

# ANNEX A

## General Terms and Conditions

### SECTION 1 DEFINITIONS.

Capitalized words in this Agreement that are not otherwise defined have the meanings shown below, for both singular and plural forms. Unless otherwise specified, any reference in this Annex to a section or other subdivision is a reference to a section or subdivision of this Annex.

**1.1 “ADP Products”** means the Application Programs, tutorials and related documentation delivered to Client by ADP.

**1.2 “Additions Schedule”** means a written supplement to this Agreement, signed by Client and ADP, describing additional Services to be provided by ADP to Client.

**1.3 “Agreement”** means this Master Services Agreement, each Annex marked on the cover page and each Additions Schedule that supplements this Master Services Agreement, as amended from time to time.

**1.4 “Application Programs”** means the computer software programs and modules delivered to Client by ADP as part of the Services but excludes pre-packaged third party software and custom programs developed by ADP for Client.

**1.5 “Business Day”** means any day except a Saturday, a Sunday, or a Federal holiday.

**1.6 “Client Group”** means Client, Client’s majority owned subsidiaries, and affiliates of Client. Affiliates are listed in Section 1 of Annex Z.

**1.7 “Client Infringement Event”** means (i) any change, or enhancement in the ADP Products made by Client or any third party for the Client, (ii) Client’s use of the ADP Products except as permitted under this Agreement or in combination with any hardware, software or other materials not expressly authorized by ADP, (iii) Client’s use of other than the most current release of the ADP Products that results in a claim or action for infringement that could have been avoided by use of the current release, or (iv) the provision by Client to ADP of materials, designs, know-how, software or other intellectual property with instructions to ADP to use the same in connection with the Services.

**1.8 “Confidential Information”** means all information that is confidential or proprietary provided by the disclosing party to the receiving party for use in connection with the Services, but does not include (i) information the receiving party already knows (ii) information that becomes generally available to the public except 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. Confidential Information also includes all trade secrets, processes, proprietary data, information or documentation or any pricing or product information the disclosing party provides to the receiving party.

**1.9 “Effective Date”** means the date written in the space marked “Effective Date” on the cover page of this Agreement.

**1.10 “Services”** means the services described in each Annex, the services in each Additions Schedule, and any other services that ADP provides to Client at Client’s request.

**1.11 “Termination Event”** means with respect to any party, (i) that party becomes the subject of a proceeding under the Bankruptcy Code, (a) seeking the appointment of a trustee, receiver or custodian or (b) seeking the liquidation, winding-up, dissolution, reorganization or the like of such party, and the proceeding is not dismissed within 30 days of its commencement, or (ii) that party’s Standard and Poor’s issuer credit rating is BB or below. If part (i) of this Section 1.11 occurs with respect to Client, Client agrees to promptly seek court authorization to pay all fees as an administrative expense.

### SECTION 2 THE SERVICES.

**2.1 Use of Services.** Client will follow the instructions and reasonable policies established by ADP from time to time and communicated to Client. Client will use the Services only for the internal business purposes of the Client and the Client Group. Client agrees that each of the entities included in the Client Group must comply with each of the provisions contained in this Agreement applicable to the Client. Client will provide to ADP access to Client’s systems, and will maintain its internal systems, equipment and software, as required in order for ADP to provide the Services. Client will provide ADP access to Client’s premises during Client’s regular business hours and at other times as mutually agreed. Client agrees to procure and maintain appropriate licenses to the software and other works in respect of which interfaces are to be delivered or maintained by ADP as part of the Services.

**2.2 Accuracy of Client Information, Review of Output.** All Services will be based upon information provided to ADP by Client and Client is responsible for the accuracy and timely input of all such information. Upon receipt from ADP, Client will promptly review all payroll registers, disbursement records, reports and documents produced by ADP for accuracy, validity and conformity with Client’s records. Client will promptly notify ADP of any error or omission discovered by Client or any discrepancy between the information provided by ADP and Client’s records and will not distribute any paycheck or rely on any record, report or document containing any discovered error, omission or discrepancy until such error, omission or discrepancy, has been corrected. Client will be responsible for the consequences of any instructions Client may give to ADP.

