

**TALX CORPORATION
UNEMPLOYMENT COMPENSATION SERVICES MODEL AGREEMENT**

This Agreement is effective as of the 1st day of July, 2016 ("Effective Date"), between the County of Personnel Administrators Association of California, a California non-profit corporation, hereinafter referred to as "CPAAC", TALX Corporation, a Missouri corporation, 11432 Lackland Road, St. Louis, Missouri, 63146, hereinafter called the "Contractor."

Whereas, CPAAC wishes to assist its member counties in maintaining unemployment coverage, if required, and in reducing the heavy costs thereof; and

Whereas, CPAAC conducted RFP #CPAAC 04-05 for group unemployment compensation administration services for those of its members who wish to participate.

Whereas, the Contractor, a leading unemployment compensation administration firm, has been selected to provide training, claims administration, management information, and related services to participating counties on a group basis, for which services the Contractor is specially trained, experienced, expert and competent; and

Now, therefore, the parties agree as follows:

SECTION 1. DEFINITIONS. As used in this Agreement, the following terms and abbreviations shall have the meanings stated:

1. **Services:** All those services to be provided by the Contractor to the Participating Counties under this Agreement.
2. **Participating County:** Any CPAAC member County executing a Participation Agreement in the form of the sample Participation Agreement attached hereto as Exhibit 1, which may be modified as mutually agreed by Contractor and each Participating County.
3. **FTE:** A full-time equivalent; i.e., one full-time county employee, or two or more part-time county employees working an amount of time equivalent to that of one full-time employee. All employees on the county payroll, including those funded by the State or the Federal Government, are considered county employees for purposes of FTE counts.
4. **EDD:** The Employment Development Department of the State of California.

SECTION 2. CONTRACTS WITH OTHER COUNTIES

As of the Effective Date of this Agreement, the Contractor agrees that it will not contract separately with any new nonparticipating CPAAC county for provision of services of the type to be provided hereunder at terms more advantageous to that county than those contained herein.

Any Participating County may contract separately with the Contractor for additional services supplemental to the Services.

SECTION 3. TERM. The term for each Participating County is set forth in the applicable Participation Agreement. A Participation Agreement may expire or be terminated without affecting the other Participation Agreements. This Agreement shall remain in effect as long as there is an outstanding Participation Agreement with a term then in effect.

SECTION 4. SERVICES

The following Services shall be provided to the Participating County during the term of this Agreement. Except as otherwise specified, such Services shall be performed by the Contractor, consistent with this Agreement. All Services shall cover all Participating County employees and claimants, including those funded by the State or the Federal Government.

- A. **Orientation and Start-Up Services.** These shall be available to any Participating County not a party to a prior unemployment compensation service agreement with CPAAC and shall include, but not limited to:

- (1) Recommendations by the Contractor for improvement in hiring, termination and other procedures to minimize future benefit charges.
- (2) Training seminars for Participating County management and administrative personnel, conducted by the Contractor at a Participating County facility or other convenient location. Topics to be covered shall include, but not limited to:
 - History and concept of unemployment compensation.
 - Unemployment law and regulations.
 - Eligibility requirements.
 - Interviewing process.
 - Hiring, warning and termination procedures.
 - Documentation requirements.
 - What to do when contacted by the EDD.
 - Serving as a witness at hearings.
 - The Contractor's services and procedures.

These topics shall be treated in the context of the Participating County's specific personnel circumstances and practices, with focus upon the evaluation and recommendations developed for the Participating County. The seminar shall be conducted as soon as the Participating County has reviewed such recommendations and, in consideration thereof, has adopted personnel procedures for the future.

