



Robert R. Freeman Administrative Complex  
1701 Mountain Industrial Boulevard  
Stone Mountain, GA 30083

## MEMORANDUM

**TO:** Mr. Charles Burbridge, Chief Financial Officer  
Division of Finance

**FROM:** Mrs. Cheryl L. Watson-Harris, Superintendent  
Office of the Superintendent

**DATE:** October 18, 2021

**RE:** **Approval of Amended ADP Contract For Select Post-Payroll Processing Services  
(Estimated Not to Exceed \$230,000)**

At its business meeting on Monday, October 18, 2021, the DeKalb Board of Education approved an amended contract with ADP for select post-payroll processing services under a Global Master Services Agreement. Each service provided under the contract will be billed based on the attached schedule of fees. The annual cost of the amended contract is estimated to not exceed \$230,000.

Services are expected to begin on or after January 1, 2022, in coordination with the implementation of the Tyler Munis HR/Payroll modules. The initial term of this annual agreement shall end on December 31, 2022. There are four one-year optional renewals. With each renewal option, ADP may increase their fees by up to 4% upon 30-day written notice.

ADP was initially contracted in March 2021 to provide certain post-payroll processing services, including: electronic wage payment; employee check payment processing; Pay card processing; commercial employment and income verification; employment tax filing; W2 processing; and, wage garnishment. Fees for these services are based on a schedule of fees and actual transaction volume. The estimated annual fee for these services was estimated to be less than \$98,000. Implementation was scheduled to coordinate with the expected July 1, 2021 go-live date for the Tyler Munis HR/Payroll application. The initial agreement was entered as a single source under the terms and conditions of ADP's contract with OMNIA Partners, Public Sector. The contract was competitively solicited and publicly awarded by a government entity serving as a lead agency. **The initial term was to expire 12-31-21.**

Please take the appropriate action to affect this directive of the Board.

CWH:am

c: Ms. Carla Smith, Purchasing Manager, Purchasing Department, Division of Finance  
Ms. Phyllis Jones, Buyer, Purchasing Department, Division of Finance



# GLOBAL MASTER SERVICES AGREEMENT

Effective Date: November 12, 2021

As between:

**ADP, Inc.**

(Referred to in this agreement as "ADP")  
One ADP Boulevard  
Roseland, NJ 07068

-and-

**Dekalb County Schools**

(Referred to in this agreement as "Client")  
3770 N Decatur Rd  
Decatur, GA 30032-1005

ADP and Client agree that ADP shall provide Client with the following services in accordance with the terms set forth in this Global Master Services Agreement.

## Compliance Services

- ADP Employment Tax Services – delivered via the Employment Tax Module
- ADP Wage Payment Services - delivered via the Wage Payments Module
- Print and Online Statement Services – delivered via the W2 Management Module
- Employment Verification Services – delivered via the Employment Verification Module
- ADP Wage Garnishment Disbursement Services – delivered via the Wage Garnishments Module
- ADP Health Compliance Services – delivered via the Health Compliance Module
- ADP Unemployment Claims- delivered via the Unemployment Claims Module

## Appendices

- Pricing and Financial Terms



**ADP, Inc.**

*[Handwritten Signature]*

Signature of Authorized Representative

Rob Hamilton

Printed Name

SVP/GM

Title

11/12/21

Date



**Dekalb County Schools**

*[Handwritten Signature]*

Signature of Authorized Representative

Cheryl L. Watson-Harris

Printed Name

Superintendent

Title

10/27/21

Date



## Global Master Terms and Conditions

### 1. Definitions

1.1. **Compliance Services.** Compliance-related services to assist in the following:

1.1.1. **ADP Employment Tax Services.** Coordination of payroll-related tax and/or regulatory agency deposits, filings, and reconciliations on behalf of employers.

1.1.2. **ADP Health Compliance Services.** A technology, software, and service solution to assist in managing the compliance needs related to the employer shared responsibility provisions of the Affordable Care Act (ACA), including eligibility calculations, affordability determinations, and regulatory management (provision of notices of coverage; management of exchange notices; preparation, delivery, and filing of annual IRS Forms 1094-C and 1095-C; preparation of state health coverage filings as specified by ADP; and penalty management).

1.1.3. **ADP Unemployment Claims Services.** Management of unemployment insurance claims, including claim administration, timely appeals, auditing of benefit charges, and hearing representation.

1.1.4. **Employment Verification Services.** Management of employment and income verification requests.

1.1.5. **Print and Online Statement Services.** Print and distribution of payroll checks, pay statements, and/or year-end statements, as well as online posting of pay statements and/or year-end statements.

1.1.6. **ADP Wage Garnishment Disbursement Services.** Garnishment payment processing and disbursement of payments to appropriate payees as directed by client.

1.1.7. **ADP Wage Payment Services.** Payment of wages, commissions, consulting fees, or similar compensation or work-related expenses in the employment context to employees and independent contractors via direct deposit, check, or payroll debit cards, in each case to the extent the method of payment delivery is in scope, and online posting of pay statements to the extent applicable. Such services may be provided via ADPCheck Services, Wisely Now Services, ADP Direct Deposit Services, and Pay Card Services.

### 1.2. General

1.2.1. "ADP" has the meaning set forth on the cover page.

1.2.2. "ADP Application Programs" means the computer software programs and related Documentation, including any updates, modifications or enhancements thereto, that are either delivered or made accessible to Client through a hosted environment by ADP in connection with the Services.

1.2.3. "ADPCheck" means checks printed and distributed by ADP to Payees pursuant to Client's direction.

1.2.4. "ADPCheck Services" refers to ADP's payment of Client's Payees for Permitted Payments through ADPCheck.

1.2.5. "ADP Direct Deposit Services" means ADP's full service direct deposit services which includes ADP's payment of Client's Payees who have elected to receive Permitted Payments by direct deposit into an account at a financial institution of such Payee's selection.



1.2.6. "Affiliate" means, with respect to any entity, any other entity that controls, is controlled by or under control with such first entity. For purposes of this Agreement, "control" (or variants of it) means the ability, whether directly or indirectly, to direct the management and action of an entity by means of ownership, contract or otherwise.

1.2.7. "Agreement" means this Global Master Services Agreement, consisting of the signature pages, the Global Master Terms and Conditions, all exhibits, annexes, appendices and schedules, and each Amendment, if any.

1.2.8. "Amendment" means a written amendment to this Agreement modifying, supplementing or amending the terms and conditions of this Agreement.

1.2.9. "Approved Country" means each country in which, subject to the terms of this Agreement, Client is authorized to use or receive the Services. A list of Approved Countries for each Service is set forth in the Pricing and Financial Terms appendix.

1.2.10. "Business Day" means any day, except a Saturday, Sunday or a day on which ADP's bank is not open for business in the applicable jurisdiction where services are provided by ADP.

1.2.11. "Cardholder" means the Payees of Client who receive a Pay Card.

1.2.12. "Client" has the meaning set forth on the cover page.

1.2.13. "Client ACA Liaison" has the meaning set forth in Section 14.7.1.

1.2.14. "Client Content" means all information and materials provided by Client, its agents or employees, regardless of form.

1.2.15. "Client Group" means Client and Client's Affiliates listed in the Pricing and Financial Terms appendix who are authorized to receive the Services.

1.2.16. Reserved.

1.2.17. "Confidential Information" means all trade secrets, processes, proprietary data and documentation and any pricing and product information, Personal Data, the terms of this Agreement, and any other information that is confidential or proprietary provided by the disclosing party to the receiving party for use in connection with the Services or this Agreement, but does not include information that (i) the receiving party already knows prior to its disclosure by the disclosing party, (ii) becomes generally available to the public, except as a result of disclosure by the receiving party in violation of this Agreement or (iii) becomes known to the receiving party on a non-confidential basis from a source other than the disclosing party.

1.2.18. "Cost Reimbursement Fee" means those amounts set forth in the Pricing and Financial Terms appendix to be paid to ADP in the event Client terminates any Services prior to the expiration of the Initial Term, other than for material breach pursuant to Section 12.2.

1.2.19. "Data Security Breach" means a security breach as defined by applicable law or any incident that compromises the confidentiality, integrity, or availability of Personal Data.

1.2.20. "Documentation" means all manuals, tutorials and related materials that may be provided or made available to Client by ADP in connection with the Services.

1.2.21. "Effective Date" has the meaning set forth on the cover page.



1.2.22. "ERISA" means Employee Retirement Income Security Act of 1974, as amended.

1.2.23. "FCRA" means the Fair Credit Reporting Act, 15 U.S.C. §1681 et seq.

1.2.24. "Global Master Terms and Conditions" means the terms and conditions contained in the main body of this document following the signature pages.

1.2.25. "Go-Live Date" means the date of commencement of the first "live" processing of a given Service.

1.2.26. "Gross Negligence" means (1) willful, wanton, careless or reckless conduct, misconduct, failures, omissions, or disregard of the duty of care towards others of a risk known or so obvious that the actor must be taken to have been aware of it, and with an intent to injure or so great as to make it highly probable that harm would follow and/or (2) failure to use even the slightest amount of care, or conduct so reckless, as to demonstrate a substantial lack of concern for the safety of others. For the avoidance of doubt, Gross Negligence must be more than any mere mistake resulting from inexperience, excitement, or confusion, and more than mere thoughtlessness or inadvertence or simple inattention.

