Failure of the COBRA Member to timely pay the correct premium for COBRA continuation coverage;
  - i. For purposes of this Agreement "timely pay" means the initial premium payment is made within forty five (45) calendar days from the date of the COBRA election, thereafter premium payments will be considered timely if they are received within a thirty (30) calendar day grace period after the first day of the coverage period to which the premiums relate.
- (b) Coverage of the COBRA Member under another group health plan, if such plan does not contain any exclusions or limitations with respect to any pre-existing condition of the COBRA member;
- (c) Entitlement of the COBRA Member to Medicare;
- (d) Expiration of the maximum period for COBRA continuation coverage; or
- (e) The Company ceasing to provide any group health plan to any Company employees and all of its commonly controlled trades or businesses (within the meaning of Code Section 414).

**12.2** If the reason for notice is the expiration of the maximum period for COBRA continuation coverage, a notice of conversion rights (if available) shall be sent one hundred and eighty (180) calendar days prior to expiration of COBRA continuation coverage.

### ARTICLE XIII PREMIUMS FOR COBRA CONTINUATION COVERAGE

**13.1** COBRA Members who have made a valid election of COBRA continuation coverage shall make premium payments, for COBRA continuation coverage, via mail to PayFlex; electronic funds transfer through the

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## COBRA BENEFIT ADMINISTRATION

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Member's bank to PayFlex; or online through the PayFlex website. Alternatively, PayFlex may accept payments on behalf of the COBRA Member from other third-parties. PayFlex shall deposit such funds received from COBRA Members into a custodial account established for such purpose at a financial institution of PayFlex's choosing. Such deposit shall occur generally within one business day of receipt. Interest may be generated on funds held in such account during the period beginning on the day such funds are deposited by PayFlex into such account and the day that PayFlex forwards such funds as premium payments. PayFlex will forward funds generally on the 10th calendar day of each month subject to the direction of the Company. Any interest generated on such account shall generally be at federal funds rates. Such interest shall be used to pay the fees of the financial institution with respect to such account. To the extent that such interest is not sufficient to pay such fees, PayFlex shall pay such fees. To the extent that such interest is in excess of such fees, PayFlex shall be entitled to retain such interest as compensation for services provided. Premium payments collected by PayFlex belong to the Company's benefit plan, except that PayFlex shall retain any interest on the custodial account except to the extent otherwise provided in this paragraph. PayFlex shall act solely as an administrative collection agent for the Company in collecting premium payments and will remit payments to the Company, appropriate insurance carrier, or other entity directed by the Company by the 10th calendar day of the month. The payment will include all fully satisfied premium intervals collected prior to the date the premiums are remitted. The Company agrees that, in addition to any amounts specified in the Fees and Expense Exhibit, amounts retained by PayFlex under this paragraph constitute reasonable compensation for PayFlex' services.

**13.2** When premium payments are received by PayFlex, PayFlex will notify the appropriate insurance carriers /administrators of eligibility changes including new enrollees or terminations. When premium payments are received by the Company, the Company is responsible to notify appropriate insurance carriers/administrators of eligibility changes including new enrollees or terminations.

**13.3** If PayFlex collects premiums and the premium payment is deficient by an amount that is no greater than \$50 or 10% of the COBRA premium amount required for that coverage period, PayFlex will notify the qualified beneficiary of the deficient amount and provide him or her with a reasonable period of time (not to exceed thirty (30) calendar days) in which to make the

payment as described in 26 C.F.R. § 54.4980B-8, Q/A-5(d).

**13.4** If PayFlex collects premiums, PayFlex will provide the Company with a monthly summary employer census report, COBRA member payment and refund report, COBRA member paid through report, deficient payment report and an address update report. The Company will notify PayFlex of any errors or corrections in such reports within thirty (30) calendar days following delivery by PayFlex.

