MASTER SERVICE AGREEMENT

Last updated July 19, 2024

This Master Service Agreement ("**MSA**") is by and between S & W Payroll Services, L.L.C., with its principal place of business at 1155 Highway 190 East Service Road, Suite 2, Covington, LA 70433 ("**Netchex**") and "**Client**", as identified in the Fee Proposal or Master Service Agreement Signature Page referencing this MSA ("**Signature Page**") (The MSA, Fee Proposal, and all other documents expressly incorporated herein or terms agreed to by Client which expressly incorporate the terms of this MSA, collectively and as applicable to Client, the "**Agreement**"). Netchex and Client may be referred to, individually, as a "**Party**", and collectively as the "**Parties**".

Whereas, Netchex agrees to render Services to Client, and Client agrees to accept and pay for Services subject to and in accordance with the provisions hereof together with the Netchex Conditions of Use, the Privacy Policy, and the Funding Authorization Agreement which are hereby incorporated by reference as if set forth herein.

Now, therefore, in consideration of the premises and the mutual covenants set forth herein and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **GENERAL PROVISIONS**

    1.1   **DEFINED TERMS**.

Capitalized words used in this Agreement shall have the meanings set forth below.

(a) **Definitions**.

- "**ACA**" means the Patient Protection and Affordable Care Act (H.R. 3590), and applicable rules, regulations, and guidance, in each case, as amended.
- "**ACH**" means an electronic fund transfer made between banks and credit unions across the Automated Clearing House network.
- "**ACH Network**" means an Automated Clearing House Network.
- "**ACT Product**" means the Netchex Address, Compensation, and Tax verification product provided to Clients as further set out in Section 6.
- "**Admin**" or **"Admins"** means any individual(s) that Client provides with administrative credentials and authorizes to use the Services in an administrative capacity on behalf of Client.
- "**Anti-Corruption Laws**" means any law concerning or relating to bribery or corruption.
- **"Applicable Laws"** means all international, state, federal, or local laws, statutes, codes, rules, regulations, reporting or licensing requirements, in each case as applicable to a Party relating to the receipt, use and delivery of Services under this Agreement, including, without limitation, laws or regulations related to taxes, wages, employment, garnishment, personal information, data privacy and security, Anti-Corruption Laws or Sanctions Laws.
- "**Billing Start Month**" means the month in which Netchex will begin billing Client for the Services set forth in the relevant Fee Proposal.
- "**Client Data**" means all data, including information and electronic files, provided to Netchex by, or on behalf of, Client through use of the Services, including, without limitation, employment data (e.g., time clock entries and benefits information), public information (e.g., home addresses) and non-public Personal Data (e.g., social security numbers).
- "**COBRA**" means the Health Care Coverage Continuation provisions of the Consolidated Omnibus Budget Reconciliation Act of 1985.
- "**Conditions of Use**" means the Netchex Conditions of Use, found at **http://netchex.com/conditions-of-use/**, which govern Client's and its Users' access to or use of the Netchex website at **https://netchex.com**, the Netchex service platform at **http://netchexonline.net**, the iOS mobile application, the Android mobile application, and the domain names and subdomains, services, content, products, features and/or applications (including, without limitation, any mobile application services).
- "**Confidential Information**" means nonpublic or proprietary information disclosed by either Party (**"Disclosing Party"**) that such Party designates as confidential at the time of disclosure or which the receiving Party (**"Receiving Party"**) knows or should reasonably understand given the circumstances surrounding disclosure, to confidential. Confidential Information includes, without limitation: (i) Client Data that is nonpublic; (ii) information relating to Netchex's pricing and pricing related information; and (iii) Personal Data. Confidential Information does not include: (i) information already known to the

Receiving Party; (ii) information that becomes generally available to the public other than as a result of disclosure by the Receiving Party in violation of this Agreement; and (iii) information that becomes known to the Receiving Party from a source other than the Disclosing Party on a non-confidential basis. Notwithstanding the foregoing, these exceptions do not apply to Personal Data or other categories of information protected by applicable privacy laws or similar laws.

- "**Credit Reversal**" means debits for sums due to the Client for erroneous deposit(s).
- "**Custom Development**" means any solution or feature that Client requests that requires special or customized software or other development.
- "**Dispute**" means any dispute, claim, controversy, suit, action, cause of action, demand, or other similar legal proceeding.
- "**Effective Date**" means the date of Client's execution of the most recent Fee Proposal.
- "**Electronic Data Interchange (EDI)**" means a type of electronic payment that uses a standardized format for businesses to exchange payment data computer-to-computer.
- "**Fee Proposal**" means the Initial Fee Proposal and any subsequent Fee Proposals executed by Client by which Client requests Netchex to provide the Services set out therein and agrees to pay the corresponding Fees in accordance with the terms of this Agreement.
- "**Force Majeure Event**" means an event outside of Netchex's reasonable control that prevents or delays it from rendering Services, including, without limitation, internet failure, acts of God, hurricanes, floods, tornadoes, and terrorist attacks.
- "**Funding Authorization Agreement**" means the document signed by Client that authorizes Netchex to withdraw the applicable sums from Client's bank account as such sums relate to this Agreement.
- "**Information Security Incident**" means an incident resulting in unauthorized access to and acquisition of unencrypted, unredacted, or untruncated electronic records or data containing Personal Data where illegal use of the Personal Data has occurred or is reasonably likely to occur, or that creates a material risk of harm to any affected individual data subject.
- "**Initial Fee Proposal**" means the first Fee Proposal executed by Client by which Client requests Netchex to provide the Services set out therein and agrees to pay the corresponding Fees in accordance with the terms of this Agreement.
- "**Initial Services Term**" means the period of time beginning on the first day of the Billing Start Month and continuing for the term length specified in Section 1.11(a) or such other duration set forth in the Initial Fee Proposal.
- "**Intellectual Property**" means all Netchex software, processes, methods, products, knowhow, copyrighted works, proprietary and confidential trade secrets, deliverables, reports or output of the Services, and Custom Developments and all related works, each of which constitute Netchex's Intellectual Property and Confidential Information.
- "**International Payment Transactions**" means any payments that are transmitted to or received from a financial agency outside the territorial jurisdiction of the United States.
- "**Monthly Total**" means Client's monthly total payment amount as set forth in a Fee Proposal.
- "**Nacha**" means the National Automated Clearing House Association.
- "**Nacha Operating Rules**" means the National Automated Clearing House Association's roles and responsibilities for each financial institution and the established guidelines for each Participating Bank in its system.
- "**Originating Depository Financial Institution**" means the financial institution which delivers Automated Clearing House entries directly or indirectly through a third party to its Automated Clearing House operator.
- "**OFAC**" means the U.S. Treasury Department's Office of Foreign Assets Control.
- "**Participating Bank**" means any bank that participates in the National Automated Clearing House Association's network.
- "**Payment Services**" means any Services that require Netchex, in connection with such Services, to impound funds from Client's bank account to pay Client's third-party payment obligations.
- "**Payroll Services**" means those Services for record keeping and calculating purposes of Client's employees gross to net wages and Client's payroll tax reporting obligations.
- "**PEPM**" means per-employee-per-month.
- "**Personal Data**" means any Client Data that consists of the first name or first initial and last name of an individual in combination with any one or more of the following data elements, when the name or the data element is not encrypted, truncated, or redacted including, but not limited to a social security number; driver's license number or state identification card number; passport number; or account number, credit or debit card number, in combination with any required security code, access code, or password that would permit access to an individual's financial account; provided, however, that "Personal Data" does not include publicly available information which is lawfully made available to the general public from federal, state, or local government records.
- "**Privacy Policy**" means the Netchex privacy policy, located at **https://netchex.com/privacy-policy**/, with respect to the collection, usage, storage, sharing, and protection of Client Data.
- "**Professional Expenses**" means the costs of services (e.g., fees charged by attorneys, accountants, or other professionals) that Netchex may incur to enforce the terms of this Agreement.
- "**Qualified Direct Deposit Payroll Limit**" is a Client's limit for direct deposit liabilities assigned by Netchex.
- "**RDFI**" means a receiving depository financial institution.
- "**Receiving Bank**" means a Participating Bank where an employee deposit account is maintained.
- "**Renewal Services Term**" has the meaning set forth in Section 1.11(b).

- **"Sanctioned Person"** means any person owned or controlled by any such person or persons described in Section 3.4(b).
- **"Sanctions Laws"** means applicable sanctions laws, including without limitation economic or financial sanctions or trade embargoes imposed, administered or enforced by the U.S. government, including those administered by the U.S. Department of Treasury, the Office of Foreign Assets Control, or the U.S. Department of State.
- **"Services"** means all products and services identified in any Fee Proposal or Funding Authorization Agreement and any other product sold, or service rendered to Client at Client's request.
- **"Services Term"** means the Initial Services Term or Renewal Services Term set out in a Fee Proposal, as extended or renewed in accordance with the terms of this MSA and the Fee Proposal.
- **"Settlement Date"** means, as used herein, the banking day an ACH debit or credit transaction settles to the receiving account.
- **"Onboarding Fees"** for applicable Services will be as set forth in the relevant Fee Proposal.
- **"Target Start Month"** means the month designated in the Fee Proposal when Client expects to begin utilizing the Services set out therein.
- **"Trust Account"** means Netchex's trust account.
- **"User"** means any individual, including any employee, agent, representative, or personnel of Client (including Admins) accessing the Services on Client's behalf or through Client's account or passwords.