1.2.27. "Identity Verification Documents" means the documents that meet the federal requirements for verifying a Payee's identity and eligibility to work in the U.S. (e.g., (i) a passport, (ii) a U.S. issued driver's license or picture identification card issued by a state or U.S. federal agency and social security card, or (iii) a U.S. issued driver's license and birth certificate).

1.2.28. "Improvements" has the meaning set forth in Section 5.4.

1.2.29. Reserved.

1.2.30. Reserved.

1.2.31. "Initial Term" has the meaning set forth in Section 12.1.

1.2.32. "Intellectual Property Rights" means all rights, title and interest to or in patent, copyright, trademark, service mark, trade secret, business or trade name, know-how and rights of a similar or corresponding character.

1.2.33. "Internal Business Purposes" means the usage of the Services solely by the Client Group for its own internal business purposes, without the right to provide service bureau or other data processing services, or otherwise share or distribute the Services, to any party outside the Client Group, unless expressly contemplated by this Agreement.

1.2.34. "Issuing Bank" means the financial institution selected by ADP that issues the Pay Card.

1.2.35. "NACHA" means the National Automated Clearing House Association.

1.2.36. "Payee" means any intended recipient of payments under the Payment Services and may include Client's employees, taxing authorities, governmental agencies, suppliers, benefit carriers and/or other third parties; provided that in the case of (i) ADP Wage Payment Services, Payee shall be limited to Client's employees and independent contractors, and (ii) WorkMarket, Payee shall be limited to independent contractors.

1.2.37. "Payment Services" means Services that involve electronic or check payments being made by ADP to third parties on Client's behalf and at its direction.



1.2.38. "Pay Card" means the pre-paid card issued to Client's Payees for Permitted Payments.

1.2.39. "Pay Card Services" refers to ADP's payment of Client's Payees through a Pay Card issued by the Issuing Bank.

1.2.40. "Permitted Payment" means the legal payment of wages, commissions, consulting fees or similar compensation or work-related expenses in the employment context.

1.2.41. "Personal Data" means any information relating to an identified or identifiable natural person. An identifiable person is one who can be identified, directly or indirectly, in particular by reference to an identification number or to one or more factors specific to such person's physical, physiological, mental, economic, cultural or social identity.

1.2.42. "Plan" means Client's plan, including a group health plan, as identified by Client for the applicable Services.

1.2.43. "Plan Administrator" means the appropriate plan administrator as defined in Section 3(16)(A) of ERISA and Section 414(g) of the Internal Revenue Code of 1986, as amended.

1.2.44. "Regulation E" means the Federal Reserve Board, Regulation E (12 CFR 1005).

1.2.45. "Renewal Term" has the meaning set forth in Section 12.1.

1.2.46. "Services" means the services listed on the cover page of this Agreement (including implementation services related thereto) and such other services as the parties may agree to be performed from time to time.

1.2.47. "SOC 1 Reports" has the meaning set forth in Section 9.1.

1.2.48. "Tax Locator" has the meaning set forth in Section 14.1.1.

1.2.49. "Term" means the Initial Term together with each Renewal Term, if any.

1.2.50. "Transition Services" has the meaning set forth in Section 13.1.

1.2.51. "User" means any single natural person who, subject to the terms of this Agreement, is authorized by Client to use, access or receive the Services.

1.2.52. "Verification Agent" has the meaning set forth in Section 14.5.1.

1.2.53. "Verification Data" has the meaning set forth in Section 14.5.1.

1.2.54. "Verifiers" has the meaning set forth in Section 14.5.1.

## 2. Provision and Use of Services

2.1. **Provision of Services.** ADP, or one of its Affiliates, will provide the Services to Client Group in accordance with the terms of this Agreement. ADP will provide the Services in a good, diligent and professional manner in accordance with industry standards, utilizing personnel with a level of skill commensurate with the Services to be performed. ADP's performance of the Services (including any applicable implementation activities) is dependent upon the timely completion of Client's responsibilities and obligations under this Agreement. Without limitation of the foregoing, Client will timely provide the Client Content necessary for ADP to provide the Services.



**2.2. Cooperation.** ADP and Client will work together to implement the Services. Client will cooperate with ADP and execute and deliver all documents, forms, or instruments necessary for ADP to implement and render the Services. Client will provide ADP with all reasonable and necessary Client Content in the format requested by ADP, and will otherwise provide all reasonable assistance required of Client in order for ADP to successfully implement the Services.

**2.3. Use of Services.** Client will use the Services in accordance with the terms of this Agreement and solely for its own Internal Business Purposes in the Approved Countries. Client will be responsible for the use of the Services by the Client Group and the Users in accordance with the terms of this Agreement. Client is responsible for the accuracy and completeness of the Client Content provided to ADP. Furthermore, if Client during the implementation process or as part of the ongoing Services configures the ADP Application Programs to process additional data elements beyond those data elements that are required by ADP to perform the Services, Client will remain solely responsible for such configurations, including the processing of Personal Data pursuant to applicable law.

**2.4. Errors.** Client will promptly review all documents and reports produced by ADP and provided or made available to Client in connection with the Services and promptly notify ADP of any error, omission, or discrepancy with Client's records. ADP will promptly correct such error, omission or discrepancy and, if such error, omission or discrepancy was caused by ADP, then such correction will be done at no additional charge to Client.

**2.5. Records.** Unless expressly included as a part of the Services, and without prejudice to ADP's obligation to retain the data necessary for the provision of the Services, ADP does not serve as Client's record keeper and Client will be responsible for retaining copies of all documentation received from or provided to ADP in connection with the Services to the extent required by law or Client's internal policies.

### **3. Compliance**

**3.1. Applicable Laws.** Each party will comply with laws and regulations that affect its business generally, including any applicable anti-bribery, export control and data protection laws.

**3.2. Design of the Services.** ADP will design the Services, including the functions and processes applicable to ADP's performance of the Services, to assist the Client in complying with its legal and regulatory requirements applicable to the Services, and ADP will be responsible for the accuracy of such design. Client and not ADP will be responsible for (i) how it uses the Services to comply with its legal and regulatory requirements and (ii) the consequences of any instructions that it gives to ADP, including as part of the implementation of the Services, provided ADP follows such instructions. Services do not include any legal, financial, regulatory, benefits, accounting or tax advice.

**3.3. Online Statements.** If Client instructs ADP to provide online pay statements, Forms W2, Forms 1099, or Forms 1095-C (including T4 Forms in Canada or other similar local forms) without physical copies thereof, Client will be exclusively responsible for determining if and to what extent Client's use of online pay statements, Forms W2, Forms 1099, or Forms 1095-C (or T4 Forms in Canada) satisfies Client's obligations under applicable laws and the consequences resulting from such determinations.

**3.4. Pay Card Services.** Notwithstanding anything to the contrary in Section 3.2, ADP shall be responsible for compliance with requirements of Regulation E applicable to financial institutions with respect to prepaid card accounts, provided Client will fulfill the compliance responsibilities of Regulation E that Client controls, including: (a) Client will distribute to its Payees all documentation (including without limitation, Pay Card fee schedule and Cardholder Terms and Conditions) that ADP makes available to Client for distribution purposes, and (b) Client will not mandate or unduly influence that any Payee receive Permitted Payments only on the Pay Card; in lieu of such mandate, Client will provide to Payees other legally permissible options for payment of Permitted Payments. Client agrees that it will not rely solely on its use of the Pay Card Services in complying with any laws and governmental regulations and that it will comply with the financial industry rules and compliance standards imposed by various



card/payment networks or associations (e.g., related to such things as card security and fraudulent or impermissible use of Pay Cards).

**3.5. Data Protection Laws.** During the Term of the Agreement (i) Personal Data transferred by Client or at Client's direction to ADP has been collected by Client in accordance with applicable privacy laws; and (ii) Client has the authority to provide such Personal Data to ADP under applicable privacy laws. ADP may not retain, sell (as defined by applicable privacy laws), use or disclose the Personal Data for any purpose other than as needed to perform the Services, as permitted by the Agreement, or as required by law.

#### **4. Confidentiality**

**4.1. General.** All Confidential Information disclosed under this Agreement will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose to any third party 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 such information confidential. ADP may disclose Client's Confidential Information on a need to know basis to (i) ADP's subcontractors who are performing the Services, provided that ADP shall remain liable for any unauthorized disclosure of Client's Confidential Information by those subcontractors, (ii) employees of ADP's Affiliates, provided such employees are instructed to keep the information confidential as set forth in this Agreement and (iii) social security agencies, tax authorities and similar third parties, to the extent strictly necessary to perform the Services. ADP may use Client's and its employees' and other Services recipients' information in an aggregated, anonymized form, such that neither Client nor such person may be identified, and Client will have no ownership interest in such aggregated, anonymized data. Client authorizes ADP to release employee-related data, and such other data as required to perform the Services, to third party vendors of Client as designated by Client from time to time. If ADP agrees to a Client request to provide ADP Confidential Information to a third party vendor of Client, Client will cause such third party to (i) use at least the same degree of care, discretion and diligence in protecting the ADP Confidential Information as the third party is required to use with respect to Client's Confidential Information, but in any event no less than a reasonable standard of care in protecting the ADP Confidential Information; and (ii) use the ADP Confidential Information solely for providing services to Client for Client's internal operations. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (x) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (y) as appropriate to respond to any summons or subpoena or in connection with any litigation and (z) to the extent necessary to enforce its rights under this Agreement.

