

# MASTER SERVICE AGREEMENT

Last updated February 15, 2020

This Master Service Agreement (“MSA”) is by and between S & W Payroll Services, L.L.C. (“Netchex”) and Client, as identified on Fee Proposal referencing this Agreement. This Agreement is effective as of the date of execution of the Fee Proposal (the “Effective Date”). Client may receive notices at the address or email address listed on the Fee Proposal.

The parties hereby agree as follows:

Netchex will render to Client, and Client agrees to accept and pay for the Services subject to and in accordance with the provisions of this MSA and the Fee Proposal signed by Client. In all cases, the Agreement shall include the following MSA provisions: **General Provisions, Payroll Service & Funds Transfer Terms** and **Direct Deposit Service Terms** below, and any amendment that may be entered into pursuant to this Agreement.

If Client subscribes to the **NetBenefits** product, then Client also agrees to the **NetBenefits Service Terms**. If Client subscribes to the **NetCOBRA** product, then Client also agrees to the **NetCOBRA Service Terms**.

Each representative signing the Fee Proposal and agreeing to this MSA represents and warrants that he/she has the legal power and authority to enter into this MSA on behalf of Netchex or Client, as applicable.

## 1. GENERAL PROVISIONS

1.1 **Scope.** In general, all products and services identified in any statement of work, Fee Proposal, or in this Agreement, and any other product sold, or service rendered to Client at Client’s request (collectively, “Services”) are subject to the provisions of this Agreement.

1.2 **Definitions.** Capitalized words used in this Agreement but not otherwise defined herein shall have the meanings set forth below.

- (a) “Admins” is defined in Section 1.3(c).
- (b) “Agreement” means the MSA, Fee Proposal, additional terms for Services included in the Fee Proposal, quotes, and statements of work, if any.
- (c) “Confidential Information” means all information of a confidential or proprietary nature, including Netchex’s pricing and pricing related information and Client Data provided by the disclosing party to the receiving party for use in connection with the Services but does not include (i) information already known to the receiving party; (ii) information that becomes generally available to the public other than as a result of disclosure by the receiving party in violation of this Agreement; and (iii) information that becomes known to the receiving party from a source other than the disclosing party on a non-confidential basis.
- (d) “Custom Development” is defined in Section 1.4(d).
- (e) “Client” is defined in the Fee Proposal.
- (f) “Client Data” is defined in Section 1.7.
- (g) “Effective Date” is defined in the MSA preamble.

- (h) "Information Security Incident" means an incident of unauthorized access to and acquisition of unencrypted, unredacted, or untruncated electronic records or data containing Personal Data where illegal use of the Personal Data has occurred or is reasonably likely to occur or that creates a material risk of harm to any affected individual data subject.
- (i) "Initial Term" is defined in Section 1.10(a).
- (j) "Intellectual Property" is defined in Section 1.5.
- (k) "Netchex" has the meaning set forth in the preamble of this Agreement.
- (l) "Payment Services" means any Services that require Netchex, in connection with such Services, to impound funds from Client's bank account to pay Client's third-party payment obligations.
- (m) "Personal Data" means any Client Data that consists of the first name or first initial and last name of an individual in combination with any one or more of the following data elements, when the name or the data element is not encrypted, truncated, or redacted: (1) social security number; (2) driver's license number or state identification card number; (3) passport number; or (4) account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; provided, however, that "Personal Data" does not include publicly available information which is lawfully made available to the general public from federal, state, or local government records.
- (n) "Services" is defined in Section 1.1.
- (o) "Term" is defined in Section 1.10.
- (p) "User Agreements" is defined in Section 1.14(a).

1.3 **Client Obligations.** Netchex cannot render the Services to Client without the Client's help and cooperation. Accordingly, Client agrees to the following regarding its use of the Services:

- (a) **Cooperation.** Client must cooperate with Netchex to allow Netchex to render the Services to Client. Client must promptly provide to Netchex all requested documents and information needed to perform the Services, and Client's failure to do so may delay Netchex's implementation and/or performance of the Services, which will not be considered a breach by Netchex under the Agreement. All Services provided pursuant to this Agreement shall be based upon information provided to Netchex by Client (including proof of federal, state, and local tax identification). Upon receipt from Netchex, Client will promptly review all disbursement records and other reports, or documentation prepared by Netchex for validity and accuracy according to Client's records, and Client will promptly notify Netchex of any discrepancies.
- (b) **Exclusivity.** Beginning after Client's first payroll period in which the Services provided by Netchex are used, and continuing through the Term of this Agreement, Netchex shall be the sole and exclusive provider of the Services to Client.
- (c) **Administrative Control.** Client shall authorize one or more administrators, employees, brokers, or other designated third parties with administrative credentials (each, an "Admin" and, collectively, the "Admins") to use and control the Services, including by (i) acting on Client's behalf; (ii) providing information on Client's behalf; and (iii) binding Client with respect to the Services. Admins are authorized by Client to access the Services by entering a confidential user ID and password, which Admins shall keep private and not share with others. The acts, omissions, and decisions of any Admin are deemed to be the acts, omissions, and decisions of Client, which are hereby authorized, ratified and adopted by Client. Netchex shall be entitled to rely on the acts, omissions, and decisions made using

administrative credentials, including without limitation any changes to any documents and information provided to or by Client, or any other changes made in connection with the Services. Client or Admin may add or remove any Admin upon reasonable notice to Netchex. Netchex has no obligation to confirm or verify any acts, omissions, or decisions made using administrative credentials with any other Admin or any other agent, employee, director, manager, other personnel, or representative of Client.

(d) **Passwords; Secure Access.** Client and its users (including its Admins) must use best efforts to securely access any Services, including by using secure and trusted connections to the internet. Client and any and all personnel of Client authorized to access the Services, including but not limited to Admins, will take reasonable steps to adequately secure, and keep confidential, any applicable passwords or credentials, and any information accessible via access to the Services. If Client believes or suspects that any of Client's, its Admins', or any other personnel of Client's passwords or credentials have been disclosed to, accessed by, or compromised by unauthorized persons, Client must immediately notify Netchex. Netchex reserves the right to prevent access to the Services if Netchex has reason to believe that Client's passwords or credentials used in connection with the Services have been compromised, or that any other security breach has occurred in connection with the Services. In addition, Client acknowledges that security of transmissions over the internet cannot be guaranteed and further acknowledges that Netchex is not responsible for Client's access to the internet, interception or interruptions of communications through the internet, or changes or losses of data through the internet.