1.2   SCOPE.

(a) This Agreement, inclusive of all terms, addenda, policies and exhibits incorporated herein by reference, sets out the terms and conditions governing Client's receipt and use of all Services. In the event of a conflict in terms among the documents comprising this Agreement, the following order of priority shall apply: First, the Fee Proposal, then the terms of this MSA, then terms incorporated into this MSA by reference.

(b) Services added by Client following the Effective Date of this Agreement shall be agreed to in subsequent Fee Proposal(s), which shall set forth the terms applicable to such Services in addition to the terms of this MSA.

1.3   COMPLIANCE.

(a) Each Party shall comply with Applicable Laws with respect to the receipt, delivery, access and use of the Services and its performance of obligations under this Agreement; conducting its internal business; and its use of Personal Data.

(b) All Payment Services are subject to the Nacha Operating Rules. Netchex and Client each agree to independently monitor and comply with all applicable Nacha Operating Rules.

(c) Client acknowledges that Client, and not Netchex, is solely responsible for all acts, omissions, and use of the Services by its Admins and Users, including: (i) Compliance with Applicable Laws and legal requirements; (ii) Monitoring changes in Applicable Law and promptly implementing any necessary changes to its operations accordingly; (iii) Compliance with all Applicable Laws related to data privacy and the use of Personal Data, and obtaining any and all consents from its employees and other Users necessary to transmit information to Netchex; and (iv) its use of the Services.

(d) All Services provided by Netchex under this Agreement are subject to Client's strict compliance with the provisions of this Section 1.3, and any breach of this Section by Client shall be deemed a material breach of this Agreement and Netchex shall have the right to immediately terminate this Agreement for cause and shall have no further obligation to provide Services to Client.

(e) **Services Do Not Constitute Legal or Other Advice**. CLIENT ACKNOWLEDGES AND AGREES THAT THE SERVICES PROVIDED HEREUNDER ARE NOT INTENDED TO BE AND WILL NOT BE RELIED UPON BY CLIENT AS EITHER LEGAL, FINANCIAL, INSURANCE, OR TAX ADVICE. TO THE EXTENT CLIENT REQUIRES ANY SUCH ADVICE, CLIENT REPRESENTS THAT IT WILL SEEK SUCH ADVICE FROM QUALIFIED LEGAL, FINANCIAL, INSURANCE, COMPLIANCE, ACCOUNTING, OR OTHER PROFESSIONALS. CLIENT SHOULD REVIEW APPLICABLE LAW IN ALL JURISDICTIONS WHERE CLIENT OPERATES AND HAS EMPLOYEES AND CONSULT EXPERIENCED COUNSEL FOR LEGAL ADVICE.

1.4   CLIENT OBLIGATIONS.

Netchex cannot render the Services to Client without the Client's assistance and cooperation. Accordingly, Client agrees to cooperate with Netchex and provide such information and resources required for Netchex to commence providing Services during the Target Start Month.

(a) **Implementation Obligations**. Client agrees to perform the following implementation obligations, in addition to promptly complying with Netchex's requests for information, documentation, and resources required for the Services to be implemented by Netchex:

(i) Promptly provide valid and verifiable identification information (including proof of federal, state, and local tax identification and valid ownership and controller information) for all Users and such other individuals receiving Services, no less than fifteen (15) days prior to the date on which Services are scheduled to commence.

(ii) In order to ensure prompt registration of Client into Netchex's system, Client will: (A) promptly provide all documents and information requested; and (B) attend and participate in all required meetings with Netchex implementation representatives, including the Service commencement kick-off meeting.

(iii) Upon receipt from Netchex, Client will promptly review for completeness and accuracy all documentation provided by Netchex (including, without limitation, disbursement records and other reports or documentation prepared by Netchex), and Client will immediately notify Netchex of any errors or discrepancies. Netchex is not responsible for delays, interruptions in the performance of Services, or errors attributable to Client's failure to notify Netchex of incomplete, incorrect, or erroneous documentation.

(iv) Netchex may assess Client a monthly fee of one hundred dollars ($100.00) per month beginning on Client's Target Start Month for Client's failure to provide Netchex with valid, verifiable proof of Client's federal, state, or local tax identification and valid ownership and controller information until Client has provided such to Netchex.

(b) **Exclusivity**. Client agrees that Netchex shall be the sole and exclusive provider of Payroll Services to Client during the Services Term. Client's violation of this Section 1.4(b) shall constitute an Uncurable Material Breach of this Agreement and Netchex shall have the right to immediately terminate this Agreement and the Fee Proposal pursuant to Section 1.11(g), and be entitled to charge Client Early Termination Fees, in addition to all other rights available to it under law or equity.

(c) **Administrative Users**. Client authorizes its Admins to (i) act on Client's behalf; (ii) provide information on Client's behalf; and (iii) bind Client with respect to the Services (including binding Client to any purchases made by an Admin). Admins are authorized by Client to access the Services by entering a confidential user ID and password, which Admins shall keep private and not share with others. Client acknowledges and agrees that all acts, omissions, purchases, and decisions of any Admin are deemed to be the acts, omissions, purchases, and decisions of Client, and are hereby authorized, ratified and adopted by Client. Client is responsible for all documents and information provided to Netchex by any Admin, including the accuracy and completeness thereof. Client is responsible for payment for any purchases made by an Admin. Netchex is entitled to rely on the acts, omissions, purchases, changes, and decisions made in the Client's account using administrative credentials, including without limitation any changes to any documents and information provided to or by Client. Client or an Admin may add or remove any Admin upon reasonable notice to Netchex. Netchex has no obligation to confirm or verify any acts, omissions, permissions, purchases, or decisions made using administrative credentials with any other Admin or any other agent, employee, director, manager, other personnel, or representative of Client.

(d) **Passwords; Secure Access**. Client and its Users (including its Admins) must use reasonable efforts to securely access any Services, including by using secure and trusted connections to the internet. Client shall, and shall ensure that its Users, will adequately secure, and keep confidential, their account information (including any applicable passwords or credentials), and any information accessible via access to the Services. Client shall take industry standard measures to protect against and prevent security breaches or unauthorized uses of its account, including implementing administrative, physical and technical safeguards adequate for protection of the security, confidentiality and integrity of Client Data and personal information of Client Users, including multi-factor authentication, data system audits, and employee data security training. If Client believes or suspects that any of Client's, its Admins', or any other personnel of Client's passwords or credentials have been disclosed to, accessed by, or compromised by unauthorized persons, Client must immediately notify Netchex. Client and its Users are responsible for safeguarding all account credentials and for all activity occurring on Client's or its User's accounts. Netchex reserves the right to prevent access to the Services if Netchex has reason to believe that Client's passwords or credentials used in connection with the Services have been compromised, or that any other security breach has occurred in connection with the Services. In addition, Client acknowledges that security of transmissions over the internet cannot be guaranteed and further acknowledges that Netchex is not responsible for Client's access to the internet, interception or interruptions of communications through the internet, or changes or losses of data through the internet.

1.5   BILLING AND FEES.

(a) **Billing Details**.

(i) Client agrees to be invoiced and drafted during the billing cycle which will begin at the start of Client's Target Start Month as set forth in the Fee Proposal ("**Billing Start Month**") and continue as monthly invoices throughout the duration of this Agreement. Netchex reserves the right to commence billing at the beginning of Client's Target Start Month regardless of whether the Services have commenced in the event that implementation of Services is delayed due to Client's failure to fulfill any Client obligations under Section 1.4.

(ii) Client agrees that if Client terminates the Agreement or the Fee Proposal following the Effective Date, Client will be responsible for payment of an Early Termination Fee as provided in Section 1.11(e) below.

(iii) Client's Monthly Total, as set forth in the Fee Proposal, includes the monthly minimum PEPM payment and any additional monthly costs.

(iv) Invoices will be available on the seventh (7th) business day of the month. Netchex will electronically draft the bank account designated by Client on the Funding Authorization Agreement on the tenth (10th) business day of the month. Netchex will provide Client with no less than thirty (30) days prior written notice in the event of changes to the dates on which invoicing or electronic drafts will occur.

(v) The first month's invoice will be based on the employee count set out in the Fee Proposal. All subsequent monthly invoices shall be determined by previous month's count of unique employees and shall not fall below the established monthly minimum PEPM payment.