**4.2. Return or Destruction.** Upon the request of the disclosing party or upon the expiration or earlier termination of this Agreement, and to the extent feasible, the receiving party will return or destroy all Confidential Information of the disclosing party in the possession of the receiving party, provided that each party may maintain a copy if required to meet its legal or regulatory obligations and may maintain archival copies stored in accordance with regular computer back-up operations. To the extent that any portion of Confidential Information of a disclosing party remains in the possession of the receiving party following expiration or earlier termination of this Agreement, such portion of the disclosing party's Confidential Information shall remain subject to the generally applicable statutory requirements and the confidentiality protections contained in Section 4.1.

#### **5. Intellectual Property**

**5.1. Client IP Rights.** Except for the rights expressly granted to ADP in this Agreement, all rights, title and interests in and to Client Content, including all Intellectual Property Rights inherent therein and pertaining thereto, are owned exclusively by Client or its licensors. Client hereby grants to ADP for the Term a non-exclusive, worldwide, non-transferable, royalty-free license to use, edit, modify, adapt, translate, exhibit, publish, reproduce, copy and display the Client Content for the sole purpose of performing the Services; provided Client has the right to pre-approve the use by ADP of any Client trademarks or service marks.



**5.2. ADP IP Rights.** Except for the rights expressly granted to Client in this Agreement, all rights, title and interest in and to the Services, including all Intellectual Property Rights inherent therein and pertaining thereto, are owned exclusively by ADP or its licensors. ADP grants to Client for the Term a personal, non-exclusive, non-transferable, royalty-free license to use and access the ADP Application Programs solely for the Internal Business Purposes in the Approved Countries and solely up to the maximum number of Users (if any) indicated in the Pricing and Financial Terms appendix. The ADP Application Programs do not include any Client-specific customizations unless otherwise agreed in writing by the parties. Client will not obscure, alter or remove any copyright, trademark, service mark or proprietary rights notices on any materials provided by ADP in connection with the Services, and will not copy, recompile, disassemble, reverse engineer, or make or distribute any other form of, or any derivative work from, such ADP materials.

**5.3. Ownership of Reports.** Client will retain ownership of the content of reports and other materials that include Client Content produced and delivered by ADP as a part of the Services, provided that ADP will be the owner of the format of such reports. To the extent any such reports or other materials incorporate any ADP proprietary information, ADP (i) retains sole ownership of such proprietary information and (ii) provides the Client a fully paid up, irrevocable, perpetual, royalty-free license to access and use same for its Internal Business Purposes without the right to create derivative works (other than derivative works to be used solely for its Internal Business Purposes) or to further distribute any of the foregoing rights outside the Client Group.

**5.4. Improvements.** ADP will make available to Client, at no additional cost, software improvements, enhancements, or updates to any ADP Application Programs that are included in the Services (collectively "Improvements") if and as they are made generally available by ADP at no additional cost to ADP's other clients using the same ADP Application Programs as Client and receiving the same Services as Client. All Improvements provided under this Section 5.4 shall be considered part of the ADP Application Programs. If Client fails to implement Improvements provided or made available to Client by ADP, ADP shall be relieved of any responsibility for errors or degradation in the Services and shall have no obligation to provide support for the ADP Application Programs.

**5.5. ADP Application Program IP Infringement.** ADP will not provide Client with any Application Programs that when used in accordance with the terms of this Agreement infringe upon any Intellectual Property Rights of a third party in an Approved Country.

**5.6. Client Infringement Event.** Client Group will not (i) make any change or enhancement to the Services other than at the direction of, or as approved by, ADP, (ii) fail to use the most current release or version of any computer software programs included in the ADP Application Programs or any corrections or enhancements provided by ADP thereto, or (iii) direct any third party on behalf of Client Group to (a) make any change or enhancement to the Services other than at the direction of, or as approved by, ADP, (b) fail to use the most current release or version of any computer software programs included in the ADP Application Programs or any corrections or enhancements provided by ADP thereto.

**5.7. Provision of Client Content.** Client will not provide ADP with Client Content which when used by ADP as contemplated by the Agreement gives rise to a cause of action against ADP.

**6. Reserved.**

**7. Limit on Liability**

**7.1. Ordinary Cap.** Notwithstanding anything to the contrary in this Agreement and subject to the remainder of this Section 7, neither party's aggregate liability in any calendar year shall exceed an amount equal to the greater of: (i) 12 times the average ongoing monthly Services fees paid or payable to ADP by Client during such calendar year for all Services and (ii) One Hundred Thousand Dollars (\$100,000) (the "Ordinary Cap").

**7.2. Extraordinary Cap.** As an exception to Section 7.1, if damages arise from a breach of Section 4



(Confidentiality) or Section 9.3 (Data Security), the Ordinary Cap will be increased by an amount equal to the greater of (i) an additional 12 times the average ongoing monthly Services fees paid or payable to ADP by Client during such calendar year for all Services and (ii) an additional One Hundred Thousand Dollars (\$100,000) (the "Extraordinary Cap"). For the avoidance of doubt, in no case shall either party's aggregate liability in any calendar year under this Agreement exceed an amount equal to the greater of: (a) 24 times the average monthly ongoing Services fees paid or payable to ADP by Client during such calendar year for all Services and (b) Two Hundred Thousand Dollars (\$200,000).

**7.3. Matters not Subject to the Cap.** The foregoing limits on liability shall not apply to the following:

7.3.1. Client's funding obligations in connection with the Payment Services;

7.3.2. Loss or misdirection of Client funds in possession or control of ADP due to ADP's error or omission;

7.3.3. In connection with the Employment Tax Services, (i) interest charges imposed by an applicable tax authority on Client for the failure by ADP to pay funds to the extent and for the period that such funds were held by ADP and (ii) all tax penalties resulting from ADP's error or omission in the performance of such Service. The provisions of this Section 7.3.3 shall only apply if (x) Client permits ADP to act on Client's behalf in any communications and negotiations with the applicable taxing authority that is seeking to impose any such penalties or interest and (y) Client assists ADP as reasonably required by ADP;

7.3.4. Either party's Gross Negligence, or willful, criminal or fraudulent misconduct;

7.3.5. Reserved;

7.3.6. Client's obligations to pay the fees for Services; and

7.3.7. ADP's obligations to provide credit monitoring as set forth in Section 10.

**7.4. 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.

**7.5. No Consequential Damages.** NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT AND ONLY TO THE EXTENT PERMITTED BY APPLICABLE LAW, NONE OF ADP, CLIENT OR ANY BANK WILL BE RESPONSIBLE FOR SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES (INCLUDING DAMAGES FOR LOSS OF BUSINESS OR PROFITS, BUSINESS INTERRUPTIONS OR HARM TO REPUTATION) THAT ANY OTHER PARTY OR ITS RESPECTIVE AFFILIATES 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. The foregoing exclusion shall not apply to claims for consequential damages arising from ADP's or Client's (i) Gross Negligence willful, criminal or fraudulent misconduct, or (ii) breach or breaches of Section 4.1 or Section 9.3 under this Agreement; provided however, that any consequential damages recovered by Client or ADP in a calendar year for claims pursuant to Section 7.5(ii) will be subject to the Extraordinary Cap set forth in Section 7.2 above.

## **8. Warranties and Disclaimer**

**8.1. Warranties.** Each party warrants that (i) it has full corporate power and authority to execute and deliver this Agreement and to consummate the transactions contemplated hereby and (ii) this Agreement has been duly and validly executed and delivered and constitutes the valid and binding agreement of the parties, enforceable in accordance with its terms.



**8.2. DISCLAIMER.** EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ALL SERVICES, ADP APPLICATION PROGRAMS AND EQUIPMENT PROVIDED BY ADP OR ITS SUPPLIERS ARE PROVIDED "AS IS" AND ADP AND ITS LICENSORS AND SUPPLIERS EXPRESSLY DISCLAIM ANY WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS, VIRUSES OR ANY OTHER MALICIOUS CODE, WITH RESPECT TO THE SERVICES, THE ADP APPLICATION PROGRAMS, ANY CUSTOM PROGRAMS CREATED BY ADP OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP AND RESULTS OBTAINED THROUGH THE USE THEREOF.