(e) **Legal Compliance.** Client shall not use or access the Services provided by Netchex in any way that violates any applicable international, federal, state or local laws or regulations. Client acknowledges that Client, and not Netchex, will be solely responsible for the following:

- (i) Compliance with all laws and governmental regulations, including without limitation laws and regulations relating to taxes, garnishments, and all other legal requirements;
- (ii) Monitoring changes in the law and implementing any necessary changes to its operations accordingly;
- (iii) Compliance with all applicable data protection laws and obtaining any and all consents from its employees necessary to transmit information to Netchex; and
- (iv) Any use Client may make of the Services.

Each party shall be responsible for complying with all applicable laws or regulations that affect its internal business generally. Each party shall furthermore be responsible for complying with all applicable laws and regulations regarding security breaches and suspected security breaches involving personal information stored on the computer systems of either party or its subcontractors. All Payment Services are subject to the operating rules of the National Automated Clearing House Association ("NACHA"). Netchex and Client each agree to comply with all applicable NACHA rules and regulations.

All Services provided by Netchex under this Agreement shall be contingent on Client not engaging in any acts that are in contravention of any federal, state, or local law. If Client engages in any such acts in contravention of any federal, state, or local law, Netchex shall have the right to immediately terminate this Agreement and shall have no further obligation to provide any Services to Client, in accordance with Section 1.10(e) of this Agreement.

(f) **Services Do Not Constitute Legal or Other Advice.** CLIENT ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY CLIENT AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT CLIENT REQUIRES ANY SUCH ADVICE, CLIENT REPRESENTS THAT IT WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, ACCOUNTING, OR OTHER PROFESSIONALS. CLIENT SHOULD REVIEW

APPLICABLE LAW IN ALL JURISDICTIONS WHERE CLIENT OPERATES AND HAS EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE.

- (g) **Additional Services.** If Client requests any additional services offered by Netchex but not included in the Services under this Agreement, such services may be included in a mutually agreed upon amendment to this Agreement. Any such amendment shall be incorporated herein by reference as if set forth in this Agreement. Any additional services shall be made available at additional fees.

1.4 **Fees and Client Funds.** Client agrees to pay the fees identified in the Fee Proposal, subject to increases allowed under this Agreement, any accepted quote for Custom Development, and any early termination fees under Section 1.10(c). If Netchex employs third parties to collect any outstanding monies owed under this Agreement, Client will pay reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all other related costs.

- (a) **Guaranteed Fees.** During the Initial Term, Netchex may not increase the fees identified in the Fee Proposal.
- (b) **Allowable Increases.** After the Initial Term, Netchex may annually increase its fees by the greater of either 5% or the Consumer Price Index, All Urban Consumers, Not Seasonally Adjusted, U.S. City Average, All Items (as published by the United States Bureau of Labor Statistics, Series ID: CUUR0000SA0). All Services will be billed to Client at the fee applicable at the time the Services were rendered.
- (c) **Training and Travel.** If Client requests in-person or on-site training from Netchex, Client must pay Netchex for its trainer's time and travel according to rates quoted to Client.
- (d) **Custom Development.** If Client requests any solution or feature that requires special or customized software or other development ("Custom Development"), Client must pay Netchex according to the rates quoted to Client.
- (e) **Client Requested Audit.** If Client requests documents or information from Netchex in connection with an audit, certification, or other program, Netchex shall use reasonable efforts to assist in responding to the request, and Client shall reimburse Netchex for its reasonable costs and expenses associated with preparing its response, including employee time and reasonable professional expenses (e.g., fees charged by attorneys, accountants, or other professionals), if applicable.
- (f) **Client Funds.** Netchex may earn interest on Client funds in its possession, and Client hereby assigns to Netchex the benefit of any funds held in separate accounts used to perform any Service.
- (g) **Sales Tax.** Client shall be responsible for payment of all sales taxes relating to the provision of the Services, except to the extent a valid tax exemption certificate or other written documentation acceptable to Netchex to evidence Client's tax exemption is provided by Client to Netchex prior to the delivery of Services.

1.5 **Intellectual Property.** To develop, support, and maintain its Services and Custom Development, Netchex has made substantial investments to create software, knowhow, and related works, which constitute Netchex's copyrighted works and proprietary and confidential trade secrets (collectively, "Intellectual Property"). Intellectual Property also includes all rights in any Custom Development software, knowhow, and related works.

- (a) **Ownership.** Netchex owns all Intellectual Property. No Custom Development may be deemed a work made for hire under the Copyright Act. Notwithstanding any provision in the Agreement to the contrary, no Intellectual Property is assigned to Client. Client agrees not to attack Netchex's ownership or validity

of any Intellectual Property, whether registered or unregistered, and this obligation will survive the termination or expiration of the Agreement.

- (b) **License.** Subject to Client's compliance with the other provisions of the Agreement, Netchex hereby grants to Client a non-exclusive, revocable, non-transferable, non-sublicensable, limited right to use software, in objective form only, and related Intellectual Property required to render the Services during the Term and solely for Client's internal business purposes. Client acknowledges that all Intellectual Property licensed to Client hereunder is protected by U.S. copyright laws, international copyright treaties, as well as other intellectual property laws. Client agrees not to use, disclose, display, copy, or reproduce any Intellectual Property, except as expressly authorized by the Agreement. Netchex reserves all rights to the Intellectual Property except as expressly granted by this Section 1.5. All licenses to the Intellectual Property shall terminate automatically upon Netchex ceasing to provide Client with related Services.
- (c) **Trademarks.** Neither party may use the other party's trademarks without prior written authorization, except Client hereby authorizes Netchex to identify Client as one of Netchex's clients.

1.6 **Use of Services.** Client may use the Services only as expressly permitted by the Agreement.