**Compliance with Laws.** The Services are designed to assist Client in complying with its applicable legal and regulatory responsibilities. Nevertheless, Client (and not ADP) will be responsible (i) for compliance by Client with all laws and governmental regulations affecting its business and (ii) for any use Client may make of the Services to assist it in complying with such laws and governmental regulations.

**2.3 Communication Lines.** Except as otherwise provided in this Agreement, if the Services require the use by Client of communication lines to connect to ADP facilities, Client will be responsible for those communication lines. Client will pay all installation, use, service and repair charges for the communication lines. ADP will not be responsible for the reliability or availability of the communication lines used by Client to access the Services.

**2.4 Additional Services.** If Client requests additional services not included in this Agreement, and ADP agrees to

provide those services, (i) those services will be included in an Additions Schedule to be signed and attached to and made a part of this Agreement, (ii) any Services provided to Client but not included in an Additions Schedule will be subject to the applicable terms of this Agreement, and (iii) unless otherwise agreed in writing, Client will pay ADP's then prevailing fees for those Services. However, the purchase of any such additional services shall be subject to the prior approval of Client's Board of Supervisors.

### **SECTION 3 FEES, TAXES AND PAYMENT TERMS.**

**3.1 Fees for Services.** Client will pay ADP for the Services as specified in Annex Z. Client will pay those fees regardless of which entity in the Client Group receives the Services. The fees in Annex Z are based upon current requirements, specifications, volumes and quantities as communicated by Client to ADP and may be revised if Client's actual requirements, specifications, volumes or quantities vary materially from those communicated to ADP. The fees in Annex Z do not include amounts to be paid by Client to third parties in connection with the Services. Client will pay ADP reasonable travel and out-of-pocket expenses as specified in Annex Z.

**3.2 Taxes, Shipping and Handling, and Fees . All taxes, shipping, and handling costs, and similar fees are included in the prices specified in Annex Z.**

### **SECTION 4 DISCLAIMER OF WARRANTIES.**

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ADP EXPRESSLY DISCLAIMS ANY WARRANTY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS WITH RESPECT TO THE SERVICES, THE ADP PRODUCTS, CUSTOM PROGRAMS OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP.

### **SECTION 5 INTELLECTUAL PROPERTY.**

**5.1 Ownership of Proprietary Rights.** The ADP Products will at all times remain the exclusive, sole and absolute property of ADP or the third parties from whom ADP has obtained the right to use the ADP Products. Except for the license granted to Client in this Agreement, Client will have no interest in the ADP Products. All rights, title and interest in or to any copyright, trademark, service mark, trade secret, and other proprietary right relating to the ADP Products and the related logos, product names, etc. are reserved and all rights not expressly granted are reserved by ADP and such third parties. Client may not obscure, alter or remove any copyright, trademark, service mark or proprietary rights notices on any ADP Products.

**5.2 ADP Infringement Indemnity.** ADP will defend Client in any suit or cause of action alleging that the ADP Products as provided by ADP and used in accordance with the terms of this Agreement infringe upon any United States patent, copyright, trade secret, or other proprietary right of a third party. ADP will pay damages assessed, including reasonable attorneys' fees and settlement amounts, against Client in any such suit or cause of action, *provided that*, (i) ADP is promptly notified in writing of such suit or cause of action, (ii) ADP controls any negotiations or defense and Client assists ADP as reasonably required by ADP, and (iii) Client takes all reasonable steps to mitigate any potential damages that may result. The foregoing infringement indemnity

will not apply and ADP will not be liable for any damages assessed in any suit or cause of action to the extent resulting from a Client Infringement Event. If any ADP Product is held or believed to infringe on any third-party's intellectual property rights, ADP may, in its sole discretion, (a) modify the ADP Product to be non-infringing, (b) obtain for Client a license to continue using such ADP Product, or (c) if neither (a) nor (b) are practical, terminate this Agreement as to the infringing ADP Product and return to Client any unearned fees paid by Client to ADP in advance. This Section 5.2 states ADP's entire liability and Client's exclusive remedies for infringement of intellectual property rights of any kind.