(vi) An Onboarding Fee will be included on Client's first month's bill with Netchex. Any other additional one-time fee items set forth in the Fee Proposal will be invoiced once the item is delivered.

(vii) Rates and discounts listed in the Fee Proposal are based on the product offering(s) subscribed to in the Fee Proposal. Any future adjustments to the product offering(s) subscribed to may result in adjusted rates and discounts.

(b) **Service Fees**.

(i) Service Fees. Client agrees to pay Netchex for the Services at the rate set forth in the most recent Fee Proposal, subject to increases allowed under this Agreement, any accepted quote for Custom Development, and any Early Termination Fees under Section 1.11(e) in accordance with Client's signed Funding Authorization Agreement. Client will also pay reasonable collection costs, including Professional Expenses regardless of whether litigation has commenced, and all other related costs Netchex may incur in the collection of said monies.

(ii) Fees Increases. Netchex will not increase Services fees (or, as applicable, the monthly minimum PEPM) during the Initial Services Term absent Client's written agreement. Following the Initial Services Term, Netchex may increase fees (or, as applicable, the monthly minimum PEPM) on an annual basis upon written notice to Client no less than thirty (30) days prior to the expiration of the then-current Term for such Services. Except where otherwise agreed in writing by the Parties, when implementing or increasing a monthly minimum PEPM payment, Netchex will set the monthly minimum PEPM payment at current prevailing market rate or ninety percent (90%) of trailing twelve (12) month average of Clients employee count multiplied by Client's current PEPM rate. Client's continued use of the Services following notice of fee increases shall constitute Client's acceptance of and agreement to such fee increase.

(iii) Support Services. Netchex, in its sole discretion, may provide Support Services subject to Client's agreement to pay applicable Support Services Fees. Support Services may include, without limitation, services performed by Netchex that exceed the scope of Services as described in the MSA or Fee Proposal, or services which a Client requests Netchex to perform, such as problem resolution, additional reviews, correction or analysis of Client Data, or services required to be performed to continue to effectively provide Services to a Client, such as file feeds or data integrations requested or required to be provided to a third party for the Services or Third Party Services (collectively, "**Support Services**"). A description of available Support Services is available upon request or accessible via the NetCommunity web portal.

(iv) Support Services Fees. Prior to performing Support Services, Netchex will provide Client with a written description of the scope of such Support Services and an estimate of fees applicable to such Support Services. Client's written approval of such scope and fees will serve as Client's contractual commitment to pay the fees applicable to such Support Services. In the event that Client does not agree to pay the Support Services Fees applicable to Support Services, Netchex reserves the right, in its sole discretion, to discontinue the provision of such Support Services.

(v) Training and Travel. If Client requests in-person or on-site training from Netchex, Client must pay Netchex for its trainer's time and travel in accordance with the rates quoted to Client by Netchex.

(vi) Custom Development. Client must pay Netchex for Custom Development in accordance with the rates quoted to Client by Netchex.

(vii) Client Requested Audit. If Client requests documents or information from Netchex in connection with an audit, certification, or other program, Netchex shall use reasonable efforts to assist in responding to the request, and Client shall reimburse Netchex for its reasonable costs and expenses associated with preparing its response, including employee time and reasonable Professional Expenses, if applicable.

(viii) Sales Tax. Certain jurisdictions may require that applicable sales tax be assessed on any fees paid by Client. Client shall be responsible for payment of any such sales taxes relating to the provision of the Services unless Client provides Netchex an exemption certificate acceptable to the appropriate authorities prior to the commencement of the Services.

(ix) Transactional Fees. Notwithstanding anything to the contrary, certain transactional fees incurred by Netchex in the course of providing Services ("**Transactional Fees**") will be passed on to Client. Transactional fees may include, without limitation, fees for banking services, tax services, payroll adjustments, and employee record services. Client acknowledges and agrees that it is responsible for payment of Transactional Fees and that such fees are subject to change at any time without prior notice. Changes to Transactional fees may result from factors including, without limitation, changes in banking fees, tax

rates, regulatory or business factors that may impact Netchex's expenses and the cost of providing the Services. A list of Transactional Fees is available upon request or accessible via the NetCommunity web portal.

(x)   Material Reduction in Use or Inaccurate User Count. If the number of Users under any Fee Proposal decreases by more than fifty percent (50%) of the number of Users for which Client was billed in the prior month's invoice (or, if in the first invoice, by the number of Users on which the Fee Proposal was based), Netchex may, in its sole discretion and upon written notice to Client, modify the Fee Proposal to adjust the pricing applicable to Client to reflect the actual number of Users of the relevant Services.

1.6   INTELLECTUAL PROPERTY.

Client acknowledges that Netchex has made substantial investments to create, develop, support, and maintain the Services and Custom Developments and that Netchex is the sole owner of all Intellectual Property related thereto, and understands that no ownership rights or Intellectual Property rights are being granted to Client under this Agreement.

(a) **Ownership**.   Netchex owns all Intellectual Property in and to the Services and all Custom Developments. No Custom Development may be deemed a work made for hire under the Copyright Act. Notwithstanding any contrary provision herein, no Intellectual Property is assigned to Client. Client agrees not to attack Netchex's ownership or validity of any Intellectual Property, whether registered or unregistered, and this obligation will survive the termination or expiration of the Agreement.

(b) **License**. Subject to Client's timely payment of fees and compliance with all provisions of this Agreement, Netchex hereby grants to Client a non-exclusive, revocable, non-transferable, non-sublicensable, limited right to access and use the Services and software, in object form only, solely for Client's internal business purposes during the Services Term. Client acknowledges that all Intellectual Property licensed to Client hereunder is protected by U.S. copyright laws, international copyright treaties, as well as other intellectual property laws. Client agrees not to use, disclose, display, copy, or reproduce any Intellectual Property, except as expressly authorized by the Agreement. Netchex reserves all rights to Intellectual Property except as expressly granted by this Section 1.6. Client's license to access and use the Services and Intellectual Property shall immediately terminate upon the expiration or termination of this Agreement and the relevant Services Term.

(c) **Trademarks**. Neither Party may use the other Party's trademarks without prior written authorization, except Client hereby authorizes Netchex to identify Client as one of Netchex's clients.

1.7   USE OF SERVICES.

(a) **Client Uses**.

(i)   Permitted Uses. Client may use the Services only as expressly permitted under this Agreement. In general, to the extent that a Service requires Client to use software developed by Netchex or its licensors, or any Intellectual Property, Client may make such use. If a Service is priced based on a certain number of Users, then Client may not allow more than the designated number of Users to use the Service.

(ii)   Restrictions and Limitations. Client may not sell or sublicense any Service or licensed Intellectual Property. Client, its Users and Admins, and those under its management and control, including all employees and contractors, must not: (i) breach this Agreement or cause any other person to engage in acts that, if performed by Client, would breach the Agreement; (ii) attempt to decompile or otherwise reverse engineer Netchex's software or any other licensed Intellectual Property; or (iii) access or attempt to access Netchex's databases, servers, or other equipment without authorization. The obligations under this paragraph will survive the termination or expiration of this Agreement. The Services are solely for Users who are domiciled in the United States, and Client shall ensure that none of its Users may access the Services if domiciled outside the United States.

(b) **Netchex Uses**.

(i)   Third Party Service Providers. Netchex may utilize third-party service providers to provide or improve certain aspects of the Services, including to analyze how Client and its Users use the Netchex website and the Services. Third-party service providers may place cookies on Client's or its Users' devices to collect certain internet log information and visitor behavior information in anonymous form. Netchex may use these third-party services, such as cookies, to analyze trends, administer and track use of Netchex's website, and to gather demographic information about Netchex Users. Moreover, Netchex may use these technologies to: (i) recognize Client; (ii) verify Client's identity; (iii) customize the Services and advertising; (iv) help ensure that Client's account security is not compromised; (v) collect traffic data, such as whether Client is a new or returning visitor, the timestamp of Client's current visit to Netchex's website, and the referrer site or campaign that directed Client to the Services (e.g., search engine, keywords, banner or email); (vi) mitigate risk and prevent fraud through

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the Services; and (vii) for any other purpose that is not unlawful. Netchex may receive reports based on the use of these technologies by third-party companies on an individual as well as aggregated basis.

(ii) <u>Third Party Services</u>. From time to time, Netchex may offer third-party products or services for sale, including products and services accessible through a third-party website (e.g., NetCOBRA) ("Third Party Services"). Any use by Client of such Third Party Services, and any exchange of data, including Personal Data, between Client and the provider of such Third Party Services, is solely between Client and the provider of such Third Party Services. Client's access and use of the Third Party Services may also be subject to additional terms and conditions, privacy policies, or other agreements with such third party, and Client may be required to authenticate to or create separate accounts to use Third Party Services on the websites or via the technology platforms of their respective providers. Use of Third Party Services is at Client's own risk and Netchex disclaims all liability related thereto. Netchex does not warrant or support Third Party Services. If Client does not agree to abide by the applicable terms for any such Third Party Services, then Client should not purchase or use such Third Party Services, and all such use is at Client's sole risk. Client acknowledges and agrees that Netchex is not responsible for any aspect of such Third Party Services.