- (a) **Permitted Uses.** If Services are rendered in connection with a particular Section of this Agreement, Client may use the Services only as permitted in the applicable Section. In general, to the extent that a Service requires Client to use software developed by Netchex or its licensors, or any Netchex Intellectual Property, Client may make such use. If a Service is priced based on a certain number of users, then Client may not allow more than the designated number of users to use the Service.
- (b) **Third Party Software.** Netchex may render any Service in conjunction with third party service providers. Netchex may also use third party services to help analyze how users use the Netchex websites and the Services, and these third-party services may place cookies on Client's device to collect certain internet log information and visitor behavior information in anonymous form. Netchex may use these third-party services, such as cookies, to analyze trends, administer and track use of Netchex's websites, and to gather demographic information about Netchex's user-base as a whole. Moreover, Netchex may use these technologies to: (i) recognize Client; (ii) verify Client's identity; (c) customize the Services and advertising; (d) help ensure that Client's account security is not compromised; (e) collect traffic data, such as whether Client is a new or returning visitor, the timestamp of Client's current visit to Netchex's websites, and the referrer site or campaign that directed Client to the Services (e.g., search engine, keywords, banner or email); and (f) mitigate risk and prevent fraud through the Services. Netchex may receive reports based on the use of these technologies by third party companies on an individual as well as aggregated basis.
- (c) **Restrictions and Limitations.** Netchex does not sell software, and this Agreement should not be construed as a sale. Client may not sell or sublicense any Service or licensed Intellectual Property. Client, its users and Admins, and those under its management and control, including all employees and contractors, must not: (i) breach this Agreement or cause any other person to engage in acts that, if performed by Client, would breach the Agreement; (ii) attempt to decompile or otherwise reverse engineer Netchex's software or any other licensed Intellectual Property; or (iii) access or attempt to access Netchex's databases, servers, or other equipment without authorization. The obligations under this paragraph will survive the termination or expiration of this Agreement.

1.7 **Client Data.** Client's use of Services may lead Client, through its users and/or Admins, to provide Netchex with employment data (e.g., time clock entries and benefits information), public information (e.g., home addresses) and non-public personal information (e.g., social security numbers) (collectively, "Client Data").

- (a) **Ownership and Use.** Client owns all Client Data and is responsible for its accuracy and completeness. Client represents and warrants that it has all permissions and authorizations necessary for it to provide Client Data to Netchex. Netchex will not use Client Data, except as permitted by the Agreement and/or Netchex's Privacy Notice. Client authorizes Netchex to use, copy, and transmit Client Data for all purposes relating to the Services of Netchex and its partners and affiliates. Netchex may report aggregated, anonymized data to the Federal Reserve and other entities that report on jobs and other enterprise statistics. At Client's request, Netchex may transmit Client Data to federal, state, and local governments, banks and other financial institutions, insurance carriers, retirement plans, and any other recipient identified by Client.
- (b) **Security; Information Security Incidents.** Netchex uses industry standard security measures to secure and back-up Client Data. To the extent required by applicable law, Netchex will notify Client when there is a Data Security Incident involving Personal Data of the Client. As the owner of Client Data, including any affected Personal Data, Client shall have the sole legal right to determine: (i) whether notice of the Information Security Incident is to be provided on its behalf to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise at Client's discretion, and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation; and Client will defend, indemnify, and hold Netchex harmless from such determinations by Client. Notwithstanding the foregoing, nothing in this Agreement shall be construed to restrain Netchex from complying with any obligation Netchex has to notify any person, entity, governmental authority, or other third party of any Information Security Incident. If the Information Security Incident arises from an unauthorized third-party use of Client's valid access credentials to a Netchex account, then Client will reimburse Netchex for any and all costs and expenses of such Information Security Incident, including the cost of investigation.
- (c) **Storage and Retention.** Netchex is not Client's official record keeper. Accordingly, Client must keep copies of all Client Data provided to Netchex. During the Term of this Agreement, Netchex may destroy Client Data that is at least six (6) years old (or a shorter period upon request). Netchex will employ commercially reasonable storage and reasonable precautions to prevent the loss of or alteration to Client's data in Netchex's possession, but Netchex does not undertake to guarantee against such loss or alteration. If Client requests Netchex to store and retain Client Data for more than six (6) years, Netchex may issue a quote to Client for that service. After the Term of this Agreement ends, Netchex may destroy Client Data at any time or upon request.
- (d) **Legal Compliance.** Netchex complies with applicable state and federal laws relating to the storage, security, and disposal of sensitive personal information and limits on use, disclosure, and data breaches.

1.8 **Privacy.** Netchex complies with its Privacy Notice with respect to collection, usage, storage, sharing and protection of Client Data. Netchex's latest Privacy Notice, which may be updated from time to time, is found on Netchex's website, can may be found at: <https://netchex.com/netchex-privacy-policy/> ("Privacy Notice"). Client, as well as all Admins and any other users with access to the Netchex Services, acknowledge that they have read and agree to the terms contained in the Privacy Policy.

1.9 **Confidentiality.** All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion, and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own Confidential Information. The receiving party will limit access to Confidential Information to its affiliates, employees, and authorized representatives with a need to know and will instruct them to keep such information confidential. Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (i) to the extent necessary to comply with any law, rule, regulation, or ruling applicable to it; (ii) as

appropriate and with prior notice where practicable, to respond to any summons or subpoena or in connection with any litigation; (iii) relating to a specific employee, to the extent that such employee has consented to the release; and (iv) in order to provide the Services pursuant to this Agreement. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, Netchex may retain information as may be required by applicable law for regulatory purposes or in back-up files, provided that Netchex's confidentiality obligations hereunder remain applicable.

1.10 **Term, Termination, and Termination Fees.** The "Effective Date" of this Agreement is set forth in the preamble of this MSA, and the Agreement shall remain in effect until it expires or is terminated, which shall be the "Term" of this Agreement.