**5.3 Client Infringement Indemnity.** Client will defend ADP against, and pay damages assessed in, any suit or cause of action alleging infringement upon any United States patent, copyright, trade secret, or other proprietary right of a third party, to the extent that any such suit or cause of action results from an allegation of a Client Infringement Event.

### **SECTION 6 GENERAL PROVISIONS.**

**6.1 Protection of Client Files.** ADP will take reasonable precautions to prevent the loss of or alteration to Client's data files in ADP's possession. Client will, to the extent it deems necessary, keep copies of all source documents of the information delivered to ADP or inputted by Client or on behalf of Client into the ADP system and will maintain a procedure external to the ADP system for the reconstruction of lost or altered data files.

**6.2 Employee and Plan Participant Access.** Client shall ensure that its employees and plan participants ("Users") who access the Services or the System comply with any on-line terms. ADP may suspend or discontinue access to the Services by any User if ADP reasonably believes that such User has violated such terms or is otherwise using the Services in an inappropriate manner. Client shall take any and all actions reasonably necessary to maintain the privacy of User names and passwords for the Services and the System.

**6.3 Nondisclosure.** All Confidential Information disclosed under this Agreement 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 employees with a need to know the Confidential Information and will instruct those employees to keep the information confidential. It is understood, however, that ADP may disclose the Client's Confidential Information on a need to know basis to its subcontractors who are performing Services for the Client, provided those subcontractors have executed confidentiality agreements and further provided that ADP shall remain liable for any unauthorized disclosure of the Client's Confidential Information by those subcontractors. In addition, ADP will establish and follow reasonable security measures to prevent unauthorized access to Client's data files. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (ii) as appropriate to respond to any summons or subpoena or in connection with any litigation and (iii) to the extent necessary to enforce its rights under 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. The provisions of this Section 6.3 will survive the termination of this Agreement.

**6.4 No Solicitation of Employees.** Neither party will recruit or solicit the other's personnel or employees that have become known to a party as a result of the Services performed

until the earlier of one year after (i) the termination of this Agreement or (ii) that person is no longer employed by the other party. The provisions of this Section 6.4 will survive the termination of this Agreement.

**6.5 U.S. Government Restricted Rights.** The Services, the ADP Products and the related materials are provided with RESTRICTED RIGHTS. Use, duplication or disclosure by the Government is subject to restrictions in FAR §52.227-14, FAR §52.227-19, or DFARS §252.227-7013(c)(1)(ii), as applicable. Contractor is ADP, Inc., 5800 Windward Parkway, Alpharetta, GA 30005.

**6.6 Independent Contractors.** The performance by ADP of its duties and obligations under this Agreement will be that of an independent contractor and nothing contained in this Agreement will create or imply an agency, joint venture or partnership between ADP and Client. Neither the employees of ADP nor ADP's subcontractors will be considered employees or agents of Client. Unless expressly stated in this Agreement, none of ADP, its employees or its subcontractors may enter into contracts on behalf of, bind, or otherwise obligate Client in any manner whatsoever.

**6.7 Use of Services via the Internet.** This provision applies to any Services which are being provided to Client via the Internet or which Client may access via the Internet. Data transmitted through the Internet is encrypted for Client's protection. However, the security of transmissions over the Internet can never be guaranteed. ADP is not responsible for Client's access to the Internet, for any interception or interruption of any communications through the Internet, or for changes to or losses of data through the Internet. In order to protect Client and Client's data, ADP may suspend Client's use of the Services via the Internet immediately, without notice, pending an investigation, if any breach of security is suspected.