(iii) In connection with the Services provided under this Agreement, Netchex may make available to Client an application programming interface ("**API**") for Client's access of the Services via mobile application. API usage fees may be issued in association with use of any Netchex API. Client acknowledges that Netchex may, in its sole discretion and upon no less than thirty (30) days written notice to Client (or upon Client's agreement in a Fee Proposal), for use of the API. Netchex may modify the API (or any part thereof) at any time in its sole discretion. Upon release of any new versions of the API, Netchex reserves the right to require Client to obtain and use the most recent version of the API to access the Services. Netchex may terminate or revoke Client's use of the API for any reason, at any time, with or without prior notice, in Netchex's sole discretion.

(iv) Client acknowledges and agrees that Netchex may market products and services directly to Client's employees and Users.

1.8   CLIENT DATA.

(a) **Ownership and Use**. Client owns all Client Data and is responsible for its accuracy and completeness. Client represents and warrants that it has all permissions and authorizations necessary for it to provide Client Data to Netchex. Netchex will not use Client Data, except as permitted by the Agreement and/or the Privacy Policy. Client authorizes Netchex, its partners and affiliates, and its third party service providers, to use, copy, display, process, modify, transmit, and aggregate Client Data for all lawful purposes relating to the Services, including, without limitation, for purposes of User or Client verification, customization of Services and/or advertising, monitoring, improving, and enhancing the performance or security of the Services, and for any other purpose that is not unlawful. Netchex may report aggregated, anonymized data to the Federal Reserve and other entities that report on jobs and other enterprise statistics. At Client's request, Netchex may transmit Client Data to federal, state, and local governments, banks and other financial institutions, insurance carriers, retirement plans, and any other recipient identified by Client.

(b) **Security; Information Security Incidents**. Netchex uses industry standard security measures to secure and back-up Client Data. To the extent required by applicable law, Netchex will notify Client in the event of an Information Security Incident involving Personal Data. As the owner of Client Data, including any affected Personal Data, Client shall have the sole legal right to determine: (i) whether notice of the Information Security Incident is to be provided on its behalf to any individuals, regulators, law enforcement agencies, consumer reporting agencies or others as required by law or regulation, or otherwise at Client's discretion, and (ii) the contents of such notice, whether any type of remediation may be offered to affected persons, and the nature and extent of any such remediation; and Client will defend, indemnify, and hold Netchex harmless from such determinations by Client. Notwithstanding the foregoing, nothing in this Agreement shall be construed to restrain Netchex from complying with any obligation Netchex has under Applicable Law to notify any person, entity, governmental authority, or other third-party of any Information Security Incident.

(c) **Storage and Retention**. Netchex is not Client's official record keeper. Accordingly, Client must keep its own copies of all Client Data provided to Netchex. During the Services Term, Client authorizes Netchex, and Netchex reserves the right to destroy Client Data that is at least six (6) years old (or a shorter period upon Client's request) without prior notice to Client. Netchex will employ commercially reasonable storage and reasonable precautions to prevent the loss of or alteration to any Client Data in Netchex's possession, but Netchex does not undertake to guarantee against such loss or alteration for any reason, including due to a Force Majeure Event. After the expiration or termination of this Agreement and the Fee Proposal, Netchex may destroy Client Data at any time. Netchex has no liability for deletion of Client Data as described in this <u>Section 1.8(c)</u>. Notwithstanding any other provision herein, Netchex shall have no obligation to return or destroy Client Data (i) retained in standard archival or computer back-up systems or pursuant to the standard document retention practices of Netchex, (ii) to the extent required by legal requirements or by any governmental or regulatory authority, and/or (iii) shared with Netchex's accountants or legal counsel, copies of which they may retain pursuant to their professional obligations. Any Client Data that qualifies as Confidential Information and is retained by Netchex as described in items (a) through (c) above shall be maintained as confidential and subject to the terms and conditions of this Agreement.

1.9   PRIVACY POLICY.

Netchex's practices with respect to its collection and use of Personal Data are set out in the Privacy Policy, as it may be updated from time to time, which is located at **https://netchex.com/privacy-policy/**. By accessing and using the Services, Client, and its Admins and Users, acknowledge that they have read and agree to the terms contained in the Privacy Policy. Any Client or Users that do not agree with the Privacy Policy should immediately cease use of the Services. Continued use of the Services after amendments to the Privacy Policy constitutes an acknowledgement and acceptance of the amended Privacy Policy.

1.10   CONFIDENTIALITY.

All Confidential Information disclosed under this Agreement shall remain the exclusive and confidential property of the Disclosing Party. The Receiving Party shall not disclose the Confidential Information of the Disclosing Party and shall 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, but in no event less than a reasonable degree of care. The Receiving Party shall limit access to Confidential Information to only its affiliates, employees, and authorized representatives, with a need to know the Confidential Information and shall instruct them to keep such information confidential. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information of the Disclosing Party: (i) to the extent necessary to comply with any law, rule, regulation, or ruling applicable to it; (ii) as appropriate and with prior notice where practicable, to respond to any summons or subpoena or in connection with any litigation; (iii) relating to a specific employee, to the extent that such employee has consented to the release; and (iv) in order to provide the Services pursuant to this Agreement. Upon the request of the Disclosing Party, the Receiving Party shall return or destroy all Confidential Information of the Disclosing Party that is in its possession. Notwithstanding the foregoing, Netchex may retain Confidential Information as required by Applicable Laws, for regulatory purposes, or in accordance with its records retention policies, provided that the confidentiality obligations hereunder survive for as long as such Confidential Information is retained.

1.11   TERM AND TERMINATION; BREACH.

This Agreement is effective as of the Effective Date and shall remain in effect until it expires or is terminated in accordance with this Section 1.11. Each Fee Proposal is effective as of the first day of the Target Start Month set forth on the applicable Fee Proposal and shall remain in effect until the expiration or termination thereof in accordance with the terms of this MSA (each, a **"Services Term"**).

(a) **Initial Services Term**. Client's Initial Services Term begins on the first day of the Target Start Month and continues for twelve (12) months or such other duration set forth in the Initial Fee Proposal (the **"Initial Services Term"**).

(b) **Automatic Renewal**. Fee Proposals will automatically renew for successive Services periods of equal duration (each a **"Renewal Services Term"**), unless either Party provides written notice of non-renewal to the other Party at least sixty (60) days prior to expiration of the then-active Services Term.

(c) **Subsequent Fee Proposals; Extension of Term.** If Client agrees to a subsequent Fee Proposal for new Services during an active Services Term, the Services Term for *all Services then in effect* (the new Services ordered plus all Services Client currently receives) shall be extended for the period reflected in the latest Fee Proposal entered by Client.

(d) **Notice of Non-Renewal**. If Client provides written notice to Netchex of its intent not to renew the Fee Proposal at least sixty (60) days prior to expiration of the then-active Services Term, the Services Term and Fee Proposal will terminate upon the expiration of the then-current Term. If Client fails to provide written notice of non-renewal sixty (60) days prior to the expiration of a Fee Proposal, then the Fee Proposal will automatically renew for a Renewal Services Term and Client will be responsible for payment through the date of expiration of such Renewal Services Term.

(e) **Early Termination. Client hereby agrees to pay to Netchex an early termination fee ("Early Termination Fee") if Client terminates a Fee Proposal following the Effective Date thereof (irrespective of whether the Services Term for such Fee Proposal has commenced). The Early Termination Fee shall be equal to the amount of fifty percent (50%) of the fees due for the remainder of the applicable Services Term. If the Fee Proposal is terminated by Client following the Effective Date but prior to the Billing Start Month, the Early Termination Fee shall be equal to the amount of fifty percent (50%) of the fees due for twelve (12) months or the Services Term set forth in the Fee Proposal, in addition to the implementation and training fees set out in the Fee Proposal. In the case of Client's failure to Implement and commence Services, any Onboarding Fee and/or implementation-based fees as set forth by the Fee Proposal shall be added to any Early Termination Fees as applicable.**

(f) **Netchex Termination for Convenience.** Notwithstanding anything to the contrary, Netchex may terminate this Agreement or the Fee Proposal without cause or penalty at any time upon ninety (90) days' written notice to Client.

(g) **Termination For Cause**. Either Party may terminate this Agreement or the Fee Proposal for cause upon material breach, provided that the non-breaching Party provides prompt written notice of such breach, and the breaching Party fails to cure such breach (for breaches capable of cure) within fourteen (14) days of receipt of such notice. Netchex shall have the right to

immediately suspend access to Services and terminate this Agreement or any Fee Proposal upon written notice for Client's (i) violation of Applicable Laws; (ii) gross negligence, willful misconduct, or fraud; (iii) failure to remit timely payment or to provide the funds required to allow Netchex to render Services under this Agreement; (iv) breach of the exclusivity requirement set forth in Section 1.4(b); or (v) failure to provide valid ownership and controller information to Netchex (each, an **"Uncurable Material Breach"**). In the event of Client's Uncurable Material Breach, in addition to all other rights and remedies available to Netchex under this Agreement, Netchex may immediately terminate this Agreement and Fee Proposal then in effect and require Client to pay Early Termination Fees.