- (a) **Renewal.** Services offered under the Agreement will have an "Initial Term" set forth in the Fee Proposal. After the Initial Term, the term of this Agreement will automatically renew for a period equal to the Initial Term (each a "Renewal Term" and together with the Initial Term, the "Term"), unless either party gives written notice to the other party at least sixty (60) days before the expiration of the Term. If notice of non-renewal is given at least sixty (60) days before the expiration date of the Term, then the Agreement will expire at the end of the Term. If notice of non-renewal is given less than sixty (60) days before the expiration date of the Term, then the term will renew for one (1) Renewal Term and expire at the end of such Renewal Term.
- (b) **Extension of Term.** In addition to extension via renewal, the Term of the Agreement will automatically extend to the last day of the Term of any other additional Fee Proposal or Section of this Agreement that is executed or renewed by the parties (for example, the Term of the Agreement will be extended if Client elects to utilize NetBenefits services via Netchex and agrees to the NetBenefits Section 4 on a date after the initial Fee Proposal was signed).
- (c) **Suspension or Termination by Netchex.** If Client materially breaches the Agreement, Netchex may suspend Services without notice. Material breaches of this Agreement include but are not limited to the following:
  - (i) Client failing to pay Netchex on time, in accordance with the terms of this Agreement;
  - (ii) Client failing to provide the funds required to allow Netchex to render any Services under this Agreement. Netchex will not pay out funds of Client if Client does not provide the funds to be paid out. Client acknowledges that Netchex has no requirement to pay out any amounts when funds to cover such amounts have not been provided by Client; and
  - (iii) Client violating the exclusivity requirements set forth in Section 1.3(b) of this Agreement.

If Client does not cure a material breach within five (5) business days of written notice, then Netchex may deem the Agreement terminated and Client must pay Netchex any outstanding amounts owed (if applicable) plus liquidated damages within ten (10) business days following such termination in an amount equal to fifty percent (50%) of the fees remaining on any unexpired portion of the Term, determined based on the average fees paid by Client over the previous ninety (90) days.

- (d) **Termination by Client.** If Netchex fails to render Services, then, ten (10) business days after providing Netchex with written notice permitting Netchex to cure, and only if Netchex has not cured the failure, Client may terminate the Agreement by sending written notice to Netchex. Client may terminate the Agreement with sixty (60) days' notice to Netchex, but if the termination by Client is not due to a failure by Netchex and is not due to non-renewal under Section 1.10(a) above, then Client must pay the liquidated damages described in Section 1.10(c) above.

- (e) **Effects.** When the Term ends: (i) Netchex will no longer be obliged to render any Services; (ii) all licenses to the Client under this Agreement will terminate; and (iii) Client must pay all fees due under this Agreement. Provisions in this Agreement relating to obligations continuing beyond the end of the Term of the Agreement may survive, according to their respective provisions. In the event that any employees, agents, representatives, or personnel of Client (including Admins) continue to have access to any information provided after the end of the Term of this Agreement, such individuals shall continue to comply with the terms of this Agreement until such access has ended, unless the parties agree to new or additional terms that will apply.

1.11 **Limited Liability.** The fees proposed and quoted to Client reflect savings that Netchex is able to offer because of the provisions in this Section 1.11. These proposed and quoted fees reflect the value of the provisions in this Section 1.11 to Netchex, which allow Netchex to offer the Services at significant savings to Client.

- (a) **Limited Direct Damages.** Notwithstanding any other provisions of the Agreement, and to the greatest extent allowed by law, neither party will be liable to the other for any loss relating to or arising from any act or omission in its performance under the Agreement, whether in contract or tort, including negligence, except for direct and liquidated damages not to exceed the fees Netchex has collected from Client in the preceding twelve (12) months.
- (b) **No Other Damages.** Neither party may be liable to the other for any indirect, special, incidental, consequential or punitive damages, including without limitation business interruption losses, lost business opportunities, lost profits and mitigation expenditures, regardless of the form of the action, whether in contract or tort, even if the parties have knowledge of the possibility of the damages.

1.12 **No Warranty.** The fees proposed and quoted to Client reflect savings that Netchex is able to offer because of the provisions in this Section 1.12. These proposed and quoted fees reflect the value of the provisions in this Section 1.12 to Netchex, which allow Netchex to offer the Services at significant savings to Client. Netchex will provide the Services in a professional manner that is consistent with industry standards.

- (a) **As Is.** The Services are rendered, and any Intellectual Property is licensed, as is. Netchex disclaims all implied warranties to the greatest extent allowed by law and does not and cannot guarantee that its software or Services are bug or error free. To the extent they would otherwise be applicable, disclaimed warranties include, without limitation: warranty of merchantability, warranty of fitness for a particular purpose, and warranty against redhibitory defects.
- (b) **No Professional Advice.** In the course of providing the Services, Netchex may provide Client with general advice regarding the use of its products and other areas pertaining to the Services provided, such as reporting and withholding. However, Netchex does not and cannot render legal, accounting, financial or other similar professional advice, and Client must rely on their professional advisors alone for such advice.
- (c) **Not Fiduciary.** Netchex and Client have entered into the Agreement at arms-length and neither party is a fiduciary of the other. Netchex is an independent contractor.

1.13 **Indemnification.**

- (a) **Client Indemnification.** Client acknowledges that all Services rendered by Netchex are based upon the information furnished by the Client. Client will indemnify, defend, and hold Netchex harmless from any claim against Client and/or Netchex arising out of the use of information provided by the Client. The foregoing indemnification obligation shall include, without limitation, any claim: (i) based on alleged loss as a result of noncredit by Client of any deposit or (ii) made by an employee as a result of the rejection of any debits because of insufficient funds of Client or otherwise by Client's failure to credit deposits to employee's account. Netchex is not responsible for settling any disputes between Client and Client's employees.

(b) **Netchex Indemnification.** Netchex will indemnify, hold harmless, and defend Client against any claim or lawsuit brought by any third party alleging infringement or violation of any patent, copyright, trademark, service mark, or other intellectual property right in connection with the Services; provided, however, that Netchex has sole control over the defense of any such claims or lawsuits and Client cooperates in every reasonable way with Netchex to facilitate the defense. Client may, at its option and at its own expense, participate with Netchex in the defense with counsel of its own choosing, and Netchex shall make good faith efforts to enter into a reasonable joint defense or common interested agreement with Client.

(c) **Mutual Indemnification.** Each Party hereby agrees to indemnify, defend and hold the other Party, and its members, managers, officers, directors, employees, affiliates and representatives (each, an “Indemnified Party”, and collectively, the “Indemnified Parties”), harmless from and against any and all losses, claims, damages, judgments, amounts paid in settlement, costs and expenses (including interest, penalties, costs of investigation and reasonable attorneys’ fees and disbursements) that are suffered or incurred by such Indemnified Party and arise out of or result from (a) any act or omission of such Party or any of its employees taken or omitted to be taken in connection with the arrangement contemplated by this Agreement, or (b) any breach by such Party of its obligations under this Agreement.