- (3) Assistance to the Participating County by the Contractor in evaluating the available options for funding of unemployment benefit cost, taking into account the Participating County's employee separation experience, probable benefit liability and other specific circumstances.
- B. Continuing Training. After the introductory training seminar required under A. (2) above, the Contractor shall provide continuing training to the Participating County throughout the term of this Agreement, in the form of:
- (1) Visits to or other communications with Participating County personnel, as needed, to inform them of changes in applicable law and regulations, of claims activity indicating a need for specific change in procedure, or of other matters of a significant and urgent nature.
 - (2) A training seminar, conducted at a Participating County facility or other convenient location, which like the introductory seminar, shall be customized for each Participating County if necessary. (In the first year, this seminar may be supplemental to the introductory seminar.) Additional seminars may be conducted upon request by the Participating County or upon determination of need by the Contractor.
- C. Claims Administration. Commencing July 1, 2016, the Contractor shall provide claims administration services to the Participating County, including, but not limited to the following:
- (1) Provision of separation report forms, assistance as needed in the completion of separation reports, receipt of completed reports from the Participating County, and maintenance of the reports and related data for the full period of potential unemployment liability. Manner of reporting separation data may be modified by mutual agreement of each individual Participating County and Contractor without modifying or breaching this Agreement.
 - (2) Service as addressee of record, receiving base period notices (DE1545 forms) directly from the EDD and initial claims (DE1101 C forms) from the Participating County.

- (3) Response to all claims communications in the manner and to the extent necessary to secure the most favorable results for the Participating County. Such response shall include: thorough review of each claim; timely protest of the claim, if a reasonable basis for protest is found; and, if an adverse decision is reached on a protested claim and a reasonable basis for appeal is found, timely appeal through all administration review levels, including re-determination, administrative law judge hearings and appeals board hearing. As a condition to the foregoing, it is agreed that the Participating County may at any time direct that a protest or appeal be dropped and the Contractor shall comply with such direction.
- (4) Audit of all EDD benefit charges to verify their correctness and challenge of incorrect charges by protest, appeal, or other necessary action.
- (5) Collection and maintenance of all records and data necessary to satisfy performance of the above functions.
- (6) Provision of all relevant records and data to the Participating County and other assistance to the Participating County, as needed, should either the Participating County or a claimant decide to challenge an appeals board ruling in court.
- (7) Participating County agrees that current and accurate data is necessary for the Contractor to provide the Services. Participating County agrees to provide such data to the Contractor in a mutually acceptable format at the end of Participating County's pay period. Participating County further agrees to test and validate the accuracy of the data on a mutually acceptable frequency using paper-based or electronic data validation reports provided by the Contractor. In the event data is identified by either the Contractor or Participating County to be incorrect or improperly formatted, such parties agree to notify each other as quickly as possible. Both parties agree to work together to identify and resolve all identified historical and ongoing data errors within two (2) of Participating County's pay periods. Participating County agree that any action required of the Contractor to correct the data for Participating County may result in additional fees.

D. Management Reporting. Contractor agrees to submit to each Participating County the following reports:

- (1) Quarterly Claims Activity Report. This report will contain a detailed listing of all claims that were filed during the quarter. The report will identify the activity on protestable claims as well as non-protestable claims. The report identifies those claims filed during the quarter, listing the reasons for separation and the outcome of the action taken. Additionally, this report will detail those claims that went to an unemployment hearing and state the determination as rendered by the Administrative Law Judge. This report can be sorted in various manner, including by location, department, budget unit, date and separation reason. If a Participating County wishes to receive reports that can be sorted in this manner, an ongoing payroll data file will need to be implemented that will include location specific codes for this purpose. This will enable each Participating County to identify those departments that are complying with the unemployment program as well as spotting those departments where compliance is not being properly followed.

In addition, this report allows each Participating County the opportunity to rehire those claimants who are currently drawing unemployment and where charges are being assessed against a particular Participating County. Individual counties will have the option to select and submit the departmental codes that best suits their needs.

Finally, this report summarizes the information contained in the detailed claims analysis. The summary will contain the Reason for Separation, Claims by Status

(eligible, ineligible, or pending), and by Claim Type (separating employer or base period employer).