(h) **Effects of Termination**. Upon the expiration or termination of the Services Term: (i) Netchex will no longer be obligated to provide Services to Client; (ii) all licenses granted to Client under this Agreement, and Client's right and ability to access the Services will terminate; and (iii) Client is responsible for payment of all fees due under this Agreement by ACH under the terms of the Funding Authorization Agreement. Provisions in this Agreement relating to obligations continuing beyond the end of the Term of the Agreement may survive, according to their respective provisions. In the event that any employees, agents, representatives, or personnel of Client (including Admins) continue to have access to any information provided after the termination of this Agreement, such individuals shall continue to comply with the terms of this Agreement until such access has ended, unless the Parties agree to new or additional terms that will apply.

(i) **NetBenefits and NetCOBRA: Failure to Pay Termination**. Notwithstanding any contrary provision herein, failure to pay NetBenefits and/or NetCOBRA related fees when due may result in Netchex unilaterally terminating this Agreement after a thirty (30) day notice period as set forth in Section 4.4 and Section 5.5 as applicable.

(j) **ACH Rules Termination**. Notwithstanding any contrary provision herein, Netchex or its Originating Depository Financial Institution may immediately suspend or terminate the Agreement for breach of ACH Rules, applicable banking regulations, or the terms hereof, as set forth in Section 3.1(a)(iii).

(k) **Termination Notice**. For purposes of this Section 1.11, Client will submit to Netchex any notice of non-renewal or termination in writing at the address provided in Section 1.16 below.

1.12 LIMITED LIABILITY.

Client acknowledges that the fees proposed and quoted to Client reflect savings that Netchex is able to offer because of the provisions in this Section 1.12.

(a) **Limited Direct Damages**. Notwithstanding any other provision herein, and to the greatest extent allowed by law, neither Party will be liable to the other for any loss relating to or arising from any act or omission in its performance under the Agreement, whether in contract or tort, including negligence, except for direct and liquidated damages not to exceed the fees Netchex has collected from Client in the preceding twelve (12) months.

(b) **No Other Damages**. Neither Party may be liable to the other for any indirect, special, incidental, consequential or punitive damages, including without limitation business interruption losses, lost business opportunities, lost profits and mitigation expenditures, regardless of the form of the action, whether in contract or tort, even if the Parties have knowledge of the possibility of the damages.

1.13 NO WARRANTY.

The fees proposed and quoted to Client reflect savings that Netchex is able to offer because of the provisions in this Section 1.13. Netchex will provide the Services in a professional manner that is consistent with industry standards.

(a) **As Is**. The Services are rendered, and any Intellectual Property is licensed, as is. Netchex disclaims all implied warranties to the greatest extent allowed by law and does not and cannot guarantee that its software or Services are bug or error free. To the extent they would otherwise be applicable, disclaimed warranties include, without limitation: warranty of merchantability, warranty of fitness for a particular purpose, and warranty against redhibitory defects.

(b) **No Professional Advice**. In the course of providing the Services, Netchex may provide Client with general advice regarding the use of its products and other areas pertaining to the Services provided, such as reporting and withholding. However, Netchex does not and cannot render legal, accounting, financial or other similar professional advice, and Client must rely on their professional advisors alone for such advice.

(c) **Not Fiduciary**. Netchex and Client have entered into the Agreement at arms-length and neither Party is a fiduciary of the other. Netchex is an independent contractor.

(d) **Use of Artificial Intelligence**. Netchex uses Artificial Intelligence technologies (**"AI"**) to enhance certain services and improve user experience. Netchex's use of AI may include, without limitation, customer service chatbots and other informational chat features or services (including, without limitation, AskHR), personalized recommendations, automated data analysis, and predictive modeling. These tools are designed to enhance Client and user experiences and to improve the efficiency of Netchex Services. HOWEVER, DUE TO THE CONSTANTLY EVOLVING NATURE OF TECHNOLOGY AND AI, ALL AI FEATURES, AND ANY AI-

BASED OR ASSISTED SERVICES, ARE PROVIDED TO CLIENT ON AN AS-IS BASIS WITHOUT WARRANTIES OF ANY KIND, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ACCURACY. CLIENT ACKNOWLEDGES THAT AI-GENERATED INFORMATION OR SERVICES MAY CONTAIN ERRORS AND MAY NOT PRODUCE ACCURATE OUTPUT, AND CLIENT UNDERSTANDS AND AGREES THAT SUCH CONTENT OR SERVICES SHOULD BE USED SOLELY AS SUPPLEMENTARY INFORMATION AND NOT AS THE SOLE BASIS FOR DECISION-MAKING. NETCHEX IS NOT LIABLE FOR ANY DECISIONS MADE BASED ON AI-GENERATED CONTENT, AI FEATURES, OR AI-BASED SERVICES, AND EXPRESSLY DISCLAIMS ALL LIABILITY FOR ALL SUCH CONTENT, INCLUDING, WITHOUT LIMITATION, FOR ERRORS, INACCURACIES, OR MISREPRESENTATIONS PRODUCED BY AI.

1.14 INDEMNIFICATION.

(a) **Client Indemnification**. Client acknowledges that all Services rendered by Netchex are based upon the information furnished by the Client. Client will indemnify, defend, and hold Netchex harmless from any claim and against any and all losses, claims, damages, judgments, fines, penalties, interest, attorneys' fees and disbursements, costs and expenses (including, if applicable, costs of investigation, notification related costs, and Professional Expenses), and amounts paid in settlement (collectively, **"Losses"**) against Client and/or Netchex arising out of: (i) Netchex's use of Client Data; (ii) any unauthorized access to or disclosure of Client's Netchex account or Client Data arising out of (A) Client's failure to properly safeguard its account credentials, (B) Client's disabling of, or failure to implement, security features provided or offered by Netchex, including without limitation multi-factor authentication, or (C) fraudulent or criminal acts of third parties, including, without limitation, hacking or phishing; (iii) Client's breach of its obligations under this Agreement; or (iv) any claim by an employee or User of Client, howsoever arising, including, without limitation, any claim alleging losses as a result of noncredit by Client of any deposit, or made by an employee as a result of the rejection of any debits because of Client's failure to credit deposits to employee's account.

(b) **Netchex Indemnification**. Netchex will indemnify, defend, and hold Client harmless from and defend Client against any Losses arising from a third party claim or lawsuit brought against Client arising out of: (i) an allegation that Client's use of the Services in accordance with the terms of this Agreement infringe or violate such third party's patent, copyright, trademark, service mark, or other intellectual property rights; (ii) Netchex's gross negligence or willful misconduct, provided, however, that Netchex has sole control over the defense of any such claims or lawsuits and Client cooperates in every reasonable way with Netchex to facilitate the defense. Client may, at its option and at its own expense, participate with Netchex in the defense with counsel of its own choosing, and Netchex shall make good faith efforts to enter into a reasonable joint defense or common interest agreement with Client.

1.15 OTHER PROVISIONS.

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

(a) **Entire Agreement**. This Agreement and any attached or incorporated agreements, exhibits, addendums, and schedules reflect the entire agreement between Netchex and Client and supersedes all prior and contemporaneous written and oral negotiations, understandings, or agreements.

(b) **Release; Dispute Resolution**. Either Party wishing to initiate dispute resolution procedures with respect to a Dispute, must first submit the Dispute to mediation by giving the other Party written notice. The mediation will be conducted in accordance with the American Arbitration Association ("AAA") Commercial Mediation Rules then in effect. The mediation will take place in St. Tammany Parish, Louisiana.

(c) **Choice of Law and Venue**. This Agreement and all matters arising out of or relating to this Agreement, including any Disputes between the Parties to this Agreement, whether arising in contract, tort, statute, regulation, or otherwise, shall be governed by, construed, interpreted, and enforced in accordance with the substantive and procedural laws of the State of Louisiana, without giving effect to its conflict of laws provisions, regardless of where any action may be brought. Furthermore, if such a Dispute is not successfully resolved by mediation within 45 days of commencement thereof, the Parties each irrevocably agree that such Dispute shall be resolved on an individual basis exclusively in the jurisdiction of the state and federal courts of the 22nd Judicial District Court for St. Tammany Parish in the State of Louisiana, or alternatively, the United States District Court for the Eastern District of Louisiana. Client irrevocably consents to the exclusive personal jurisdiction of such courts and hereby waives any and all objections to the exercise of jurisdiction by such courts, including any claim that any Dispute (including any tort claim) has been brought in an inconvenient or improper forum or venue. Notwithstanding anything to the contrary in this Agreement, the Parties agree that Netchex may commence and maintain an action or proceeding seeking injunctive or other equitable relief in any court of competent jurisdiction. In the event a court rules that the litigation requirements under this Section 1.15(c) are not enforceable, a Dispute shall be resolved by arbitration. The arbitration will be conducted in St. Tammany Parish, Louisiana in accordance with the Rules of AAA in force at the time of the referral to arbitration. The tribunal shall consist of one arbitrator.