## **9. Security and Controls**

**9.1. Service Organization Control Reports.** Following completion of implementation of any applicable Services, ADP will, at Client's request and at no charge, provide Client with copies of any routine Service Organization Control 1 reports ("SOC 1 Reports") (or any successor reports thereto) that are both directly related to those Services provided hereunder for Client and already released to ADP by the public accounting firm producing the report. SOC 1 Reports are ADP Confidential Information and Client will not distribute or allow any third party (other than its independent auditors) to use any such report without the prior written consent of ADP. Client will instruct its independent auditors or other approved third parties to keep such report confidential and Client will remain liable for any unauthorized disclosure of such report by its independent auditors or other approved third parties.

**9.2. Business Continuity; Disaster Recovery.** ADP maintains a commercially reasonable business continuity and disaster recovery plan and will follow such plan.

**9.3. Data Security.** ADP has an established information security program containing appropriate administrative, technical and physical measures to protect Client data (including Personal Data) against accidental or unlawful destruction, alteration, unauthorized disclosure or access consistent with applicable laws. In the event ADP suspects any unauthorized access to, or use of, the Services, ADP may suspend access to the Services to the extent ADP deems necessary to preserve the security of the Client's data.

## **10. Data Security Breach**

**10.1. Notification.** If ADP becomes aware of a Data Security Breach of Client's Personal Data, ADP will take appropriate actions to contain, investigate and mitigate the Data Security Breach. ADP shall notify Client without undue delay after becoming aware that a Data Security Breach has occurred, unless otherwise required or instructed by law enforcement or regulatory authority. ADP will share information in its possession with Client for Client to determine any regulatory reporting obligations required by applicable law.

**10.2. Other ADP Obligations.** In the event that a Data Security Breach is the result of the failure of ADP to comply with the terms of this Agreement, ADP shall, to the extent legally required or otherwise necessary to notify the individuals of potential harm, bear the actual, reasonable costs of notifying affected individuals. ADP and Client shall mutually agree on the content and timing of any such notifications, in good faith and as needed to meet applicable legal requirements. In addition, where notifications are required, and where such monitoring is practicable and customary, ADP shall also bear the cost of one year of credit monitoring to affected individuals in the applicable jurisdictions.

## **11. Payment Terms**

**11.1.** Client will pay to ADP the fees and other charges for the Services as set forth in the Pricing and Financial Terms appendix.

## **12. Term; Termination; Suspension**



**12.1. Initial Term.** This Agreement is effective upon the Effective Date and will remain in effect until the date set forth in the Pricing and Financial Terms Appendix (the "Initial Term"). After the Initial Term expires, this Agreement will automatically renew for additional one year periods (each a "Renewal Term") unless terminated by either party upon at least 180 days prior written notice to the other party prior to the end of the Initial Term or Renewal Term, as applicable.

**12.2. Termination.** Either party may terminate this Agreement for the other's material breach of this Agreement if such breach is not cured within 60 days following notice thereof. In addition: (i) ADP may terminate this Agreement in the event (a) Client fails to timely pay fees for Services performed within 10 days following notice that such fees are past due, (b) the provision of Services to Client causes or will cause ADP or its Affiliates to be in violation of any sanction laws applicable to ADP or its Affiliates (such termination shall be effective immediately upon written notice); and (ii) Client may terminate this Agreement or any Service for any reason for its convenience upon 180 days notice and payment of the Cost Reimbursement Fee (if applicable) and Deferred Fee (if applicable), each as set forth in the Pricing and Financial Terms appendix.

**12.3. Suspension.** Without limiting the foregoing, the parties agree that Payment Services involve credit risk to ADP. Payment Services may be suspended by ADP (A) immediately following notice to Client (i) that Client has failed to remit sufficient, good and available funds within the deadline and via the method of delivery set forth in the Pricing and Financial Terms appendix as it relates to the applicable Payment Services, or (ii) if Client breaches any rules promulgated by the NACHA (or other similar local regulator) as it relates to ADP conducting ACH (or similar electronic payment) transactions on behalf of Client, and (B) with 24 hour notice if: (i) a bank notifies ADP that it is no longer willing to originate debits from Client's account(s) or credits for Client's behalf for any reason or (ii) the authorization to debit Client's account is terminated or ADP reasonably believes that there is or has been fraudulent activity on the account. If the Payment Services are terminated or suspended pursuant to Sections 12.2 or 12.3, Client acknowledges that ADP shall be entitled to allocate any funds in ADP's possession that have been previously remitted or otherwise made available by Client to ADP relative to the Payment Services in such priorities as ADP may determine appropriate, including reimbursing ADP for payments made by ADP on Client's behalf to a third party. If the Payment Services are terminated by ADP, Client understands that it will (x) immediately become solely responsible for all of Client's third party payment obligations covered by the Payment Services then or thereafter due (including, without limitation, for ADP Employment Tax Services, any and all penalties and interest accruing after the date of such termination, other than penalties and interest for which ADP is responsible under Section 7.3.3), and (y) reimburse ADP for all payments properly made by ADP on behalf of Client to any payee, which has not been paid or reimbursed by Client. If the Payment Services remains suspended for 30 days, the affected Payment Service shall be deemed terminated on the 31st day following suspension.

#### **12.4. Additional Termination Provisions.**

**12.4.1. Additional Termination Provisions for Pay Card Services.** In addition to any other terms and conditions of the Agreement, ADP may terminate the Pay Card Services as follows: (i) the Pay Card Services (or any feature thereof) in any designated jurisdiction may be terminated on 60 days' notice to Client if ADP or the Issuing Bank believes that any changes in any card network rules or NACHA rules, or changes to, or interpretations of, applicable law by any federal, state or local governmental authority, or any formal or informal order, instruction or directive communicated to ADP or the Issuing Bank by such authority make it commercially impractical to continue to provide the Pay Card Services (or any feature thereof) in such jurisdiction; or (ii) the Issuing Bank cancels the Pay Cards issued on behalf of Client (e.g., due to Client's non-compliance with its obligations) or advises ADP that it is no longer willing to service the Pay Card, provided that in such later instance ADP shall take commercially reasonable steps to engage a successor Issuing Bank, and provided further that ADP shall not be liable for any delay in providing the Pay Card Services during such search for a successor Issuing Bank.

**12.4.2. Additional Termination Provisions for ADP Employment Tax Services.** If the ADP Employment Tax Services in the United States are terminated, Client's access to ADP websites containing Client's data will expire 90 days from the effective date of the termination, and Client will be responsible for downloading all



relevant data, including Statements of Deposit (SODs) prior to the expiration of such access. ADP may terminate the Tax Locator feature of the ADP Employment Tax Services at any time by providing 30 days written notice to Client.

**12.4.3. Additional Termination Provisions for ADP Health Compliance Services.** Either party may, upon notice to the other, terminate all or any portion of the ADP Health Compliance Services if, in the case of ADP, ADP determines that it can no longer perform its obligations due to changes in or application of applicable law or if, in the case of Client, Client determines that it can no longer receive or have a need to receive all or a portion of the ADP Health Compliance Services due to changes in or application of applicable law.

**12.4.4. Additional Termination Provisions for Employment Verification Services.** ADP may, in its sole discretion, terminate the Employment Verification Services at any time upon 90 days prior written notice to Client should a Verification Agent notify ADP that it is no longer willing to provide the Employment Verification Services and ADP, after taking commercially reasonable steps, cannot engage a successor Verification Agent.

**12.4.5. Additional Termination Provisions for ADP Unemployment Claims Services.** Either ADP or Client may terminate the ADP Unemployment Claims Services upon 90 days prior written notice to the other party. Notwithstanding any provision to the contrary, upon termination of the ADP Unemployment Claims Services, Client's access to ADP websites containing Client's data expires and Client is responsible for downloading all relevant data prior to expiration of any such access rights.

### 13. Transition Services

**13.1. Scope.** Upon expiration or termination of the Services, subject to Sections 13.2 and 13.3, ADP shall provide Client and its designee(s) with reasonable transition services ("Transition Services") consisting of continuation of the terminated Services and, if requested by Client and mutually agreed by the parties in an Amendment, any additional services (including technical assistance) that will be delivered at ADP's then prevailing rates. In connection with the Transition Services, ADP will not be required to provide any third party with access to ADP's systems, intellectual property or any Confidential Information of ADP.

**13.2. Performance of Obligations.** During the provision of Transition Services, ADP and Client shall continue to perform their respective obligations under this Agreement, including, with respect to ADP, the provision of ongoing Services to Client and with respect to Client, the payment of all fees for such Services specified in the Pricing and Financial Terms appendix.

**13.3. Past Due Amounts.** If ADP has terminated this Agreement due to Client's failure to pay fees, ADP's provision of Transition Services will be subject to Client's payment of all past due amounts and ADP may require Client to prepay for any Transition Services.

### 14. Additional Terms

**14.1. ADP Employment Tax Services.** The following additional terms and conditions apply to the ADP Employment Tax Services:

**14.1.1. ADP Tax Locator.** The ADP Employment Tax Services in the United States shall include access to the tax locator, a tool which helps Client locate municipal, school district, county and state codes and tax rates for new hires and transferred employees based upon their work and home addresses ("Tax Locator"). Client is solely responsible for the accuracy of data Client inputs into the Tax Locator, and the data Client generates and uses from the Tax Locator.