**13.5** If PayFlex receives written notice from the Company of an increase in the premium amount for COBRA continuation coverage, and such notice specifies the effective date of the increase (which must be at least thirty (30) calendar days after such written notice to PayFlex), PayFlex will notify the affected COBRA members of the amount and effective date of the increase within thirty (30) business days following PayFlex's receipt of such written notice from the Company.

## ARTICLE XIV ANNUAL OPEN ENROLLMENT SERVICE

**14.1** Where agreed upon between PayFlex and the Company in writing, PayFlex shall assist the Company in notifying COBRA Members of open enrollment rights. Company shall provide benefit material to PayFlex at least sixty (60) calendar days prior to the open enrollment period.

**14.2** PayFlex will send a letter notifying the COBRA Member of their open enrollment options. This mailing shall include enrollment forms and benefit communication material as provided by Company.

The Company will provide PayFlex with a completed open enrollment document. Upon receipt of the completed open enrollment document from the Company, PayFlex will process the documents and notify the carrier(s) of any change in the enrollment status.

# ADMINISTRATIVE SERVICES EXHIBIT

## REIMBURSEMENT SERVICES ADMINISTRATION

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This Exhibit details the services PayFlex will perform as it relates to the Reimbursement Services selected on the Summary Sheet.<sup>1</sup>

### ARTICLE XV DUTIES OF THE PARTIES

#### PayFlex's Responsibilities

**15.1** In accordance with Section 1.2 of the Terms and Conditions PayFlex shall maintain records on each Member. The Company shall furnish PayFlex with all information necessary for the preparation of such records. PayFlex shall not be responsible for verifying the accuracy or completeness of the information provided by the Company. The records maintained on each Member shall include:

- (a) Full name and address;
- (b) Member number or Social Security number;
- (c) Election and/or contribution amount; and
- (d) Effective date of coverage.

**15.2** PayFlex shall provide the Company with forms or comparable electronic means for the enrollment and maintenance of a Member's records and for the Member's submission of claims for payment of benefits provided in the Plan.

**15.3** PayFlex shall assist the Company, or its designated agent, by providing information relating to the preparation and filing of any report, form or document required by any state or federal agency with respect to the Plan. PayFlex will also assist the Company by providing the following, when requested, and without exposing PayFlex to liability for providing any such assistance:

- (a) Electronic sample of the "Plan Document" and "Summary Plan Description," when requested by the Company;

- (b) Available information requested by the Company in connection with the filing of the IRS Form 5500; and

- (c) Available information requested by the Company in connection with conducting non-discrimination testing.

**15.4** The Company shall be responsible for the final proper preparation and timely filing of the following documents, and performance and compliance with the following in connection with the Plan:

- (a) "Plan Document" and "Summary Plan Description";
- (b) Corporate resolution approving and adopting the Plan;
- (c) IRS Form 5500; and
- (d) Non-discrimination testing and compliance.

The Company shall defend, indemnify and hold PayFlex harmless from any claim, damage, loss or expense arising out of the Company's performance of its obligations under this Section.

#### Claim Services

**15.5** PayFlex shall process each application for benefits made by a Member on the forms distributed by the Company or via approved electronic means, and after due investigation and verification of the statements contained therein, PayFlex will make the initial determination of the eligibility of the Member to benefits under the Plan.

**15.6** PayFlex shall conduct such examination as is reasonable to determine that the claim for benefit is consistent with the terms of the Plan and will make the initial determination of the amounts due and payable pursuant to the Plan.

**15.7** PayFlex shall make available to the Company, a check history showing the name of the Member, name of payee and amount of benefit payable based on PayFlex' initial determination as to the allowability of the claim.