1.14 **Other Provisions.** The titles of each section and paragraph may not be used to construe the provisions of that section or paragraph.

(a) **Entire Agreement.** This Agreement reflects the entire agreement between Netchex and Client and supersedes all prior written and oral agreements. Agreements between Netchex and Client’s users and Admins, if any, such as click-wrap agreements, privacy policy, or terms of use, (collectively, “User Agreements”) hereby incorporate by reference the Agreement and do not amend this Agreement. Client’s users, including Admins, are obligated to perform and/or not perform Client’s obligations under this Agreement to the same extent as Client, except to pay Netchex. In the event there is a conflict between this Agreement and any User Agreement, the provisions of this Agreement will prevail.

(b) **Choice of Law and Venue.** This Agreement is governed by Louisiana law, except for its conflicts of law rules. Netchex will accept and perform the Agreement in St. Tammany Parish, Louisiana, and the parties agree to submit to the jurisdiction of, and to waive any objections to venue in, the state and federal courts of St. Tammany Parish. Notwithstanding any other provision in this Agreement, within thirty (30) days of the later of (i) notice of a material breach of this Agreement or (ii) the filing of a civil action alleging a breach or seeking specific performance of this Agreement, either party may compel the other party to submit to non-binding mediation.

(c) **Severability and Reformation.** If any provision of this Agreement is found to violate public policy or be *contra bonos mores*, then that provision alone should be reformed to be enforceable to the greatest extent allowed by law and consistent with the purpose of the original provision. Notwithstanding the foregoing, the balance of this Agreement should be enforced.

(d) **Force Majeure.** If a force majeure event—including without limitation acts of God, hurricanes, floods, tornadoes, and terrorist attacks—prevents or delays Netchex from rendering any Services, then Netchex will have an additional thirty (30) days to perform the Services without being deemed to be in breach of this Agreement.

(e) **Assignments.** The prior written consent of Netchex is required before Client may assign this Agreement. If Client purports to assign this Agreement without the prior written consent of Netchex, then Netchex may, at its option, deem the assignment void *ab initio* or deem this Agreement materially breached. The sale or change in control of Client, or the transfer of all or a substantial portion of the

assets or users to which this Agreement relates, will be considered an assignment requiring Netchex's prior written approval under this paragraph.

- (f) **Modification of Terms.** Netchex reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Services at any time, effective upon the commencement of any Renewal Term. Client is responsible for regularly reviewing the General Provisions of this Agreement [as such appear on Netchex's website]. CONTINUED USE OF THE SERVICES AFTER ANY SUCH CHANGE TAKES EFFECT SHALL CONSTITUTE CLIENT'S CONSENT TO SUCH CHANGES.
- (g) **Amendments.** Amendments to this Agreement must be agreed to in writing. This paragraph does not apply to fee schedules reflecting increased fees, which Netchex may issue from time to time, subject to the terms of this Agreement.

1.15 **Notices.** Netchex may send correspondence to Client at the physical address or e-mail address identified in the Fee Proposal. Client must send all notices to Netchex that are permitted or required under this Agreement by sending correspondence (with electronic mail being sufficient) to the following:

Netchex  
Attn: Contract Administrator  
1155 Highway 190 E. Service Road  
Suite 2  
Covington, LA 70433  
Email: [contracts@netchexonline.com](mailto:contracts@netchexonline.com)

## 2. PAYROLL SERVICE & FUNDS TRANSFER TERMS

2.1 Netchex agrees that upon its acceptance of this contract and in consideration of the fees and charges in the Fee Proposal, Netchex hereby agrees to perform the following functions:

- (a) Collect from Client, hold in its Trust Account (the "Trust Account"), and deposit with an appropriate authorized depository on or before the statutory deadlines, the required federal, state, and local payroll tax amounts; and
- (b) Prepare and file all required federal, state, and local payroll tax forms and reports.

2.2 Netchex assumes responsibility for interest charges and/or penalties resulting from the negligence of Netchex. Netchex does not accept responsibility for failure to make deposits or filings if Client does not provide Netchex with accurate and timely information or sufficient funds. Client agrees to have Netchex fees directly debited from Client's bank account for all services. As additional consideration, Client agrees to assign to Netchex any benefits derived on the funds in the Trust Account.

Netchex is not a responsible party for payment of taxes to any federal, state or local tax authority, except to the extent that Netchex is holding funds in its Trust Account for payment of said taxes. Netchex is not a responsible party for the application of or the issuing of tax identification numbers with federal, state and local taxing authorities.

In order to enable Netchex to perform its obligations pursuant to this Agreement, Client hereby agrees to perform and is responsible for the following functions:

- (a) For Direct Deposit amounts under \$250,000.00:

- (i) Standard Schedule: Provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time at least two (2) banking days prior to each pay date. Netchex will then debit Client one (1) banking day prior to each pay date for the total amount of Direct Deposit, Payroll Tax liabilities, and Premium Pay and fees (if applicable).

**Example:**

Wednesday	Thursday	Friday
Client submits payroll information to Netchex	Netchex debits Client's Account	Pay Date

- (ii) Standard Holiday/Weekend Schedule: If the Client's pay date is on a Saturday, Sunday or bank holiday, then the Client must submit accurate and complete payroll and tax information to Netchex three (3) banking days prior to pay date. Netchex will debit Client two (2) banking days prior to pay date for the total amount of Direct Deposit, Payroll Tax liabilities, and Premium Pay and fees (if applicable).

**Example:**

Tuesday	Wednesday	Thursday	Friday
Client submits payroll information to Netchex	Netchex debits Client's bank account	Settlement Date <i>(Employees get paid on this day)</i>	Holiday - Pay Date Banks are Closed

- (iii) If Client does not follow the Standard Schedule above in Section 2.2(a)(i) and a payroll is submitted one (1) banking day before pay date, Client must provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time AND Client must send a wire transfer to Netchex for the total amount of Direct Deposit, Payroll Tax liabilities, and Premium Pay (if applicable). Wire Transfer guidelines, time frames, and fees vary from bank to bank. You should be familiar with your bank's policies before choosing this method.

**Example:**

Thursday	Friday
Client submits payroll information to Netchex and Client sends wire transfer to Netchex	Pay Date

- (b) For Direct Deposit amounts over \$250,000.00:

- (i) Standard Schedule: Provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time at least three (3) banking days prior to each pay date. Netchex will then debit Client two (2) banking days prior to each pay date for the total amount of Direct Deposit, Payroll Tax liabilities, and Premium Pay and fees (if applicable).