**14.1.2. Important Tax Information (IRS Disclosure) for U.S. Only.** Notwithstanding Client's engagement of ADP to provide the ADP Employment Tax Services in the United States, please be aware that Client remains responsible for the timely filing of payroll tax returns and the timely payment of payroll taxes for its employees.



The Internal Revenue Service recommends that employers enroll in the U.S. Treasury Department's Electronic Federal Tax Payment System (EFTPS) to monitor their accounts and ensure that timely tax payments are being made for them, and that online enrollment in EFTPS is available at [www.efdtps.gov](http://www.efdtps.gov); an enrollment form may also be obtained by calling (800) 555-4477; that state tax authorities generally offer similar means to verify tax payments; and that Client may contact appropriate state offices directly for details.

**14.2. Payment Services.** The following additional terms and conditions apply to the Payment Services:

**14.2.1. Client Credentialing.** Client understands and acknowledges that the implementation and ongoing provision of Payment Services are conditioned upon Client passing (and continuing to pass) a credentialing process that ADP may deem necessary in connection with the provision of Payment Services.

**14.2.2. Additional Requirements.** Payment Services may be subject to the rules and standards of any applicable clearing house, payment and/or card networks or associations. Client and ADP each agree to comply with all such rules and standards applicable to it with respect to the Payment Services.

**14.2.3. Funding Obligations.** Client acknowledges that ADP is not a lender. As such, as a condition to receiving services, Client will remit or otherwise make available to ADP sufficient, good and available funds within the agreed-to deadline and via the agreed-to method of delivery to satisfy all of Client's third-party payment obligations covered by the Agreement. ADP will apply such funds to satisfy such third-party payment obligations. ADP will not be required to provide Payment Services if ADP has not received all funds required to satisfy Client's third-party payment obligations. Client will immediately notify ADP if it knows or should know that it will not have sufficient funds to satisfy the amounts required in connection with the Payment Services. If Client has a material adverse change in its condition, ADP may modify the funding method or deadline by which funds must be made available to ADP for payment to Payees. Client agrees to pay to ADP upon demand any amounts that have been paid by ADP to satisfy Client's third party payment obligations prior to receiving such amounts from Client.

**14.2.4. Investment Proceeds; Commingling of Client Funds.** IF ADP RECEIVES CLIENT'S FUNDS IN ADVANCE OF THE TIME ADP IS REQUIRED TO PAY SUCH FUNDS TO THIRD PARTIES, ALL AMOUNTS EARNED ON SUCH FUNDS, IF ANY, WHILE HELD BY ADP WILL BE FOR THE SOLE ACCOUNT OF ADP. ADP may commingle Client's funds with similar funds from other clients and with similar ADP and ADP-administered funds. ADP utilizes a funds control system that maintains general ledger entries by client and/or by jurisdiction.

**14.2.5. Recovery of Funds; Stop Payment Requests.** Client agrees to cooperate with ADP and any other third parties to recover funds erroneously issued or transferred to any Payee or credited to any Payee's account. If Client desires to stop payment on any check or to recall or reverse any electronic payment, Client will provide ADP with a stop payment request in the form required by ADP. Client acknowledges that ADP's placement of a stop order request is not a guarantee that such stop payment will occur.

**14.3. Wage Payment Services.** The following additional terms and conditions apply to ADP Wage Payment Services:

**14.3.1. ADPCheck Services.** Client agrees not to distribute any ADPChecks to Payees in a manner that would allow Payees to access the associated funds before pay date. With respect to ADPChecks drawn on an ADP bank account, to request a stop payment, Client shall provide ADP with a written stop payment order request in the form provided by ADP and ADP shall place a stop payment order in accordance with its standard operating procedures.

**14.3.2. Pay Card Services.** To the extent received, Client will be responsible for securing all welcome kits to prevent unauthorized access or use.



**14.3.2.1. Cardholder Set-Up.** Client will set-up (or cause ADP to set-up) each Payee as a Cardholder using data and procedures required by the Issuing Bank or ADP. Client shall provide the appropriate card kit to Payees (i.e., payroll card kit for employees paid wages, commissions, or similar compensation and non-employee card kits for independent contractors). Further, Client shall obtain all necessary consents of each Payee (including those switching from another paycard program) included in submitted set-up data that is required under applicable law and rules, including NACHA, for Payee to (i) receive payments from Client on its Pay Card and (ii) participate in the Pay Card Services, and Client is responsible for reviewing and confirming that all enrollment information supplied to ADP is accurate and complete.

Prior to set-up of any Payee on the Cardholder database and distribution of a Pay Card to the Payee, Client will verify the Identity Verification Documents. Client shall obtain from the Payee and provide to ADP the following information: (a) name; (b) residential address (a P.O. Box is not acceptable); (c) date of birth; (d) social security number; and (e) personal telephone number. Client agrees to provide any additional information as may be required by ADP or the Issuing Bank. Client will not provide a Pay Card to individuals outside the United States without the express written consent of ADP. Client further agrees that ADP or Issuing Bank (directly or through a subcontractor) may seek identity information and legal documentation directly from the Payee to verify the identity of any Payee and that a Payee may be denied Pay Card Services for several reasons, including failure to validate the personal information of the Payee. For each Cardholder, Client will make and preserve either of the following: (1) a copy of the Identity Verification Documents; or (2) a description of the Identity Verification Documents, noting the date reviewed, type of document, and if applicable, the document's identification number, place of issuance and issuance and expiration date, provided Client will preserve a copy of all Identity Verification Documents for Payees who are form 1099 independent contractors. Client shall retain such documentation during the time that such Payee is a Cardholder until the earlier of (x) five years from termination of Client's obligation to make payments to such Payee or (y) five years from termination of such Payee's Pay Card account; provided, however, that in the event a longer retention period is required for the Issuing Bank or ADP to meet its legal obligations, as a result of a change in applicable law or official interpretations thereof, ADP shall provide notice of such longer retention period and Client shall retain such documentation for such longer retention period.

**14.3.2.2. Enrolling Employees for Cards.** Prior to providing Payee's information to ADP to issue a permanent Pay Card or Client enrolling a Payee for an instant issue Pay Card, Client shall provide each Payee with the notice required under the USA Patriot Act which reads as follows: **"IMPORTANT INFORMATION ABOUT PROCEDURES FOR OPENING A NEW PREPAID CARD ACCOUNT.** To help the government fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. What this means for you: When you open a prepaid card account, we may require your name, address, date of birth, social security number, tax identification number and other information that will allow us to identify you. We may also ask to see your driver's license or other identifying documents." The USA Patriot Act notice may be updated from time to time by ADP or the Issuing Bank.

Prior to or in conjunction with distributing a Pay Card to any Payee, if applicable, Client shall remove the account routing information from the card kit. Client shall not, disclose or make available any such account routing (ABA/DDA) number to any Payee and shall always direct Payees to the Cardholder services telephone number to obtain such account routing (ABA/DDA) number. Payees must accept the Cardholder Terms and Conditions, and the Pay Card may be cancelled by ADP or the Issuing Bank at any time in accordance with the Cardholder Terms and Conditions. Client will provide Cardholders with any other information and materials regarding the Pay Card Services provided to it from time to time as determined by ADP. The amounts to be loaded to each Cardholder's Pay Card will be provided to ADP by Client through one of ADP's standard payroll transmission methods available to Client or another means agreed to by ADP and Client. Wages loaded to a Pay Card do not expire.

**14.3.2.3. Pay Card Status, Services and Communications.** Client is responsible for ensuring that Cardholders are paid via an alternate pay method in such instances where a Cardholder's Pay Card has not been activated, has terminated, cancelled or is in inactive status and even if a Payee has consented to receive their Permitted Payments by the Pay Card. Client will direct Cardholders to ADP's Cardholder services with respect to any Card inquiries, to resolve all disputes regarding their Pay Card and to report any lost or stolen Pay Cards,



provided Client will resolve disputes by Cardholders regarding amounts credited or debited to the Pay Cards at the request of Client (e.g., credits as a result of payroll). Client understands that it is not entitled to access or review any Cardholder transaction information and that it has no right to draw back any amounts funded to the Pay Card other than due to an error. Notwithstanding the foregoing, in limited circumstances (e.g., where necessary to investigate or prevent fraud) and consistent with the applicable Cardholder privacy notice, ADP may provide certain Cardholder transaction information to Client. Cardholders may receive notices, mailings and other communications related to the Card and Card features (e.g., secondary cards, card portability, reward programs, etc.) from or on behalf of ADP or the Issuing Bank.

**14.3.2.4. Issuing Bank.** All Pay Cards issued to Cardholders are the property of the Issuing Bank and are subject to cancellation by the Issuing Bank at any time in accordance with the Issuing Bank's Cardholder Terms and Conditions. The Pay Card Services may be modified as required by the Issuing Bank and as ADP may deem appropriate to assist ADP or the Issuing Bank in complying with its obligations, including legal and regulatory obligations.