**6.8 Use Outside the U.S.** Except as otherwise specifically agreed by ADP and the Client in writing, Client will use the Services and the ADP Products only in the U.S. For any agreed upon use of the Services or the ADP Products outside the U.S., Client agrees to comply with any applicable export restrictions, laws and regulations imposed from time to time by the governments of the U.S. or the other country, if any, in which the ADP Products will be used by Client.

## SECTION 7 LIMITATION OF LIABILITY.

**7.1 Errors and Omissions.** Subject to any claim by Client under Section 7.3 or any section in the Annexes titled "Further Limitation of Liability," ADP's liability for claims of any type or character arising from errors or omissions in the Services that are caused by ADP shall be to correct the affected Client report, data or tax agency's filings, as the case may be. Upon the request of Client, ADP will correct any error or omission made by ADP in connection with the Services at no additional charge to Client.

**7.2 Mitigation of Damages.** ADP and Client will each use reasonable efforts to mitigate any potential damages or other adverse consequences arising from or related to the Services.

**7.3 Limit on Monetary Damages.** Notwithstanding anything to the contrary contained in this Agreement, ADP's liability under this Agreement for damages (monetary or otherwise) under any circumstances for claims of any type or character arising from or related to a particular Service will be limited in each instance to the amount of actual damages incurred by Client, *provided, however,* that ADP's aggregate liability hereunder in any calendar year (other than and subject to Section 5.2 of Annex A, and (if applicable) Section 4 of Annex C, and Section 3 of Annex E) will not exceed the average charge for one processing paid by Client to ADP for the affected Service during such calendar year. If Client

continues to receive Services, any such monetary damages shall be paid to Client by way of a credit against future fees payable. The Annexes attached to this Agreement may contain provisions further addressing the liability of ADP for monetary damages.

**7.4 No Consequential Damages.** NOTWITHSTANDING ANYTHING IN THIS AGREEMENT TO THE CONTRARY, NEITHER ADP NOR CLIENT WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING LOST PROFITS) THAT THE OTHER PARTY MAY INCUR OR EXPERIENCE IN CONNECTION WITH THIS AGREEMENT OR THE SERVICES, HOWEVER CAUSED AND UNDER WHATEVER THEORY OF LIABILITY, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## SECTION 8 TERM AND TERMINATION.

**8.1 Term.** This Agreement is effective on the Effective Date. The Term of this Agreement starts on the Effective Date and ends on the termination date shown in Annex Z.

**8.2 Termination by Client.** In addition to any termination rights in other Annexes, if (i) ADP fails to perform any material obligation under this Agreement and that failure continues for 60 days after ADP receives written notice from Client specifying in reasonable detail the nature of that failure, or (ii) a Termination Event occurs with respect to ADP, Client may terminate this Agreement by further written notice to ADP. Client may terminate this Agreement immediately, at the sole discretion of Client's Authorized Representative, if ADP has materially breached the Agreement, and the breach, in the opinion of Client's Authorized Representative, either cannot be cured within 60 days or will cause substantial hardship, interference, or delay to Client's operations during the 60-day cure period.

**8.3 Termination by ADP.** In addition to any termination rights in other Annexes, if (i) Client fails to pay any amount due under this Agreement within 30 days after the due date, (ii) Client fails to perform any other material obligation and that failure continues for 60 days after Client receives written notice from ADP specifying in reasonable detail the nature of that failure, or (iii) a Termination Event occurs with respect to Client, ADP may terminate this Agreement by further written notice to Client. At ADP's option, ADP may, in the event of delinquent payment pursuant to clause (i), suspend the affected Services upon five (5) Business Day's prior written notice to Client, and ADP shall have no liability to Client for such suspended Services.

**8.4 Effect of Termination.** Upon expiration or termination of this Agreement, or any Annex or Additions Schedule or any Services for any reason, (i) all licenses and other rights granted to Client under the respective Annex or Additions Schedule or in connection with the terminated Services, will become null and void, (ii) all materials provided by either party to the other under the respective Annex or Additions Schedule or in connection with the terminated Services, will be returned within five Business Days after the effective date of termination, and (iii) all earned and unpaid fees and expenses will become immediately due and payable within 30 days of such expiration or termination. Each party's termination rights in this Agreement are cumulative and are in addition to all other rights and remedies available to the parties.