**Example:**

Tuesday	Wednesday	Thursday	Friday
Client submits payroll information to Netchex	Netchex debits Client's bank account		Pay Date

- (ii) Standard Holiday/Weekend Schedule: If the Client’s pay date is on a Saturday, Sunday or bank holiday, then the Client must submit accurate and complete payroll and tax information to Netchex four (4) banking days prior to pay date. Netchex will debit Client three (3) banking days prior to pay date for the total amount of Direct Deposit, Payroll Tax liabilities, and Premium Pay and fees (if applicable).

**Example:**

Monday	Tuesday	Wednesday	Thursday	Friday
Client submits payroll information to Netchex	Netchex debits Client’s bank account		Settlement Date (Employees get paid on this day)	Holiday - Pay Date Banks are Closed

- (iii) If Client does not follow the Standard Schedule above in Section 2.2(b)(i) and a payroll is submitted two (2) banking days before pay date, Client must provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time AND Client must send a wire transfer to Netchex for total amount of Direct Deposit, Payroll Tax liabilities, and Premium Pay (if applicable). Wire Transfer guidelines, time frames, and fees vary from bank to bank. Client should be familiar with your bank’s policies before choosing this method.

**Example:**

Wednesday	Thursday	Friday
Client submits payroll information to Netchex and Client sends wire transfer to Netchex		Pay Date

- (c) Immediately provide Netchex with copies of any notices or correspondence received from any federal, state, or local authority with respect to any tax return or deposit made by Netchex.
- (d) Provide Netchex with the proper voluntary deduction amounts including but not limited to 401(k), health insurance and garnishments.
- (e) Agrees to have sufficient funds to cover Client’s payroll tax charges, processing charges and any non-sufficient funds (“NSF”) fees in Client’s designated Demand Deposit Account (“DDA”). Client further agrees to instruct the Bank holding its DDA account to honor these charges as initiated from time to time by Netchex. If the Bank, upon Client’s instructions or otherwise, refuses to honor such charges, Netchex reserves the right to assess an NSF fee in the amount of up to one-hundred dollars (\$100.00) per occurrence. Should Netchex receive an NSF notice, a Netchex representative will call and request that Client wire the payroll tax funds and processing charges, along with the NSF fee, to the Netchex Trust account that same day.

2.3 Netchex shall debit Client DDA for direct deposit liabilities, tax liabilities and any fees in accordance with the timeline prescribed in Sections 2.2(a) and/or 2.2(b). In the event that these funds are not available, upon demand Client shall pay Netchex the amount due plus any bank fees and penalties; a NSF fee in the amount of up to one-hundred dollars (\$100.00) per occurrence will be charged to Client by Netchex, and Client will have until 3:00 PM Central Standard Time on the date of notification to send these funds by wire transfer to the Netchex’s bank account.

- 2.4 Client agrees that any and all funds held in escrow (including tax funds) may be used as payment to Netchex in the event that funds are not available when Netchex debits Client account for direct deposit liabilities, tax liabilities and any fees in accordance with the timeline prescribed in Sections 2.2(a) and/or 2.2(b).
- 2.5 Client acknowledges that Netchex tax filing services are based upon information supplied by Client (including proof of federal, state and local tax identification numbers and deposit frequencies) and the results of Netchex payroll services. Client is responsible for the accuracy of such information and the verification of payroll data. Client has the final and ultimate responsibility for checking the accuracy of paychecks to be issued to employees.
- Client has the final and ultimate responsibility for checking the accuracy of and the remittance of any non-tax payments, such as voluntary deductions and garnishments.
- 2.6 Client hereby instructs all federal, state, and local tax authorities via respective Power of Attorney documents to deliver tax forms, documents, and other related information to Netchex. Netchex is hereby given full authorization to represent and submit records on behalf of Client before federal, state and agreed upon local jurisdiction's tax office with respect to payroll taxes. Client hereby authorizes Client's payroll team, including any vendor or computer service, to deliver to Netchex all necessary documents and payroll information, including payroll tax registers, quarterly reports, and summaries.

### **3. DIRECT DEPOSIT SERVICE TERMS**

- 3.1 For qualified Clients, direct deposit services may be utilized by the Client's employees who have deposit accounts with banks that participate in the National Automated Clearing House Association ("NACHA") network, hereinafter called "Participating Banks", who request that their accounts be regularly credited for amounts due and payable to them by Client. Netchex may request and obtain data, including financial, about the Client prior to establishing direct deposit services. Client agrees to the Exposure Limit established by Netchex.

In order to enable Netchex to perform its obligations pursuant to this Agreement, Client hereby agrees to perform and is responsible for the following functions:

- (a) Comply with and be subject to regulations affecting ACH entries, including but not limited to Regulation E and the Operating Rules of NACHA governing this method of payments. The NACHA Rules require the following:
- (i) Client is an Originator of ACH entries and agrees to assume the responsibilities of an Originator under the NACHA Rules.
  - (ii) Client may not initiate entries that violate the laws of the United States or any state laws.
  - (iii) Netchex or its Originating Depository Financial Institution ("ODFI") may immediately suspend or terminate the Agreement for breach of ACH Rules, applicable banking regulations, or the Agreement terms. Any termination or suspension of the Agreement shall not affect any of the Client's or Netchex's rights and obligations with respect to services performed prior to termination/suspension, or any other obligations that survive the Agreement.
  - (iv) Client must establish, implement, and update, as appropriate, policies, procedures, and systems (including controls) with respect to the initiation, processing, and storage of entries that are designed to: (a) protect the confidentiality and integrity of Protected Information until

its destruction; (b) protect against anticipated threats or hazards to the security or integrity of Protected Information until its destruction; and (c) protect against unauthorized use of Protected Information that could result in substantial harm to a natural person or organization.