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

(e) **Force Majeure**. In the event of an occurrence of a Force Majeure Event, Netchex will have an additional thirty (30) days to perform the Services without being deemed to be in breach of this Agreement.

(f) **Assignment; Change of Control**. The prior written consent of Netchex is required before Client may assign this Agreement. If Client purports to assign this Agreement without the prior written consent of Netchex, then Netchex may, at its option, deem the assignment void *ab initio* or deem this Agreement materially breached. The sale or change in control of Client, or the transfer of all or a substantial portion of the assets to which this Agreement relates, will be considered an assignment requiring Netchex's prior written approval under this paragraph.

(g) **Modification of Agreement**. Netchex expressly reserves the right to modify the terms of this Agreement at any time without prior notice to Client. Except as otherwise specifically set forth herein, modifications shall become effective immediately upon publishing an updated version of this Agreement to the Netchex website. Netchex will retain the prior two (2) versions of this Agreement on its website, but the most recently published version shall govern the obligations of Netchex and Client. Client is responsible for regularly reviewing the terms of this Agreement on the Netchex website. Where Netchex has expressly agreed to provide Client with notice of changes (such as changes to invoicing dates or fees), notice will be provided to: (i) Client's email address as set out in the applicable Fee Proposal or (ii) Client's portal or admin page. Client is responsible for keeping its email address current and promptly notifying Netchex by email (pursuant to Section 1.16) of any changes to Client's email address. CLIENT'S CONTINUED USE OF THE SERVICES FOLLOWING WRITTEN NOTICE OF MODIFICATIONS TO THE TERMS OF THIS AGREEMENT SHALL CONSTITUTE CLIENT'S AGREEMENT TO SUCH CHANGES.

(h) **Binding Authority**. Client represents, warrants, and acknowledges that it has read and agrees to the terms of this Agreement, and agrees to be bound by its terms, and that the person agreeing on Client's behalf has the authority to bind Client to the terms set forth herein.

1.16 NOTICES.

Netchex may send correspondence to Client at the physical address or email address identified in the Fee Proposal, or through Client's portal or admin page. Except as otherwise stated in this Agreement, Client must send all notices to Netchex that are permitted or required under this Agreement including notifications of non-renewal or termination, by sending correspondence to either address below:

> Netchex Physical Address:
> Attn: Contract Administrator
> 1155 Highway 190 E. Service Road
> Suite 2
> Covington, LA 70433
>
> Netchex Email Address:
> contracts@netchexonline.com

1.17 SURVIVAL.

Any right or obligation of either Party to this Agreement that by its express terms or nature and context is intended to survive termination or expiration of this Agreement shall survive such termination or expiration of this Agreement. Such rights or obligations include, but are not limited to: Section 1.3 ("Compliance"); Section 1.4 ("Client Obligations"); Section 1.5 ("Billing and Fees"); Section 1.6 ("Intellectual Property"); Section 1.7(a)(ii) ("Restrictions and Limitations"); Section 1.8 ("Client Data"); Section 1.11 ("Term and Termination; Breach"); Section 1.12 ("Limited Liability"); Section 1.13 ("No Warranty"); Section 1.14 ("Indemnification"); Section 1.15 ("Other Provisions"); Section 1.16 ("Notices"); and Section 1.17 ("Survival").

2. PAYROLL SERVICE & FUNDS TRANSFER TERMS

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

(a) Collect the required federal, state, and local payroll tax amounts from Client, hold such tax amounts in the Trust Account, and deposit such tax amounts with an appropriate authorized depository on or before the statutory deadlines; and

(b) Prepare and file all required federal, state, and local payroll tax forms and reports (collectively, "**Netchex Payroll Services**").

2.2   Netchex assumes responsibility for interest charges and/or penalties resulting from the negligence of Netchex. Netchex does not accept responsibility for failure to make deposits or filings if Client does not provide Netchex with accurate and timely information or sufficient funds. Client acknowledges that Netchex has no requirement to pay out any amounts when funds to cover such amounts have not been provided by Client. Client agrees to have Netchex fees directly debited from Client's bank account for all Services. As additional consideration for the Services, Netchex may earn interest on Client funds in its possession, and Client hereby assigns to Netchex any and all benefits derived on the funds in the Trust Account.

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

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

(a) **FOR DIRECT DEPOSITS *UNDER* CLIENT'S QUALIFIED DIRECT DEPOSIT PAYROLL LIMIT**:
   (i) **Standard Schedule**: Client agrees to provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time at least two (2) banking days prior to each pay date. Netchex will then debit Client one (1) banking day prior to each pay date for the total amount of direct deposit, payroll tax liabilities, and premium pay and fees (if applicable). *(e.g., If Client submits payroll information to Netchex on Wednesday, Netchex will debit Client's account on Thursday, and Client's employees will be paid on Friday).*
   (ii) **Standard Holiday/Weekend Schedule**: If the Client's pay date is on a Saturday, Sunday or bank holiday, then the Client must submit accurate and complete payroll and tax information to Netchex three (3) banking days prior to pay date. Netchex will debit Client two (2) banking days prior to pay date for the total amount of direct deposit, payroll tax liabilities, and premium pay and fees (if applicable*). (e.g., If Client submits payroll information to Netchex on Tuesday, Netchex will debit Client's account on Wednesday, and the date Client's employees' Settlement Date will be Thursday since banks are closed for a holiday on Friday)*.
   (iii) **Other Schedule**: If Client does not follow the Standard Schedule set forth in Section 2.2(a)(i) above and a payroll is submitted one (1) banking day before pay date, Client must provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time AND Client must send a wire transfer to Netchex for the total amount of direct deposit, payroll tax liabilities, and premium pay (if applicable). Wire Transfer guidelines, time frames, and fees vary from bank to bank. Client should be familiar with Client's bank's policies before choosing this method. *(e.g., If Client submits payroll information and sends a wire transfer to Netchex on Thursday, Client's employees will be paid on Friday)*.

(b) **FOR DIRECT DEPOSITS *OVER* CLIENT'S QUALIFIED DIRECT DEPOSIT PAYROLL LIMIT**:
   (i) **Standard Schedule**: Client agrees to provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time at least three (3) banking days prior to each pay date. Netchex will then debit Client two (2) banking days prior to each pay date for the total amount of direct deposit, payroll tax liabilities, and premium pay and fees (if applicable). *(e.g., If Client submits payroll information to Netchex on Tuesday, Netchex will debit Client's account on Wednesday, Client's employees' Settlement Date is Friday)*.
   (ii) **Standard Holiday/Weekend Schedule**: If the Client's pay date is on a Saturday, Sunday or bank holiday, then the Client must submit accurate and complete payroll and tax information to Netchex four (4) banking days prior to pay date. Netchex will debit Client three (3) banking days prior to pay date for the total amount of direct deposit, payroll tax liabilities, and premium pay and fees (if applicable). *(e.g., If Client submits payroll information to Netchex on Monday, Netchex will debit Client's account on Tuesday, Client's employees' Settlement Date is Thursday)*.
   (iii) **Other Schedule**: If Client does not follow the Standard Schedule above in Section 2.2(b)(i) and a payroll is submitted two (2) banking days before pay date, Client must provide Netchex with accurate and complete payroll and tax information on or before 3:00 PM Central Standard Time AND Client must send a wire transfer to Netchex for total amount of direct deposit, payroll tax liabilities, and premium pay (if applicable). Wire Transfer guidelines, time frames, and fees vary from bank to bank. Client should be familiar with Client's bank's policies before choosing this method. *(e.g., If Client submits payroll information and sends a wire transfer to Netchex on Wednesday, Client's employees will be paid on Friday)*.

(c) Immediately provide Netchex with copies of any notices or correspondence received from any federal, state, or local authority with respect to any tax return or deposit made by Netchex.
(d) Provide Netchex with the proper voluntary deduction amounts including but not limited to 401(k), health insurance and garnishments.
(e) Agrees to have sufficient funds to cover Client's payroll tax charges, processing charges, and any non-sufficient funds fees in Client's designated demand deposit account specified in Client's signed Funding Authorization Agreement, which is hereby

incorporated by reference and made a part of this Agreement. Client further agrees to instruct the bank holding its demand deposit account to honor these charges as initiated from time to time by Netchex. If the bank, upon Client's instructions or otherwise, refuses to honor such charges, Netchex reserves the right to assess a non-sufficient funds fee in the amount of up to two hundred fifty dollars ($250.00) per occurrence.