## SECTION 9 MISCELLANEOUS PROVISIONS.

**9.1 Amendment.** This Agreement may not be modified except by a writing signed by the authorized representatives of ADP and Client.

**9.2 Notices.** All communications required to be sent or given under this Agreement will be in writing and will be duly given and effective immediately if delivered in person or five Business Days after mailed by certified mail return receipt requested or upon confirmation of signature recording delivery, if sent via a nationally recognized overnight courier service with signature notification requested, to Client at the address shown on the first page of this Agreement or to ADP at the address shown in Annex Z or to any other address a party may identify in writing from time to time. A copy of all communications to ADP of a legal nature must be sent to ADP, Inc., One ADP Boulevard, MS 425, Roseland, New Jersey 07068, Attention: General Counsel.

**9.3 Injunctive Relief.** In the event of an actual or impending breach of Section 6.3 or 6.4, the non-breaching party, in addition to any remedy available at law, will be entitled to seek equitable relief, including injunction and specific performance.

**9.4 Assignment.** Neither this Agreement, nor any of the rights or obligations under this Agreement, may be assigned by any party without the prior written consent of the other party. Notwithstanding the foregoing, certain of the Services to be provided by ADP will be provided by subsidiaries of Automatic Data Processing, Inc., and ADP shall be responsible for the performance of those subsidiaries. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

**9.5 Entire Agreement.** This Agreement, including the Annexes and Additions Schedules, is the entire agreement and understanding between ADP and Client with respect to the subject matter and merges and supersedes all prior discussions, agreements and understandings of every kind and nature between them, and no party will be bound by any representation, warranty, covenant, term or condition other than as expressly stated in this Agreement. If any provision of an Annex or Additions Schedule conflicts with a provision of another Annex or Additions Schedule, the provision of each Annex or Additions Schedule will govern, but solely with respect to the Services covered by such Annex or Additions Schedule. **Purchase Orders submitted by Client are for Client's internal administrative purposes only and the terms and conditions contained in those purchase orders will have no force and effect.**

**9.6 No Third Party Beneficiaries.** Nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. CLIENT AGREES THAT OTHER THAN ADP'S OBLIGATIONS TO CLIENT IN THIS AGREEMENT, ADP HAS NO OBLIGATION TO ANY THIRD PARTY (INCLUDING, WITHOUT LIMITATION, CLIENT'S EMPLOYEES AND/OR ANY TAXING AUTHORITIES) BY VIRTUE OF THIS AGREEMENT.

**9.7 Force Majeure.** Any party to this Agreement will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations under this Agreement due to an act of God, war, earthquake, civil disobedience, court order, or other cause beyond the party's reasonable control. Such non-performance will not constitute grounds for default.

**9.8 Waiver.** The failure by any party to this Agreement to insist upon strict performance of any provision of this Agreement will not constitute a waiver of that provision.

**9.9 Headings.** The section headings in this Agreement are intended for convenience of reference and will not affect its interpretation.

**9.10 Severability.** If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality or

enforceability of the remainder of this Agreement will not in any way be affected or impaired.

**9.11 Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the internal laws of the State California, without regard to conflict of law principles. Venue shall be in the Superior Court of California, County of Contra Costa.

**9.12 Use of Client's Name.** ADP may use Client's name for promotional purposes subject to Client's prior written consent.

## **SECTION 10 ADP ENTITY.**

Notwithstanding the use in this Annex of the term "ADP", to the extent the provisions in this Annex are applicable to the particular Services described in the Annexes attached, each of the rights and obligations in this Agreement are applicable to and assumed by ADP and/or the wholly-owned subsidiary of Automatic Data Processing, Inc. which may be designated as the service provider in a particular Annex. ADP shall be responsible for the performance of such subsidiary(ies).