**14.3.2.5. Cardholder Fees.** Client acknowledges that separate fees as set forth on the fee schedule provided in the card kit prior to activation of the Pay Card will be applied to the Pay Card and are the responsibility of the Cardholder. Such Cardholder fees are subject to change in accordance with the Cardholder Terms and Conditions applicable to the Pay Cards.

**14.3.2.6. Information Requests.** Client agrees that upon prior notice from ADP or the issuing Bank, ADP, the Issuing Bank and any regulatory authorities with jurisdiction over the Issuing Bank or ADP shall have the right to inspect Client's books and records related to Client's use of the Pay Card Services and Client's performance of its obligations with respect thereto.

**14.3.2.7. Third Party Beneficiary.** Notwithstanding anything to the contrary in the Global Master Terms and Conditions, Client agrees that the Issuing Bank (and its respective successors and assigns) is a third party beneficiary of this Agreement, but solely as it relates to the Pay Card Services, and is entitled to enforce each of the applicable provisions against Client as well as the limit on liability provisions of Section 7 of the Global Master Terms and Conditions, including in equity and in law, as if it or they were a party hereto.

**14.4. ADP Wage Garnishment Disbursement Services.** The following additional terms and conditions apply to the ADP Wage Garnishment Disbursement Services:

**14.4.1. Description of Services.** ADP will act solely in the capacity of a third party service provider of payment processing. ADP may from time to time provide Client reasonable instructions or best practice recommendations which Client may follow, and/or documents, including documents populated with Client Content, for Client's use and ADP shall not be responsible for compliance of such documents. The ADP Wage Garnishment Disbursement Services are not a substitute for the advice of an attorney. Client agrees that ADP is not a law firm, does not provide legal advice or representation and that no attorney-client relationship exists or will be formed between ADP and Client.

**14.4.2. Client's Use of Services.** Client agrees not to distribute any ADP Checks to Payees in a manner that would allow Payees to access the associated funds before pay date.

**14.5. Employment Verification Services; Employee Authorized Disclosure.** The following additional terms and conditions apply to the Employment Verification Services and Employee Authorized Disclosure:

**14.5.1. Employment Verification Services.** Client authorizes ADP and its subcontractors through which Employment Verification Services are performed ("Verification Agents") to disclose, on Client's behalf, employment and income information ("Verification Data"), to commercial, private, non-profit and governmental entities and their agents (collectively, "Verifiers"), who wish to obtain or verify any of Client's employees' (or former



employees') Verification Data. Verification Data will be disclosed to Verifiers who certify they are entitled to receive such data (as described below) pursuant to FCRA, and, in the case of income information requests, who additionally certify they have a record of the employee's consent to such disclosure or who utilize a salary key. In accordance with FCRA, Verification Data may be provided to Verifiers where (i) the employee has applied for a benefit (such as credit, other employment or social services assistance); (ii) the employee has obtained a benefit and the Verifier is seeking to (a) determine whether the employee is qualified to continue to receive the benefit; and/or (b) collect a debt or enforce other obligations undertaken by the employee in connection with the benefit; or (iii) the Verifier is otherwise entitled under FCRA to obtain the Verification Data. In certifying they have a record of the employee's consent, Verifiers generally rely on the employee's signature on the original application as authorization for the Verifier to access the employee's income data at the time of the application and throughout the life of the obligation. Client understands that Verifiers are charged for commercial verifications processed through ADP or its Verification Agents.

**14.5.1.1. Data Quality.** If requested by ADP, Client agrees to work with ADP during implementation to produce a test file and validate the Verification Data included in the Verification Services database using validation reports made available by ADP or its Verification Agents. If Client uses ADP's hosted payroll processing services, ADP will update the Verification Services database with the applicable Verification Data available on ADP's payroll processing system.

**14.5.1.2. Notice to Furnishers of Information: Obligations of Furnishers of Information** ("Notice to Furnishers"). Client certifies that it has read the Notice to Furnishers provided to Client at the following URL: <https://www.consumer.ftc.gov/articles/pdf-0092-notice-to-furnishers.pdf>. Client understands its obligations as a data furnisher set forth in such notice and under FCRA which include duties regarding data accuracy and investigation of disputes, and certifies it will comply with all such obligations. Client further understands that if it does not comply with such obligations, ADP may correct incorrect Verification Data on behalf of Client or terminate the Employment Verification Services upon 90 days prior written notice to Client.

**14.5.1.3. Archival Copies.** Notwithstanding anything to the contrary in the Global Master Terms and Conditions, Client agrees that, after the termination of this Agreement, ADP and its Verification Agents may maintain archival copies of the Verification Data as needed to show the discharge and fulfillment of obligations to Client's employees and former employees and the provisions of Section 4 of the Global Master Terms and Conditions will continue to apply during the time that ADP and its Verification Agents maintain any such archival copies.

**14.5.2. Employee Authorized Disclosure.** ADP may disclose or use Personal Data to the extent the employee consented to the disclosure or use such as but not limited to when an employee needs their Identity verified when they submit an application for a bank account, cellular service or a benefit.

**14.6. ADP Unemployment Claims Services.** The following additional terms and conditions apply to the ADP Unemployment Claims Services:

**14.6.1. Provision and Transfer of Information.** Client will provide ADP with accurate, complete and timely information necessary for ADP to perform the ADP Unemployment Claims Services, including without limitations, the claimants' names, relevant dates, wage and separation information, state-specific required information, and other documentation to support responses to unemployment compensation agencies. Client will transfer this information via (i) on-line connection between ADP and Client's computer system or (ii) inbound data transmissions from Client to ADP, using mutually acceptable communications protocols and delivery methods. Client will promptly notify ADP in writing if Client wishes to modify the communication protocol or delivery method.

**14.7. ADP Health Compliance Services.** The following additional terms and conditions apply to the ADP Health Compliance Services.

**14.7.1. Client ACA Liaison.** Client shall designate in writing to ADP the name of one person who shall



serve as ADP's principal designated contact for the ADP Health Compliance Services (the "Client ACA Liaison"). The Client ACA Liaison shall have the authority to (i) provide information, instructions and direction on behalf of Client, and (ii) grant or provide approvals (other than Amendments) required or permitted under the Agreement in connection with the ADP Health Compliance Services. Client shall designate an alternate Client ACA Liaison in the event the principal Client ACA Liaison is not available.

**14.7.2. DISCLAIMER.** NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN OR IN THE SCOPE OF SERVICES, CLIENT EXPRESSLY ACKNOWLEDGES THAT ADP IS NOT THE "ADMINISTRATOR" OR "PLAN ADMINISTRATOR" AS DEFINED IN SECTION 3(16)(A) OF ERISA AND SECTION 414(g) OF THE CODE, RESPECTIVELY, NOR IS ADP A "FIDUCIARY" WITHIN THE MEANING OF ERISA SECTION 3(21). ADP SHALL NOT EXERCISE ANY DISCRETIONARY AUTHORITY OR DISCRETIONARY CONTROL RESPECTING MANAGEMENT OF ANY BENEFIT PLANS SPONSORED OR OFFERED BY CLIENT. ADP HAS NO DISCRETIONARY AUTHORITY OR DISCRETIONARY RESPONSIBILITY IN THE ADMINISTRATION OF THE CLIENT'S BENEFIT PLAN(S). ADP EXPRESSLY DISCLAIMS ANY WARRANTY, EITHER EXPRESS OR IMPLIED, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, NON-INTERRUPTION OF USE, AND FREEDOM FROM PROGRAM ERRORS WITH RESPECT TO THE ADP HEALTH COMPLIANCE SERVICES, THE APPLICATION PROGRAMS OR ANY THIRD-PARTY SOFTWARE DELIVERED BY ADP.

**14.7.3. Client Vendors.** Client will at its own cost cause its third party vendors to send data to and receive data from ADP as required for ADP to provide the ADP Health Compliance Services. Client shall reimburse ADP for any costs relating to transmissions of data from and/or to such third party vendors.

**14.7.4. Important Tax Information (IRS Disclosure):** Notwithstanding Client's engagement of ADP to provide the ADP Health Compliance Services, please be aware that Client remains responsible for the timely filing of all required reports and filings, and the timely payment of Client penalty obligations. The Internal Revenue Service recommends that employers enroll in the U.S. Treasury Department's Electronic Federal Tax Payment System (EFTPS) to monitor their accounts and ensure that timely tax payments are being made for them, and that online enrollment in EFTPS is available at [www.eftps.gov](http://www.eftps.gov); an enrollment form may also be obtained by calling (800) 555-4477.

**14.7.5. Additional Requirements.** Client further understands that the ADP Health Compliance services may be modified as ADP may deem appropriate to assist ADP in complying with its obligations.

## 15. Miscellaneous

**15.1. Amendment.** Except as set forth in the Change Control Procedures set forth in the Pricing and Financial Terms appendix, this Agreement may not be modified, supplemented or amended, except by a writing signed by the authorized representatives of ADP and Client.

**15.2. 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, such consent not to be unreasonably withheld. However, Client may assign any or all of its rights and obligations to any other Client Group member and ADP may assign any or all of its rights and obligations to any Affiliate of ADP, provided that any such assignment shall not release the assigning party from its obligations under this Agreement. This Agreement is binding upon and inures to the benefit of the parties hereto and their respective successors and permitted assigns.