2.3   Netchex shall debit Client's designated demand deposit account for the payroll and tax liabilities and any fees in accordance with the timeline prescribed in Sections 2.2(a) and/or 2.2(b) above. In the event that sufficient funds are not available or a debit rejection is received from Client's bank, a Netchex representative will notify the Client. Client shall pay Netchex the amount due plus any bank fees and penalties; a non-sufficient funds fee in the amount of up to two hundred fifty dollars ($250.00) per occurrence will be charged to Client by Netchex, and Client will have until 2:00 PM Central Standard Time on the date of notification to send these funds to the designated Netchex bank account. If funds are not received from the Client, per the Nacha Operating Rules, Netchex reserves the right to reinitiate a debit that has been returned for insufficient or uncollected funds up to a maximum of two (2) times following the return of the original debit within one-hundred eighty (180) days after the Settlement Date.

2.4   Client agrees that any and all funds held in escrow (including tax funds) may be used as payment to Netchex in the event that funds are not available when Netchex debits Client account for payroll and tax liabilities and any fees in accordance with the timeline prescribed in Sections 2.2(a) and/or 2.2(b) above.

2.5   Client acknowledges that Netchex tax filing services are based upon information supplied by Client (including proof of federal, state and local tax identification numbers and deposit frequencies) and the results of Netchex Payroll Services. Client is responsible for the accuracy of such information and the verification of payroll data. Client has the final and ultimate responsibility for checking the accuracy of paychecks to be issued to employees. Client has the final and ultimate responsibility for checking the accuracy of and the remittance of any non-tax payments, such as voluntary deductions and garnishments.

2.6   Client hereby instructs all federal, state, and local tax authorities via respective power of attorney documents to deliver tax forms, documents, and other related information to Netchex. Netchex is hereby given full authorization to represent and submit records on behalf of Client before federal, state and agreed upon local jurisdiction's tax office with respect to payroll taxes. Client hereby authorizes Client's payroll team, including any vendor or computer service, to deliver to Netchex all necessary documents and payroll information, including payroll tax registers, quarterly reports, and summaries.

3. DIRECT DEPOSIT SERVICE TERMS

3.1 For qualified Clients, direct deposit services may be utilized by the Client's employees who have deposit accounts with banks that participate in an ACH network (hereinafter referred to "**Participating Banks**"), who request that their accounts be regularly credited for amounts due and payable to them by Client by utilizing Nacha Operating Rules.

Netchex may request and obtain data, including financial, about the Client prior to establishing direct deposit services. Client agrees to the Qualified Direct Deposit Payroll Limit as established by Netchex.

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

(a) Comply with and be subject to regulations affecting ACH entries, including but not limited to Regulation E and the Nacha Operating Rules governing this method of payments. The Nacha Operating Rules require the following: (i) Client is an Originator of ACH entries and agrees to assume the responsibilities of an Originator under the Nacha Operating Rules; (ii) Client may not initiate entries that violate the laws of the United States or any state laws; (iii) Netchex or its Originating Depository Financial Institution may immediately suspend or terminate the Agreement for breach of ACH Rules, applicable banking regulations, or the Agreement terms. Any termination or suspension of the Agreement shall not affect any of the Client's or Netchex's rights and obligations with respect to Services performed prior to termination/suspension, or any other obligations that survive the Agreement; (iv) Client must establish, implement, and update, as appropriate, policies, procedures, and systems (including controls) with respect to the initiation, processing, and storage of entries that are designed to: (A) protect the confidentiality and integrity of protected information until its destruction; (B) protect against anticipated threats or hazards to the security or integrity of protected information until its destruction; and (C) protect against unauthorized use of protected information that could result in substantial harm to a natural person or organization; (v) Netchex or its Originating Depository Financial Institution may audit Client's compliance with the Agreement and ACH rules and applicable regulations; (vi) Netchex is conducting ACH business for Client, and Client agrees that Client will not disclose a receiver's account number or routing number to any third-party for such third-party's use, directly or indirectly, in initiating a separate debit entry not covered by the original

authorization; and (vii) Client agrees to reimburse Netchex for any fines and/or liabilities imposed for a Nacha Operating Rules violation or regulatory non-compliance caused by an action/inaction of the Client.

(b) Each employee who desires to utilize these Services will authorize Client to initiate paperless credits for sums due and payable to employee for deposit at the Participating Bank where the employee deposit account is maintained, (hereinafter called the "**Receiving Bank**").

(c) Each employee who desires to utilize these Services will also authorize the Client to initiate paper or paperless debits for sums due to the Client for erroneous deposit or deposits at the Receiving Bank ("**Credit Reversal**"). These Credit Reversals shall be governed by the Nacha Operating Rules and applicable regulations. It is the Client's responsibility to notify the employee of the Credit Reversal and the reason for the reversal no later than the Settlement Date of the reversing entry.

(d) After receipt of employee authorization for direct deposit, Client may initiate or make agreements for the initiation of paperless credits for the deposit accounts of employees who have authorized such agreements. Such deposits shall be initiated by Netchex.

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

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

3.4 **PROHIBITED RECIPIENT AND TRANSACTIONS**.

(a) Netchex does not support International Payment Transactions, including via ACH or wire transfer, and Client must not use, or attempt to use, the Services for such transactions. "**International Payment Transactions**" means any payments that are transmitted to or received from a financial agency outside the territorial jurisdiction of the United States.

(b) Client must not use, or attempt to use, the Services in any manner that would violate any Anti-Corruption Laws or applicable sanctions laws, including without limitation economic or financial sanctions or trade embargoes imposed, administered or enforced by the U.S. government, including those administered by OFAC, or the U.S. Department of State Sanctions Laws. Without limiting the foregoing, Client must not use, or attempt to use, the Services to transmit funds to: (i) any person listed in any sanctions-related list of designated persons maintained by OFAC or the U.S. Department of State; (ii) any person operating, organized or resident in a sanctioned country; or (iii) any Sanctioned Person.

(c) Client represents and warrants that: (i) Client will not request, send, or receive any International Payment Transaction; (ii) no payment requested, sent, or received by Client, or any proceeds therefrom, will violate any Anti-Corruption Laws; (iii) Client is not a Sanctioned Person and none of its officers, directors, employees, contractors, agents, and/or payees are a Sanctioned Person; and (iv) no payment requested, sent, or received by Client, or any proceeds therefrom, will violate any Sanctions Laws.

(d) Any breach of the provisions of this Section 3.4 shall be a material breach of this Agreement for which Netchex may immediately terminate or suspend all Services to Client and/or this Agreement. If Client believes or suspects that any use of the Services violated the foregoing provisions, Client will notify Netchex as soon as possible but in any event within twenty-four (24) hours, and Client will provide Netchex with all relevant information.

3.5 **UCC ARTICLE 4A DISCLOSURE.**

(a) Entries may be transmitted through one or more ACH Network.

(b) Client's rights and obligation of the Client with respect to such payments shall be construed by the by the laws of the State of Louisiana as provided by the Nacha Operating Rules, which are applicable to ACH transactions involving your account.

(c) Credit given by the RDFI to the receiver for an entry is provisional until the RDFI has received final settlement through a Federal Reserve Bank or otherwise received payment as provided for in U.C.C. 4A § 403(a). If the RDFI does not receive such payment for the entry, the RDFI is entitled to a refund from the receiver in the amount of the credit to the receiver's account, and the Client will not be considered to have paid the amount of the credit entry to the receiver.

(d) Any capitalized terms used in this Section 3.5 that have not been defined in this Agreement shall have the definitions given in the Nacha Operating Rules and regulations.

4. **NETBENEFITS SERVICE TERMS**

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

Section 4 shall not apply to any Client who (i) does not subscribe to the NetBenefits services or (ii) opts out of the NetBenefits services.

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

4.1 For the Services set forth in this <u>Section 4</u>, the Parties agree that Netchex will perform the following administrative functions:

    (a) Initial Setup includes: (i) Review of Client's completed benefit plan detail setup form; (ii) Review and build Client's benefit plans in the NetBenefits management tool based on the Client's input on the benefit plan detail setup form; and (iii) Schedule Client's benefit analysis call.

    (b) Training includes: (i) Demonstrate to Client's Admins the process of inputting employee benefit deductions to each benefit plan that employee has elected; (ii) Demonstrate to Client's Admins how to generate and review anticipated billing report to confirm employee benefit assignments are correct; (iii) Demonstrate to Client's Admins how to process new hire benefit elections; (iv) Demonstrate to Client's Admins how to process administrative benefit changes; and (v) Provide training to Client's Admins on ACA reporting Form 1094 and Form 1095 set up.

    (c) Ongoing includes: (i) Provide support, when requested, to Client's Admins on reporting the aggregate cost of benefits to Box 12DD of the W2 for amounts in NetBenefits management tool; (ii) Assist Client in preparation of employer ACA reporting via Forms 1094 and 1095, for distribution to employees and the Internal Revenue Service.