- (2) Quarterly Claims Financial Report. This report will be generated when the State issues the quarterly charges and will contain a detailed listing of all active claims. This report will detail the potential liability on all filed claims, those claims with actual charges during the quarter, charges on claims filed prior to the quarter, remaining liability on the filed claims and any liability removed due to the protesting or erroneous charges (credits) or favorable determinations on protested claims. This report can be sorted by location, department, or budget unit.

Additionally, this report will give detailed summary categorizing reasons for separation as well as benefits and credits processed during the period. Finally, this report summarizes the type of claims filed and the financial status during the quarter.

- (3) County Statistical Report (Ranking Report). This report will be generated annually and will contain a detailed listing showing the Participating County's claims and hearings activities. Likewise, the charges are classified and ranked comparing year-to-year charges. This report can assist the Participating County in budgeting projections.
- (4) Periodic Newsletter/Bulletin. Designed to educate Participating Counties on unemployment legislation as needed, periodic newsletters and/or bulletins are available for download on Contractor's website and/or distributed upon release to designated Participating County contact(s).
- (5) Inquiry Service. The Contractor shall promptly respond to inquiries received from the Participating County concerning the handling of a termination, the status or chargeability of a claim, or similar matters. If the inquiry is made by telephone call and cannot be answered during such call, it shall be answered by prompt return call. Calls may be placed to any California office of the Contractor. The Participating County caller shall not be referred from one of the Contractor's offices to another. Rather, the person receiving the call shall gather information from other offices, as necessary, and relay it to the caller.

SECTION 5. CONTRACTOR'S STAFF. During the term of this Agreement, the Contractor shall maintain not less than one office in California. This office shall be capable of providing all Services for which the Contractor is responsible to Participating Counties.

The Contractor shall establish and maintain a CPAAC Department within its organization to provide Services to Participating Counties. Each staff member of the CPAAC Department shall be experienced and qualified in their jobs. All non-clerical staff members shall be selected, to the extent reasonably possible, from existing employees of the Contractor. Any future replacements of such individuals shall be similarly selected.

The CPAAC Department shall function under the direction of a Program Coordinator who shall be subject to written approval of CPAAC, as shall any further successor to that position. Such approval shall not be unreasonably withheld. The Contractor shall notify CPAAC as soon as possible of any changes to the CPAAC Department's service representatives.

SECTION 6. CONTRACT REPRESENTATIVES AND ADVISORY COMMITTEE

The Vice-President of CPAAC shall represent CPAAC under this Agreement.

The Contractor's Program Director shall represent the Contractor under this Agreement.

The Participating County's Personnel Department shall represent the Participating County under this Agreement.

SECTION 7. RECORDS. The Contractor shall retain at one or more of its California offices, all records pertaining to this Agreement, including those required under Section 4. C (5), throughout the term of this Agreement, provided that Contractor shall only be required to maintain such records for five (5) years following the individual creation of such records by Contractor. Subject to the records retention provisions above, upon Participating County's written request at any time during the term of this Agreement (including termination or completion of the Services under this Agreement), Contractor shall deliver to the Participating County within a reasonable period of time, a historical report of all claims activity retained by Contractor. Should this Agreement be renewed, the parties shall review and re-determine record retention requirements.

SECTION 8. NOTICES. All notices, billings, payments and other formal communications required under this Agreement shall be sent to the appropriate contacts at the Participating Counties.

SECTION 9. DEFAULT BY CONTRACTOR. If the Contractor defaults in the performance of its obligations hereunder ("Default"), the Participating County may terminate this Agreement by providing written notice to the Contractor and CPAAC. Contractor shall have the right to cure such Default within thirty (30) days. If Default continues, the Agreement shall be terminated immediately. In such event, the Contractor shall be paid for services performed as provided in Section 16. PAYMENT; provided however, that each of the parties shall retain all rights and remedies it may have as a result of such Default or of such termination. CPAAC shall in no way be liable for any such Default of the Contractor or termination by the Participating County.