**15.3. Additional Documentation.** In order for ADP to perform the Services, it may be necessary for Client to execute and deliver additional documents (including reporting agent authorization, client account agreement, limited powers of attorney, etc.) and Client agrees to execute and deliver such additional documents.

**15.4. Subcontracting.** Notwithstanding Section 15.2, ADP reserves the right to subcontract any or all of the Services, provided that ADP remains fully responsible under this Agreement for the performance of any such



subcontractor. For the avoidance of doubt, third parties used by ADP to provide delivery or courier services, including the postal service in any country or any third party courier service, and banking institutions, are not considered subcontractors of ADP.

**15.5. Entire Agreement.** This Agreement constitutes the entire agreement and understanding between ADP and Client with respect to its subject matter and merges and supersedes all prior discussions, agreements and understandings of every kind and nature between the parties. No party will be bound by any representation, warranty, covenant, term or condition other than as expressly stated in this Agreement. Except where the parties expressly state otherwise in a relevant exhibit, annex, appendix or schedule, in case of conflict or inconsistency between these Global Master Terms and Conditions and any such exhibit, annex, appendix or schedule, the Global Master Terms and Conditions will prevail and control. Purchase orders or statements of work submitted to ADP by Client will be for Client's internal administrative purposes only and the terms and conditions contained in any purchase order or statements of work will have no force and effect and will not amend or modify this Agreement.

**15.6. No Third Party Beneficiaries.** Except as expressly provided herein or in an applicable exhibit, annex, appendix or schedule, nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. Client agrees that ADP's obligations in this Agreement are to Client only, and ADP has no obligation to any third party (including, without limitation, Client's personnel, directors, officers, employees, Users and any administrative authorities).

**15.7. Force Majeure.** Any party to this Agreement will be excused from performance of its obligations under this Agreement, except for Client's obligation to pay the fees to ADP pursuant to Section 11, 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, labor disputes or disturbances, governmental regulations, communication or utility failures or other cause beyond the party's reasonable control. Such non-performance will not constitute grounds for breach.

**15.8. 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. The waiver of any provision of this Agreement shall only be effective if made in writing signed by the authorized representatives of ADP and Client and shall not operate or be construed to waive any future omission or breach of, or compliance with, any other provision of this Agreement.

**15.9. Headings.** The headings used in this Agreement are for reference only and do not define, limit, or otherwise affect the meaning of any provisions hereof.

**15.10. Severability.** If any provision of this Agreement is finally determined to be invalid, illegal or unenforceable by a court of competent jurisdiction, the validity, legality or enforceability of the remainder of this Agreement will not in any way be affected or impaired and such court shall have the authority to modify such invalid, illegal or unenforceable provision to the extent necessary to render such provision valid, legal or enforceable, preserving the intent of the parties to the furthest extent permissible.

**15.11. Relationship of the Parties.** 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, construe or imply an agency, joint venture, partnership or fiduciary relationship of any kind between ADP and Client. None of ADP's employees, agents or subcontractors will be considered employees, agents or subcontractors of Client. Unless expressly stated in this Agreement, none of ADP, its employees, agents or its subcontractors may enter into contracts on behalf of, bind, or otherwise obligate Client in any manner whatsoever.

**15.12. Governing Law.** This Agreement is governed by the laws of the State of Georgia without giving effect to its conflict of law provisions.

**15.13. Communications to U.S. Based Employees.** Client agrees that ADP may use Client's U.S.-based



employee and/or participant name, email and mailing address to provide information about products and/or services offered by ADP directly such employees and/or participants. Client may elect for ADP to cease such communications upon 30 days prior written notice. In addition, each communication sent by ADP will comply with applicable laws and will enable the recipient to opt-out of receiving additional similar communications from ADP.

**15.14. Jurisdiction.** Any disputes that may arise between ADP and Client regarding the performance or interpretation of this Agreement shall be subject to the exclusive jurisdiction of the state and federal courts of Atlanta, Georgia. The parties hereby irrevocably consent to the exclusive jurisdiction of the state and federal courts of Atlanta, Georgia and waive any claim that any proceedings brought in such courts have been brought in an inconvenient forum. **THE PARTIES HEREBY IRREVOCABLY WAIVE THEIR RIGHT TO TRIAL BY JURY.**

**15.15. Counterparts.** This Agreement may be signed in two or more counterparts by original, .pdf (or similar format for scanned copies of documents) or facsimile signature, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

**15.16. Notices.** All notices required to be sent or given under this Agreement will be sent in writing and will be deemed duly given and effective (i) immediately if delivered in person, or (ii) upon confirmation of signature recording delivery, if sent via an internationally recognized overnight courier service with signature notification requested to Client at the address indicated on the signature page hereof or to ADP at ADP, Inc., 400 W. Covina Boulevard, San Dimas, California 91773, Attn: Legal Department or to any other address a party may identify in writing from time to time. A copy (which shall not constitute notice) of all such notices shall be sent to ADP at One ADP Boulevard, MS 425, Roseland, New Jersey 07068, Attention: General Counsel and to Client at 3770 N Decatur Rd, Decatur, GA 30032-1005, Attention: General Counsel.

**15.17. Survival.** Those provisions which by their content are intended to, or by their nature would, survive the performance, termination, or expiration of this Agreement, shall survive termination or expiration of this Agreement.



## Appendix-1 **Pricing and Financial Terms**



## I. Financial Detail

The fees set forth in the table(s) below are based on the Services and volumes in the Assumptions section.

ADP Implementation and Integration	One-Time Fee
Employment Tax	\$0.00
Wage Payments: Electronic Package	\$0.00
W2 Records Processed	\$0.00
W2C Manager	\$0.00
ADP Wage Garnishments	\$0.00
Health Compliance	\$5,000
Unemployment Claims	\$0.00

ADP Employment Tax	Quantity Assumed	Rate	Base
Per Employee	15,000	\$0.04 Per Month	\$0.00
Integration Maintenance	1	\$0.00	\$125.00 Per Month
Per Company Code	1	\$40.00 Per Month	\$0.00
Per Billable Jurisdiction	1	\$20.00 Per Month	\$0.00

ADP Wage Payments: Electronic Package	Quantity Assumed	Rate	Base
Electronic Package* Employee transactions for an annual total of 368,234/24 = 15,343 based on the following quantities: Semi-monthly 15,000 Monthly 632 Annual 650	15,343	\$0.12 Per Employee	\$0.00
Printed Checks & Statements Employee transactions for an annual total of 4,800/24 = 200 based on the following quantities: Semi-monthly 200	200	\$0.18 Per Page	\$0.00
Wisely Pay by ADP	800	\$0.00	\$0.00

\* Minimum Fee \$150.00 per Company Code



Total Employee Population 15000 as of 2/23/2021.

Total Employee Population 200 paid on checks per latest check run as of 2/23/2021.

For Existing card programs, Total Employee Population 1000 paid on cards per most current payroll run as of 2/23/2021.

Payroll Frequency: Monthly 632 Employees, Semi-Monthly 15000 Employees.

ADP Employment Verification Services	Quantity Assumed	Rate	Base
Commercial Employment & Income Verification	15,000	\$0.00	\$0.00
Social Services Verification	15,000	\$0.00	\$0.00

ADP W2 Management	Quantity Assumed	Minimum	Rate	Base
W2 Print Services	17,000	\$0.00	\$0.80 Per Page Per Company Code	\$0.00
W2C Print Services	1	\$150.00	\$2.50 Per Page	\$0.00
W2C Manager	1	\$0.00	\$0.00	\$0.00
W2 Online Statements	1	\$0.00	\$0.00	\$0.00

ADP Wage Garnishments	Quantity Assumed	Minimum	Rate	Base
Garnishment Disbursement	2,000	\$0.00	\$1.15 Each	\$0.00
Integration Maintenance	1	\$0.00	\$0.00	\$125.00 Per Month



ADP Unemployment Claims	Minimum	Rate	Base
Unemployment Claims Monthly Rate	\$42.50	\$0.00	\$1,882.62 Per Month
*Excess Unemployment Claims	\$0.00	\$33.22 Per Claim	\$0.00

\*Fee for Claims in excess of Annual Claim Volume (in a 12-month period) will be billed monthly in addition to the Base Monthly Fee beginning with the first month the Annual Claims Volume is exceeded.

Promotion:

First month Processing fee waived in month 1 after start 2nd month Processing fee waived in month 4 after start

#### Processing Assumptions

##### Claims:

Annual Claim\*\* Volume up to 800 with 35.00% protested. Should the protested rate rise above 40.00%, ADP reserves the right to renegotiate pricing. Protested claim rate will be reviewed at 6 months for the first year and annually thereafter.