- (v) Netchex or its ODFI may audit Client's compliance with the Agreement and ACH Rules and applicable regulations.
  - (vi) Netchex is conducting ACH business for Client, and Client agrees that Client will not disclose a Receiver's account number or routing number to any third party for such third party's use, directly or indirectly, in initiating a separate debit entry not covered by the original authorization.
  - (vii) Client agrees to reimburse Netchex for any fines and/or liabilities imposed for a Rules violation or regulatory non-compliance caused by an action/inaction of the Client.
- (b) Each employee who desires to utilize this plan will authorize Client to initiate paperless credits for sums due and Payable to employee for deposit at the Participating Bank where the employee deposit account is maintained, hereinafter called the "Receiving Bank".
  - (c) Each employee who desires to utilize this plan will also authorize the Client to initiate paper or paperless debits for sums due to the Client for erroneous deposit or deposits at the Receiving Bank. These paper or paperless debits hereinafter called "Credit Reversals", shall be governed by NACHA Rules and regulations. It is the Client's responsibility to notify the employee of the Credit Reversal and the reason for the reversal no later than the settlement date of the reversing entry.
  - (d) After receipt of employee authorization for direct deposit, Client may initiate or make agreements for the initiation of paperless credits for the deposit accounts of employees who have authorized such agreements. Such deposits shall be initiated by Netchex.

3.2 Upon receipt of deposits at each Receiving Bank, the deposit amounts shall be credited to the appropriate account, provided however, that should such bank for any reason be unable or unwilling to make such deposit, it will, within two (2) banking days following receipt, return the entry for distribution back to the Originating Bank. Client hereby authorizes the Originating Bank to make reversal entries (correction entries) in accordance with the Operating Rules of NACHA to correct such errors that may arise, which errors are within the knowledge of the Originating Bank.

3.5 Client shall have responsibility for the accuracy of deposit amounts and delivery of statements of earnings or any other statements to the depositor/employee.

3.6 UCC Article 4A Disclosure:

- (a) Entries may be transmitted through the Automated Clearing House Network ("ACH Network").
- (b) The rights and obligation of the Client concerning the entry are governed by the laws of the State of Louisiana.
- (c) Credit given by the Receiving Depository Financial Institution ("RDFI") to the Receiver for an entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise received payment as provided for in Section 4A-403(a) of Article 4A. If the RDFI does not receive such payment for the entry, the RDFI is entitled to a refund from the Receiver in the amount of the credit to the Receiver's account, and the Client will not be considered to have paid the amount of the credit entry to the Receiver.

3.7 Any capitalized terms used in this Section 3 that have not been defined in this Agreement shall have the definitions given in the NACHA Rules and regulations.

## 4. NETBENEFITS SERVICE TERMS

The NetBenefits services provided pursuant to this Section 4 are only provided to Clients who engage Netchex to provide payroll services, and any obligations pursuant to this Section 4 will terminate immediately if Client ceases to utilize Netchex payroll services.

Client desires to use the NetBenefits management tool, with reporting capabilities, related to Client's compliance with federal, state and local wage withholding, reporting and disclosure requirements under various federal, state and local laws and regulations, including the Patient Protection and Affordable Care Act ("ACA"), and to have Netchex process various employee benefit and payroll deductions relating to Client's employees.

4.1 In consideration of the fees and charges detailed in the Fee Proposal, Netchex hereby agrees to perform the following administrative functions:

### ***Initial Setup:***

- (a) Review completed Benefit Plan Detail Setup Form.
- (b) Review and Build Benefit Plans in NetBenefits application based on Client's inputs on Benefit Plan Detail Setup Form.
- (c) Schedule Benefit Analysis Call.

### ***Training:***

- (d) Demonstrate to Client Admins process of inputting employee benefit deductions to each benefit plan that employee has elected.
- (e) Demonstrate to Client Admins how to generate and review Anticipated Billing Report to confirm employee benefit assignments are correct.
- (f) Demonstrate to Client Admins how to process new hire benefit elections.
- (g) Demonstrate to Client Admins how to process Administrative Benefit Changes.
- (h) Provide training to Client Admins on ACA reporting Form 1094 and Form 1095 set up.

### ***Ongoing:***

- (i) Reporting the aggregate cost of benefits automatically to Box 12DD of the W2 only for amounts in NetBenefits.
- (j) Time and date stamp capabilities of the ACA Notice of Exchange.
- (k) Employer ACA reporting via Forms 1094 and 1095, for distribution to employees and the Internal Revenue Service.

### ***Reporting Functions Include:***

- (l) Hours worked aggregation and reporting for ACA Applicable Large Employer (ALE) Report.
- (m) Hours tracked and averaged for ACA Full-time equivalency (FTE) status of Part-Time/Variable hour employees.
- (n) ACA Automation of Measurement periods.

4.2 **The functions of Netchex specifically *exclude*:**

- (a) Determination of whether Client is subject to penalties under the ACA, including the “shared responsibility” employer penalties under Internal Revenue Code Section 4980H(a) or (b) (i.e., penalties for not offering group health insurance or offering group health insurance that is not affordable or does not represent minimum value), reporting or paying such penalties, and legal and tax advice regarding compliance with the ACA.
- (b) Reviewing Client’s information, accounting and other systems to ensure such systems are properly tracking all necessary data to enable Netchex to automate data processing or otherwise provide the NetBenefits services.
- (c) Plan eligibility determinations and interpretation of Client benefit plan provisions. (Netchex will rely on Client’s representations regarding minimum hours requirements of Client’s health plan.)
- (d) Functioning as a plan administrator of any Client benefit plan or exercising any discretionary authority that could result in Netchex functioning as a fiduciary under any such plan.

4.3 In order to enable Netchex to perform its obligations pursuant to this Agreement, Client hereby agrees to perform the following functions:

***Initial Setup:***

- (a) Provide a list of all employees who will need access to NetBenefits for training and processing purposes.
- (b) Attend training on topics listed in Sections 4.1(d)-(h).
- (c) Accurately complete implementation document(s) with all necessary information, including the following:
  - (i) new employee classification as full-time, part-time or seasonal as of hire date;
  - (ii) dependent information;
  - (iii) social security numbers; and
  - (iv) any other information required on initial setup forms.
- (d) Review Benefit Plan setup items, including confirming eligibility criteria, coverage levels, monthly premium amounts (including the safe harbor monthly premium for affordability purposes), payroll deduction frequency, and payroll deduction amounts.
- (e) Add employees’ benefit deductions to each benefit plan that employees have elected.
- (f) Generate and review Anticipated Billing Report to confirm employee benefit assignments are correct.
- (g) Confirm ACA measurement, administrative and stability periods and import hours per check and other information needed to produce Forms 1094 and 1095 for the applicable year (if NetBenefits start date is other than January 1).