**15.8** PayFlex shall arrange for the payment of all approved claims from funds made available by the Company. The claim checks shall be made payable to the Member, their assignee, or to such other person designated by the Member not otherwise restricted or prohibited by the Plan. The Company authorizes PayFlex to prepare and issue checks signed by PayFlex

<sup>1</sup> The Reimbursement Service Benefit, Administration Administrative Services Exhibit governs the administration of the following Services, as applicable, and as selected by the Company on the ASA Summary Sheet: Healthcare and Dependent Care Flexible Spending Account (FSA), Limited Purpose Flexible Spending Account (LPFSA), Health Reimbursement Arrangement (HRA and RRA), Transit and Parking, Adoption Assistance, Tuition Assistance and Premium Only.

## ADMINISTRATIVE SERVICES EXHIBIT

### REIMBURSEMENT SERVICES ADMINISTRATION

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from a PayFlex account funded by the Company for the purpose of paying claims. Any interest generated on such account shall be used to pay the fees of the financial institution with respect to such account. To the extent that such interest is not sufficient to pay such fees, PayFlex shall pay such fees. To the extent that such interest is in excess of such fees and it does not exceed LIBOR plus 2-percent, PayFlex shall be entitled to retain such interest as compensation for services. PayFlex shall request payment from the Company on a periodic basis for the payment of claims. PayFlex reserves the right to not release claim reimbursements until current funds are received by PayFlex from the Company. The Company shall advise a Member of any delays in payment of any claim due to the failure of the Company to fund a claim payment and the effect of such delay on the payment of the claim processed pursuant to this Agreement. Upon request, PayFlex will provide a report of outstanding reimbursement checks to the Company.

**15.9** The Company shall have the final authority to authorize or disallow claim payments. PayFlex shall assume no liability and shall be indemnified and held harmless by the Plan and the Company, from and against any and all claims, damages, losses or expenses resulting from PayFlex' compliance with instructions or directions communicated by the Company to PayFlex in writing.

**15.10** In the event a claim is ultimately determined to not be payable, PayFlex shall notify the Member of such decision, including the reason for the denial. The Member shall have the right to appeal such denial. PayFlex will evaluate the appeal and advise the Company of PayFlex' recommendation as to the allowability of the claim. PayFlex will provide an appeal response to the Member. The final disposition of claim will be made by and at the risk of the Company. Such final disposition will relate to Member eligibility and the timely filing of claims.

**15.11** Where applicable, PayFlex shall provide debit cards (i.e. PayFlex Card™) to all reimbursement account Members, at the request of the Plan. Card use is bound by and subject to the terms of the "Card Association Rules" as described in the "Cardholder Agreement" that PayFlex provides to each Member upon card issuance.

**15.12** All debit card transactions posted to the account, regardless of final disposition, are deemed to be claims and shall be the responsibility of the Plan and shall be funded by the Plan.

**15.13** PayFlex shall make the following standard reports available to the Company at no additional cost:

(a) Ledger Summary Report (Monthly) – List of deposits, payments and account balances by Member account for the period and plan year to date.

(b) Election Report (Beginning of Plan Year) – List of elections by Member account. Company agrees to verify all deductions and annual elections and notifying PayFlex in writing of any changes or corrections within thirty (30) calendar days following delivery of such report by PayFlex.

(c) Funding Notification Reports (Settlement and Production) – Voucher-style report sent each time funding transactions are initiated.

(d) Production and Settlement Payment Registers – Supporting detail for the Funding Notification Report referenced above. Lists Member reimbursements by account type, plan year and division (if applicable).

**15.14** Custom reports shall be provided subject to feasibility and data availability. Custom reports are not standard and shall be subject to an additional cost mutually agreed to by the parties in writing. The Plan shall be billed for programming time in accordance with the Fee and Expense Exhibit.

**15.15** The services listed in this Exhibit may be expanded by mutual written agreement of the parties.

**15.16** PayFlex, in accordance with its efforts to be an environmentally responsible company, shall provide Members with current account balance and activity information via electronic means, including web portal and call center. Periodic balance information shall be provided via "Explanation of Payment" documents that accompany claims reimbursements.