Current Total # of Active Employees:15,000

\*\* A claim is a notice generated by a state as a result of an individual filing for unemployment insurance benefits. These claim notices are generated for each state unemployment tax ID number under which an employee had worked and earned wages. States often issue multiple claim notices per individual as identified by a Social Security Number during the benefit eligibility period upon receiving a request for unemployment benefits and all such claim notices require review and processing by ADP (e.g., including but not limited to, last employer claims, base period employer claims, periodic qualification claims, additional benefit claims, renewed claims and extended benefit claims). The claim cap amount provided is based on all claim notices received and processed by ADP from the state(s) as a result of an individual filing for unemployment benefits. ADP reports the number of claims for billing purposes as 'claims processed' through an on-line reporting tool which can be accessed by Client authorized users.

ADP Health Compliance	Quantity Assumed	Rate	Base
Health Compliance	15,000	\$0.48 Per EE Per Month	\$0.00

Promotion:

First month Processing fee waived in month 1 after start

## II. Additional Services

Subject to the Fee Adjustments section, the fees for certain additional services are set forth in the table below. Those fees will be charged at the applicable rates as they occur or exceed the volume included in fees set forth in the assumptions section after the Services commence.

PROPRIETARY AND CONFIDENTIAL TO ADP, Inc.



**ADP Employment Tax Services**

Amended Quarterly Return	\$100.00 Per Return
Amended Annual Reconciliation Return	\$100.00 Per Return
Amended W2 (agency filing copy)	\$2.50 Per Employee Per Jurisdiction
Applied for Fee	\$25.00 Per Company Code Per Month
Report Reproductions	\$25.00 Per Report, plus \$1.00 Per Page
Hard Copy Closes and Exceptions	\$100.00 Per Occurrence
Tax Registration	\$150.00 Per Tax ID Applied for
Late Funding Fee	\$500.00 Per Occurrence

**ADP Wage Payments Services: Electronic Package**

Split Wrap	\$4.00 Per Split
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**ADP Employment Verification Services**

**Processing (Fees billed monthly in advance)**

Client Access Calls to Place and/or Remove Employee Information Holds	Included
Periodic File Updates	Included
Electronic Management Reports	Included
Employee File Transmissions	Included
Electronic Files	Included
Standard PIN Administration	Included

**ADP W2 Management Services**

W2 Re-issue	\$7.00 Per Re-issue
W2 Re-issue Annual Base Fee	\$500.00 Per Processed File
W2 Re-issue Implementation Fee	\$1,500.00 One-time Fee

**ADP Wage Garnishments Services**

Manual Checks	\$16.00 Each
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**ADP Unemployment Claims Services**

Optional Third Party Attorney States Hearing Representation (Currently DE, MO, NC, SC, SD and WV)



actual attorney fees not to exceed:

\$150.00 per hearing

Optional third party hearing representation available through non-ADP affiliated attorneys. No referral fee applies.

### III. Assumptions

The fees presented were calculated based upon the Services and volumes identified in the Financial Details section and the funding requirements set forth in the Financial Terms section, and if Client's actual requirements vary from what is stated, the parties shall negotiate in good faith to adjust the fees based on such changes. The fees do not include any customizations to any Service.

### IV. Financial Terms

Region/Approved Country: United States

- A. **Initial Term:** The Initial Term shall expire on December 31, 2022.
- B. **Client Group:** The Client Group includes the following entities.  
Not Applicable
- C. **Implementation:** Implementation Fees are due and payable on the Go-Live Date and will be included on Client's first invoice and Client will pay the amount of such Implementation Fees in full within 30 days after the invoice date.
- D. **Invoicing:** Except to the extent otherwise stated below, Client will pay the amount on each invoice in full within 30 days after the invoice date via direct debit of funds.
- E. **Currency:** All fees set forth herein are shown in USD and all payments relating to the Services shall be made in USD.
- F. **Taxes:** Unless Client provides ADP a valid tax exemption or direct pay certificate, Client will pay directly, or will pay to ADP, an amount equal to all applicable taxes or similar fees levied or based on the Agreement or the Services, exclusive of taxes based on ADP's net income.
- G. **Cost Reimbursement Fee:** In order for ADP to recoup certain costs associated with the Services provided under the Agreement in the event of an early termination by Client, if Client terminates Services or the Agreement in whole or in part for convenience pursuant to the Termination provision of the Global Master Terms and Conditions, Client will:



- If termination occurs during the implementation of Services:
  - pay ADP for the Implementation Services at ADP's labor rates set forth in this Appendix or, if such rates for a particular Service are not set forth herein, at ADP's prevailing labor rates (and not at the set implementation price set forth in the "Financial Detail" table), and
  - reimburse ADP for any license fees or other costs incurred by ADP in connection with the Implementation Services
- If termination occurs after the Go-Live Date for the applicable Services, reimburse ADP for its costs (including unamortized investments and any costs incurred that have not been recovered from fees charged) associated with the termination of the Services as set forth in the chart below, which provides the unrecovered costs as a percentage of the estimated aggregate ongoing fees for Services determined as of the Effective Date during each "year" of the Agreement:

	Year 1
Percentage of Estimated Aggregate Ongoing Fees as of the Effective Date	42%

In the event new Services are added, the Cost Reimbursement Fee is subject to change.

H. **Postage, Shipping, Travel and other Out-of-Pocket Expenses:** ADP will invoice Client for postage charges, delivery charges, other third party charges incurred on behalf of Client, and reasonable travel and out-of-pocket expenses.

I. **Funding Requirements and Disbursement Disclosure:**

**ADP Employment Tax Services:**

**Tax Liability Impounding Schedule**

- All tax liabilities will be provided to ADP via reverse wire.
- Federal, state and local withholding, Social Security/Medicare (FICA) employee withholding and employer contribution, and FUTA and SUI contributions will be provided to ADP one business day prior to the associated payroll check date.
- For reverse wire clients, funds must be available by 6:00 a.m. Pacific time.

**ADP Wage Payment Services:**

**Net Pay Impounding Schedule**

- All net pay will be provided to ADP via reverse wire



- All net pay funding will be provided to ADP two business days prior to associated payroll check date.
- Net pay funding for Payroll Cards will be provided by Client to the Issuing Bank within the deadline and via the method of delivery established by the Issuing Bank to satisfy Client's Payee obligations.
- For all reverse wire clients, funds must be available by 6.00 AM PST.

**ADP Wage Garnishments Services:**

Client will transmit wage garnishment information, deductions and liabilities to ADP one business day prior to the associated payroll check date via reverse wire.

- For all reverse wire clients, funds must be available by 6.00 AM PST.

- J. **Fee Adjustments:** The fees set forth in this Appendix will remain fixed during the first year following the Effective Date. During the remainder of the Initial Term, ADP may increase the fees for the Services on an annual basis by up to 4% with 30 days prior written notice. After the Initial Term, ADP may modify the fees on an annual basis upon 30 days prior written notice to Client.
- K. **Change Control:** In the event either party requests a change in the scope of the Services (including Implementation Services) (each a "Change Control Item"), the parties shall address such change request via ADP's change control process. Change Control Items and the cost associated with such changes (if any) to the Services shall be mutually agreed to by the parties, with the exception of Change Control Items that are required to be made by law or regulation applicable to the Services or to the duration of Implementation Services, which ADP will notify Client of prior to making such change.

Re: [EXTERNAL]Updated Dekalb schools MSA for ADP Services

Cadesha West (Finance) <Cadesha\_West@dekalbschoolsga.org>

Thu 10/21/2021 2:16 PM

To: Charles Burbridge (Finance) <Charles\_Burbridge@dekalbschoolsga.org>

Cc: Karen Beadles (Total Rewards) <Karen\_Beadles@dekalbschoolsga.org>; Masana Mailliard (Finance) <Masana\_Mailliard@dekalbschoolsga.org>; Thelma Smith (Finance) <thelma\_smith@dekalbschoolsga.org>

1 attachments (647 KB)

Dekalb County Schools\_Compliance Solutions MSA\_Up-Market\_2021-Sept-15\_Draft.pdf;

Good Afternoon Mr. Burbridge,

The revised ADP Global Master Services Agreement is approved to form. Please submit a copy of this email along with your request for the Superintendent's signature as well as a copy of the Board Directive.

Best regards,

Cadesha West, J.D.

DeKalb County School District

1701 Mountain Industrial Boulevard

Stone Mountain, GA 30083

Phone: (678) 507-6175

[Cadesha\\_West@dekalbschoolsga.org](mailto:Cadesha_West@dekalbschoolsga.org)

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From: Hall, Joe (ES) <Joe.Hall@ADP.com>

Sent: Wednesday, October 20, 2021 3:54 PM

To: Cadesha West (Finance) <Cadesha\_West@dekalbschoolsga.org>

Cc: Karen Beadles (Total Rewards) <Karen\_Beadles@dekalbschoolsga.org>; Masana Mailliard (Finance)

<Masana\_Mailliard@dekalbschoolsga.org>; Charles Burbridge (Finance)

<Charles\_Burbridge@dekalbschoolsga.org>; Fink, Jonathan (ES) <jonathan.fink@adp.com>

Subject: RE: [EXTERNAL]Updated Dekalb schools MSA for ADP Services

Hi Cadesha,

We were notified that the board approved. Let us know if there is anything we can provide to assist with getting the final contract signed and executed.

Thank you