The Participating County's failure to exercise its rights under this section upon a default by the Contractor shall not constitute a waiver of such rights, which may be exercised at any subsequent time.

SECTION 10. OPTION TO RENEW. If, prior to the expiration of this Agreement and like agreements with other Participating Counties, the CPAAC membership decides to continue a program of Services for Participating Counties, the Participating County shall have the right to renew this Agreement following its expiration date, by written notice to the Contractor at least thirty (30) days in advance of such date. Renewal shall be on the same terms and conditions that govern provision of Services under this Agreement insofar as they are then applicable, except that the Contractor, at his option, may negotiate to increase the rate of payment to be used in computing its annual fee.

SECTION 11. INSURANCE. Without limiting or diminishing the Contractor's obligation to indemnify or hold a Participating County harmless, EWS shall maintain insurance, as described in Attachment A, with insurance companies with a minimum Best's rating of A- VIII.

Upon commencement of Services, each Participating County can request Contractor provide a certificate of insurance to each Participating County evidencing each of the insurance policies above. Renewal certificates can also be provided to each Participating County. In addition, Contractor will endeavor to provide thirty (30) days' notice of cancellation or non-renewal.

Certificates of insurance shall include, (i) for all required policies, a statement confirming that should any of the required policies be cancelled prior to the expiration date thereof, notice shall be provided in accordance with the policy provisions; and, (ii) for the General and Automobile policies, a blanket Additional Insured endorsement.

For instances where Contractor is solely negligent, it is understood and agreed to by the parties hereto that the Contractor's insurance shall be construed as primary insurance, and the Participating County's insurance and/or deductibles and/or self-insured retention's or self-insured programs shall not be construed as contributory.

If, during the term of this Agreement or any extension thereof, there is a material change in the scope of services; or, the term of this Agreement, including any extensions thereof, exceeds five (5) years; the Participating County may request an adjustment to the types of insurance and the monetary limits of liability required under this Agreement, if in the Participating County's

reasonable judgment, the amount or type of insurance carried by the Contractor has become inadequate. Any such adjustment shall require the mutual written agreement of the parties.

SECTION 12. INDEMNIFICATION AND LIMITATION OF LIABILITY

Contractor and Participating County (each an "Indemnifying Party") each agrees to indemnify, hold harmless and defend the other party, including its officers, agents and employees, (each an "Indemnified Party") from any claim or liability for injury, damage, or other loss to persons or property arising from or in any way connected with the actions, conduct and omissions of Indemnifying Party, including its officers, agents, and employees in the performance of this Agreement. The Indemnified Party shall promptly notify the Indemnifying Party of any claims or actions which arise and for which indemnification is sought, provided, however, that failure of an Indemnified Party to give prompt written notice does not relieve the Indemnifying Party from its indemnification obligations under this Agreement unless the defense is materially prejudiced by the failure.

Participating County hereby agrees to indemnify, defend or pay the cost of defense, and hold Contractor harmless with regard to any third party claims, actions, demands, damages, liabilities, costs and expenses as a result of any action arising out of or relating to a suit brought against Contractor relating to employment or termination of employment by employees or former employees of the Participating County as long as Contractor was acting within the scope of its authority and such suit is not due to Contractor's breach of this Agreement, negligence or willful misconduct.

ANY OTHER TERM OR PROVISION OF THIS AGREEMENT TO THE CONTRARY NOTWITHSTANDING, IN NO EVENT SHALL EITHER PARTY OR ITS OFFICERS, AGENTS OR EMPLOYEES BE LIABLE FOR LOSS OF PROFITS OR FOR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THE PERFORMANCE OF THIS AGREEMENT, EVEN IF THAT PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. IN NO EVENT SHALL DAMAGES OF ANY KIND PAYABLE BY EITHER PARTY HEREUNDER EXCEED THE SUM OF ONE HUNDRED THOUSAND DOLLARS (\$100,000).