***Ongoing:***

- (h) Record the newly hired employees’ benefit plan elections and status (full-time, part-time or seasonal) in NetBenefits. (Do not setup in the Employee Voluntary Deductions section.)
- (i) Process Administrative Benefit changes. For instance, process any qualifying life event outside of open enrollment.
- (j) Upon annual plan renewal, make any premium changes using the Plan Renewal Tool within NetBenefits.
- (k) In the event of a carrier change or ACA measurement period change, coordinate plan changes through the Plan Transition Tool.

- 4.4 Client agrees to pay Netchex fees in accordance with the related Fee Proposal. Client agrees to pay the fees to Netchex on a timely basis when billed. Failure to pay fees when due may result in Netchex unilaterally terminating this Agreement after a thirty (30) day notice period.
- 4.5 Under no circumstances shall Netchex be responsible for any tax, penalty, interest or other liability imposed on Client or an employee of client pursuant to the “shared responsibility” provisions of Internal Revenue Code Section 4980H(a) or (b) or Section 5000A. Netchex is not an insurer with regard to the performance of the services. The disclaimer of warranties and the limitation of liability in this Agreement reflect the risks assumed by the parties in order for user to obtain the rights to use the services for the specified fees.

## 5. NETCOBRA SERVICE TERMS

The NetCOBRA services provided pursuant to this Section 5 are only provided to Clients who engage Netchex to provide both payroll services and NetBenefits services, and any obligations pursuant to this Section 5 will terminate immediately if Client ceases to utilize Netchex payroll services and NetBenefits services.

Client desires to have Netchex provide certain administrative and clerical functions related to Client’s compliance with Health Care Coverage Continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985 (“COBRA”).

- 5.1 In consideration of the fees and charges detailed on the Fee Proposal, Netchex hereby agrees to perform the following administrative and clerical functions:
- (a) Initially train Client on NetCOBRA procedures, including but not limited to properly inputting terminations into Netchex system and recording Qualifying Events (“QE’s”).
  - (b) Sending required notices to Qualified Beneficiaries (“QB’s”), generally within five (5) business days of Client’s notifying Netchex of a QE’s.
  - (c) Communicating with QB’s regarding COBRA coverage, via such means as Client designates (which may include electronic communications, provided Client represents that it satisfies all applicable U.S. Treasury and Department of Labor requirements in order to send electronic communications).
  - (d) Billing and collecting premiums from QB’s at a rate of 102% of Client’s actual premium, as communicated from Client to Netchex on an annual basis.
  - (e) Reporting premium payments to Client and remitting premiums received to Client at 100% of actual premium (assuming plan participants pay the full 102% premium – if less than 102% is paid by a COBRA participant, Netchex will retain 2% of the premium and remit the balance to Client).
  - (f) Communicating with COBRA participants who make partial payments of less than 102% of the applicable premium and notifying participants once any applicable grace period has expired.
  - (g) Making QB enrollment information available to and accessible by Client in the NetCOBRA portal.
  - (h) Making QB COBRA information terminations available to and accessible by Client in the NetCOBRA portal.
  - (i) Reporting QB COBRA elections and COBRA terminations to insurance carriers.
  - (j) Notifying QB’s and their dependents of COBRA alternatives (e.g. Affordable Care Act (“ACA”) exchanges).
  - (k) Updating QE notices to comply with regulatory changes.
  - (l) Initial COBRA notices provided to new employees and enrollees.
- 5.2 Netchex further agrees to account for collected premiums by:
- (a) Placing collected premiums in Netchex premium account.
  - (b) Providing client with a mid-month report detailing premiums collected during the month prior.

- (c) Forwarding to Client a check drawn on Netchex's premium account for all net premiums collected during the preceding Premium Reporting Month.

5.3 The functions of Netchex specifically exclude:

- (a) Amending and republishing the Client's benefit documents, summary plan descriptions, or booklets.
- (b) Notification to insurance carriers of termination of employment or changes in hours worked by QB's.
- (c) Plan eligibility determinations and interpretation of Client benefit plan provisions and sending open enrollment benefit plan documentation.
- (d) Functioning as a plan administrator of any Client benefit plan or exercising any discretionary authority that could result in Netchex functioning as a fiduciary under any such plan.
- (e) Legal or tax advice regarding compliance with ACA or any penalties imposed under the employer "shared responsibility" mandate of the ACA.

5.4 In order to enable Netchex to perform its obligations pursuant to this Agreement, Client hereby agrees to perform the following functions:

- (a) Comply with COBRA requirements regarding complete and timely notice to Netchex of QE's by use of Netchex NetCOBRA procedures.
- (b) Refine, reformat or otherwise revise Client data in such manner as may reasonably be required in order for Netchex to carry out its responsibilities under this Agreement.
- (c) Provide accurate and complete information via forms and documentation reasonably required by Netchex in order to provide the NetCOBRA services outlined in this agreement.
- (d) Communicate "Invisible events" such as death or divorce of an employee, adoption or birth of a child, or disability of an employee to Client's insurer and Netchex.

5.5 Client agrees to pay Netchex administrative fees in accordance with the Fee Proposal. Client agrees to pay the administrative fees to Netchex on a timely basis when billed. Failure to pay fees when due may result in Netchex unilaterally terminating this Agreement after a thirty (30) day notice period. The fees set forth in the Fee Proposal are in addition to Netchex's retention of the 2% of premiums administration fee paid by Enrollees. Client agrees to assign to Netchex any benefits that may be derived from the holding of premiums received by Netchex from COBRA enrollees prior to the time such premiums are remitted to Client.

5.6 Netchex shall not be responsible for any COBRA penalties imposed on Client that result from Client's failure to timely notify Netchex of any QE or Client's failure to comply with its obligation to convey accurate and complete information to Netchex. Neither Netchex nor any of its affiliates can accept COBRA liability on employer's behalf. Netchex cannot transfer its liabilities related to COBRA by outsourcing COBRA responsibilities. Netchex is not an insurer with regard to the performance of the services. The disclaimer of warranties and the limitation of liability in this Agreement and the MSA reflect the risks assumed by the parties in order for user to obtain the rights to use the services for the specified fees.