#### Company's Responsibilities

**15.17** The Company shall provide PayFlex with the necessary records of the Plan Members as of the Effective Date of this Agreement. Thereafter, the Company shall promptly notify PayFlex of all changes or corrections, including, but not limited to, termination, changes in status, or the addition of new Members. PayFlex shall not be liable for any action it has taken (or failed to take) on behalf of the Company or a Member prior to PayFlex's receipt of such information from the Company. The Company agrees to defend, indemnify and hold PayFlex harmless from and against any claim,

# ADMINISTRATIVE SERVICES EXHIBIT

## REIMBURSEMENT SERVICES ADMINISTRATION

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damage, loss or expense arising as a result of Company's failure to timely notify PayFlex of any such changes or corrections or to otherwise provide complete and accurate information to PayFlex.

**15.18** For the purpose of calculation of fees and updating of applicable records, the Company agrees that Member eligibility terminations that take effect on a date that precedes the Company's notice to PayFlex of such termination (Retroactive Terminations) shall not exceed thirty (30) calendar days and that PayFlex has no financial responsibility for any benefit payments or fees as a result of the Company's failure to notify PayFlex of such terminations in writing.

**15.19** The Company shall maintain a supply of forms, which, upon the Company's request, will be provided by PayFlex and the Company shall distribute or make such forms available to the Members for the filing of claims for benefits or to report changes in participation.

**15.20** The Company shall be solely responsible for the collection and administration of contributions to the Plan.

**15.21** The Company shall provide PayFlex with all materials, documents and information necessary for PayFlex's performance hereunder, or to satisfy the requirements of governing law.

**15.22** The Company shall be solely responsible for satisfying any and all reporting and disclosure requirements imposed on the Plan under applicable law. PayFlex will assist with such requirements (without exposing PayFlex to liability), upon written request from the Company.

**15.23** Health Reimbursement Accounts (HRA). The Plan shall only reimburse expenses for those individuals who are covered under a group health plan that is compliant with Affordable Care Act (ACA) requirements. The Company acknowledges that it is their responsibility under the IRS code to determine whether or not an employee's dependent is eligible to be covered under the HRA sponsored by the Company and that they are in the best position to determine an employee's dependent data and if that dependent(s) is covered under the Company sponsored group health plan or other ACA compliant group health plan. The Company shall defend, indemnify and hold PayFlex harmless from any claim, damage, loss or expense arising out of the instructions the Company provided to PayFlex to approve HRA dependent claims absent a list provided to PayFlex by the Company of such HRA ACA compliant dependents.

This HRA provision does not apply to a qualified small employer health reimbursement arrangement (QSEHRA) (small group employers with less than fifty (50) full-time employees, that do not offer any group health plan), Healthcare and Dependent Care Flexible Spending Account (FSA), Limited Purpose Flexible Spending Account (LPFSA), Transit and Parking, Adoption Assistance, Tuition Assistance and Premium Only.

### ARTICLE XVI TRANSITION

**16.1** If this Agreement is terminated by either party (other than by PayFlex pursuant Section 4.2 of the Terms and Conditions) and the Company elects a 90-day run-out period for claims submissions PayFlex shall continue to perform services hereunder (i.e. process claims) for up to three (3) months thereafter in exchange for an advanced fee paid by the Company equal to three (3) times the last month's bill. Such fee (and all other amounts owing to PayFlex hereunder) shall be paid in full prior to further performance by PayFlex.

The parties understand that there may be unresolved claims that were incurred prior to the termination date but received by PayFlex within three (3) months following the termination date ("Runout Claims or Runout Claims Period"). The Fees and Funding provisions of such Runoff Claims are outlined in Financial Account Terms Exhibit.

PayFlex shall have no obligation to process requests for reimbursement or payments presented after the end of the "Runout Claims Period" if elected by the Company, or the termination date if not elected. All payments made in accordance with this Section shall under all circumstances continue to be the sole responsibility and liability of the Company.