SECTION 13. ASSIGNMENT. Except as hereinafter provided, a party may not delegate its duties or assign its rights under this Agreement, either in whole or in part, without the prior consent of the other parties. Notwithstanding the foregoing, Contractor may assign this Agreement to a subsidiary without the prior consent of CPAAC or Participating County, provided that Contractor shall continue to be responsible for the performance of its obligations hereunder.

SECTION 14. SUBCONTRACTORS. Contractor may subcontract any of the Services to be performed under this Agreement without the prior written consent of Participating County, provided that Contractor (i) remains fully responsible for the performance of the subcontractor as if Contractor had itself performed the Services; (ii) will provide in its agreements with subcontractors such written provisions as are sufficient to enable Contractor to comply with the provisions of this Agreement; (iii) remains the sole point of contact for Participating County; and (iv) will be solely responsible for the payment of all subcontractors Contractor engages.

SECTION 15. RELATIONSHIP OF CONTRACTOR. The Contractor is an independent contractor for all purposes under this Agreement and shall be fully responsible for the manner and means of performing the services required of it hereunder. No officer or employee of the Contractor shall in any way be considered an employee of the Participating County or of CPAAC.

SECTION 16. COMPLIANCE WITH CALIFORNIA'S FAIR EMPLOYMENT AND HOUSING ACT

Contractor shall comply with California's Fair Employment and Housing Act in the performance of this Agreement, if applicable, and shall make no distinction on the grounds of race, color, religious creed, national origin/ancestry, physical disability, mental disability, medical condition, marital status, sex, age, and sexual orientation, either in providing services or in employment practices.

SECTION 17. PAYMENT

- A. **Contractor's Fee.** Commencing July 1, 2016, the Participating County shall pay to the Contractor an annual fee for all services provided by the Contractor during the calendar year, computed at the rate of \$0.785 per FTE in Participating County employment as of January 1 of the respective year provided that such rate shall be subject to adjustment as hereinafter provided.

By February 1 of each year, the Participating County shall report to the Contractor the number of FTE's in its employment as of January 1 of that year, based upon actual head count (not budgeted positions).

Payment shall be made quarterly, in arrears, upon submission of a billing by the Contractor confirming the FTE count upon which it is based and setting forth any necessary adjustment in prior billings. Service fees applicable to contract periods, which are less than a calendar quarter, shall be prorated. Invoices are payable within thirty (30) days from date of issuance.

The Contractor may audit the Participating County's employment and payroll records to verify FTE counts, and any error shall be corrected in the next billing.

A claims workload will be established annually for each Participating County that will equal approximately 10% of the Participating County's annual employee count. If the Participating County exceeds the annual claims workload in an agreement year, a fee of \$16.90 per claim will be payable to Contractor.

If this Agreement is terminated pursuant to sections 3 and 9, the Participating County shall pay only the portion of the Contractor's fee representing services performed between January 1 of the respective year and the date of termination, calculated pro rata at a daily rate. Contractor will generate current payroll information upon termination date and invoice the Participating County for any outstanding balances.

- B. It is understood by the parties hereto that Participating County is a public entity, which may not expend funds for services or equipment not budgeted in a given fiscal year. It is also understood that in the normal course, Participating County will adopt a proposed budget prior to a given fiscal year, but the final adoption of a budget does not occur until after the beginning of given fiscal year. Participating County shall give notice of cancellation of this Agreement in the event of adoption of a proposed budget not providing for funds sufficient and necessary to pay for the services required herein. Such notice shall become effective only upon the date of adoption of a final budget which does not provide funds for the services to be provided herein or for similar or substitute services performing the same or similar functions as set forth in this Agreement.

If this Agreement is terminated pursuant to Sections 3 or 9 after July 1, 2016, the Participating County shall pay only that portion of its continuing service fee representing services performed through the date of termination, calculated pro rata at a daily rate. Any balance of the fee paid by the Participating County shall be returned by CPAAC.

SECTION 18. ENTIRE AGREEMENT. This Agreement and the executed Participation Agreement between Contractor and Participating County constitute the entire Agreement of the parties regarding its subject matter, and supersedes any and all other agreements of the parties, oral or in writing, with respect to its subject matter. If any provision of this Agreement is held by any court to be invalid, void, or unenforceable, the remaining provisions shall nevertheless continue in full force.

SECTION 19. PROPRIETARY RIGHTS. The Services, specifications and computer hardware and software associated with the Services are proprietary to the Contractor and title thereto is and will at all times remain exclusively in the Contractor. All applicable rights to patents, copyrights, trademarks, trade secrets in the Services, specifications and computer hardware and software are and shall remain the exclusive property of the Contractor. This Section shall survive termination of this Agreement.

SECTION 20. FORCE MAJEURE. Neither party shall be responsible for any failure or delay in the performance of any obligations (excepting obligations to pay money) to the extent that failure is caused by acts of God, acts of terror, flood, fire, labor disputes, acts or omissions of the other party, or non-delivery or delays in delivery by any other supplier of goods or services deliverable under this Agreement.

Contractor: TALX Corporation,
a Missouri Corporation

County of Personnel Administrative
Association of California (CPAAC)

By: 

By: 

Printed Name: **Michael Mohr**
~~Vice President~~

Printed Name: MICHAEL T. STOCK
CPAAC President

Title: _____

Title: _____

Date: Feb 6, 2017

Date: 2/8/2017

**ATTACHMENT A
EWS INSURANCE**

Workers' Compensation*

(A) Workers' Compensation Limit:	Statutory
(B) Employer's Liability:	
(1) Bodily Injury by Accident, for Each Accident:	\$1,000,000
(2) Bodily Injury for Each Employee by Disease:	\$1,000,000
(3) Policy Limit for Bodily Injury by Disease:	\$1,000,000

General Liability**

Policy will include coverage for bodily injury, property damage, personal injury, advertising injury, contractual liability, products/completed operations.

(A) Per Occurrence Limit:	\$1,000,000
(B) General Aggregate:	\$2,000,000

Automobile Liability**

Policy will include coverage for all owned, non-owned, and hired vehicles used by EWS in the performance of the Services.

Limit:	\$1,000,000
--------	-------------

Umbrella Liability

Policy provides additional limits excess of Employer's Liability, General Liability and Automobile Liability policies.

Limit:	\$10,000,000
--------	--------------

Professional Liability (a/k/a Errors & Omissions Insurance) including Network Security & Privacy Liability (a/k/a Cyber)

Policy will include coverage for actual or alleged breach of duty, act, error, omission, misstatement, misleading statement or neglect in the rendering of or failure to render the services under this Agreement. Policy will also include coverage for liability as a result of a data security breach or violation of consumer data protection laws. The professional liability insurance and network security and privacy liability insurance may be maintained under a combined policy or via separate policies.

Aggregate Limit:	\$10,000,000
------------------	--------------

If Contractor's Professional Liability Insurance is written on a claims made basis rather than an occurrence basis, such insurance shall continue through the term of this Agreement and Contractor shall purchase at his sole expense either 1) an Extended Reporting Endorsement (also, known as Tail Coverage); or 2) Prior Dates Coverage from new insurer with a retroactive date back to the date of, or prior to, the inception of this Agreement; or 3) demonstrate through Certificates of Insurance that Contractor has maintained continuous coverage with the same or original insurer. Coverage provided under items; 1), 2), or 3) will continue as long as the law allows.

* Except where prohibited by law, Contractor agrees to waive all rights of subrogation, including any rights of its insurers, against each Participating County, under the workers' compensation, with respect to losses, damages, claims, suits, or demands, however caused.

**Additional Insured –Each Participating County, their affiliates, directors, officers, and employees will be listed as additional insureds on the General and Automobile Liability policies. This additional insured endorsement may be blanket or automatic and EWS's insurance shall be primary and non-contributory.