    (d) Reporting includes: (i) Hours worked aggregation and reporting for Client's ACA applicable large employer report; (ii) Hours tracked and averaged for ACA full-time equivalency status of part-time/variable hour employees; and (iii) Client's ACA automation of measurement periods.

4.2 The Parties agree that the following functions by Netchex specifically *exclude*:

    (a) Determination of whether Client is subject to penalties under the ACA, including the "shared responsibility" employer penalties under 26 U.S. Code § 4980H(a) or (b) (i.e., penalties for not offering group health insurance or offering group health insurance that is not affordable or does not represent minimum value), reporting or paying such penalties, and legal and tax advice regarding compliance with the ACA.

    (b) Reviewing Client's information, accounting, and other systems to ensure such information is accurate and systems are properly tracking all necessary data to enable Netchex to automate data processing or otherwise provide the NetBenefits Services.

    (c) Making plan eligibility determinations and interpretation of Client's benefit plan provisions. (Netchex will rely on Client's representations regarding minimum hours requirements of Client's health plan.)

    (d) Functioning as a plan administrator of any Client benefit plan or exercising any discretionary authority that could result in Netchex functioning as a fiduciary under any such plan.

    (e) Collecting and remitting premium payments to benefits carriers.

4.3 For the Services set forth in this <u>Section 4.3</u>, the Parties hereby agree that Client will perform the following administrative functions:

    (a) Initial Setup includes: (i) Provide a list of all employees who will need access to the NetBenefits management tool for training and processing purposes; (ii) Attend training on topics listed in <u>Sections 4.1(b)</u>; (iii) Accurately complete implementation document(s) with all necessary information, including dependent information; (iv) Review benefit plan setup items, including confirming eligibility criteria, coverage levels, monthly premium amounts, payroll deduction frequency, and payroll deduction amounts; (v) Add employees' benefit deductions to each benefit plan that employees have elected; (vi) Generate and review anticipated billing report to confirm employee benefit assignments are correct; and (vii) Confirm ACA measurement, administrative and stability periods and import hours per check and other information needed to produce Forms 1094 and 1095 for the applicable year (if NetBenefits start date is other than January 1).

    (b) Ongoing includes: (i) Record the newly hired employees' benefit plan elections and status (full-time, part-time, or seasonal) in the Netchex application; (ii) Process administrative benefit changes (e.g. process any qualifying life event outside of open enrollment); (iii) Upon annual plan renewal, make any premium changes within the NetBenefits management tool; (iv) In the event of a carrier change, coordinate plan changes through the NetBenefits management tool; and (v) In the event of an ACA measurement period change, update period in the ACA portal.

4.4 Client agrees to pay Netchex fees in accordance with the related Fee Proposal. Client agrees to pay the fees to Netchex on a timely basis when billed. Failure to pay fees when due may result in Netchex unilaterally terminating this Agreement after a thirty (30) day notice period.

4.5 Under no circumstances shall Netchex be responsible for any tax, penalty, interest or other liability imposed on Client or an employee of Client pursuant to the "shared responsibility" provisions of Internal Revenue Code Section 4980H(a) or (b) or Section 5000A. Netchex is not an insurer with regard to the performance of the Services. The disclaimer of warranties and the limitation of liability in this Agreement reflect the risks assumed by the Parties in order for Users to obtain the rights to use the NetBenefits for the specified fees.

5. NETCOBRA SERVICE TERMS

The NetCOBRA services provided pursuant to this Section 5 are only provided to Clients who engage Netchex to provide both Payroll Services and NetBenefits Services, and any Netchex obligations pursuant to this Section 5 will terminate immediately if Client ceases to utilize Netchex Payroll Services and NetBenefits Services. This Section 5 shall not apply to any Client who (i) does not subscribe to the NetCOBRA services or (ii) opts out of the NetCOBRA services. Client acknowledges and agrees that in order to access and use the NetCOBRA services, Client will be redirected to a third-party website. [Such third-party website will require Client to create an account and login information separate from the Netchex portal.]

Client desires to have Netchex provide certain administrative and clerical functions related to Client's compliance with COBRA, which can be located at **https://www.dol.gov/agencies/ebsa/laws-and-regulations/laws.**

5.1 For the Services set forth in this Section 5, the Parties agree that Netchex will perform the following administrative and clerical functions:
   (a) Initially train Client on NetCOBRA procedures, including but not limited to properly entering terminations into Netchex application and recording qualifying events.
   (b) Sending required notices to qualified beneficiaries, generally within fourteen (14) business days of Client's notifying Netchex of a qualifying event.
   (c) Communicating with qualified beneficiaries regarding COBRA coverage, via such means as Client designates (which may include electronic communications, provided Client represents that it satisfies all applicable U.S. Treasury and Department of Labor requirements in order to send electronic communications).
   (d) Billing and collecting premiums from qualified beneficiaries at a rate of 102% of Client's applicable premium, as communicated from Client to Netchex on an annual basis.
   (e) Reporting premium payments to Client and remitting premiums received to Client at 100% of applicable premium (assuming plan participants pay the full 102% premium – if less than 102% is paid by a COBRA participant, Netchex will retain 2% of the premium and remit the balance to Client).
   (f) Communicating with COBRA participants who make partial payments of less than 102% of the applicable premium and notifying participants once any applicable grace period has expired.
   (g) Making qualified beneficiary enrollment information available to and accessible by Client.
   (h) Making qualified beneficiary COBRA information terminations available to and accessible by Client.
   (i) Reporting qualified beneficiary COBRA elections and COBRA terminations to insurance carriers.
   (j) Notifying qualified beneficiaries and their dependents of COBRA alternatives (e.g. healthcare market); this does NOT include changes made during open enrollment.
   (k) Updating qualifying event notices to comply with regulatory changes.
   (l) Initial COBRA notices provided to new employees and enrollees.

5.2 Netchex further agrees to account for collected premiums by: (a) Placing collected premiums in Netchex premium account; (b) Providing Client with a mid-month report detailing premiums collected during the month prior; and (c) Forwarding to Client a check drawn on Netchex's premium account or by wire transfer for all net premiums collected during the preceding premium reporting month.

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

5.4 In order to enable Netchex to perform its obligations pursuant to this Agreement, Client will perform the following functions: (a) Comply with COBRA requirements regarding complete and timely notice to Netchex of qualifying events by use of Netchex NetCOBRA procedures; (b) Refine, reformat, or otherwise revise Client Data in such manner as may reasonably be required in order

for Netchex to carry out its responsibilities under this Agreement; (c) Provide accurate and complete information via forms and documentation reasonably required by Netchex in order to provide the NetCOBRA services outlined in this agreement; and (d) Communicate "invisible events" such as death or divorce of an employee, adoption or birth of a child, or disability of an employee to Client's insurer and Netchex.

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

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

6. ACT SERVICE TERMS

The Address, Compensation and Tax Verification product (the "**ACT Product**") provided pursuant to this Section 6 is only provided to Clients who engage Netchex to provide Payroll Services, and any Netchex obligations pursuant to this Section 6 will terminate immediately if Client ceases to utilize Netchex Payroll Services. This Section 6 shall not apply to any Client who (i) does not subscribe to the ACT Product or (ii) opts out of the ACT Product.

Netchex will allow Client to access and use the ACT Product, subject to and in accordance with the provisions of this Agreement and the following terms.

6.1 Client agrees and acknowledges that the use of the ACT Product, and the information and suggestions provided by Netchex, do not constitute legal, accounting, or tax advice, or other professional advice and that Netchex does not provide such advice. Accordingly, the ACT Product suggestions should not be used as a substitute for the independent investigations and the sound technical, business, and legal judgment of the Client and its professional accounting, tax, legal, or other competent advisers. Client acknowledges that the suggestions and information provided by the ACT Product are generated based on the information Client provides and are sourced from multiple third parties.

6.2 Without limiting the provisions of Section 1.12 ("Limited Liability"), Section 1.13 ("No Warranty"), and Section 1.14 ("Indemnification") of this Agreement, all information from the ACT Product is provided "as is," with no representations or guarantee of any kind or nature, including, but not limited to, completeness, accuracy, timeliness, and without warranty of any kind, express or implied, including, but not limited, to warranties of performance, merchantability, and fitness for a particular purpose. Client agrees and acknowledges that Netchex shall have no liability or responsibility for any inaccuracies, errors, or omissions with the suggestions or information provided by the ACT Product or Client's use of such suggestions or information. Client's use of the ACT Product and its suggestions or information is completely at its own risk. Client waives any claim against Netchex and agrees to defend, indemnify, and hold Netchex harmless in connection with Client's use of the ACT Product information and suggestions or any inaccuracies or defects in such information or suggestions.

7. EARNED WAGE ACCESS SERVICE TERMS

7.1 **These Earned Wage Access Terms constitute a binding contract between S & W Payroll Services L.L.C. (DBA Netchex) ("Netchex"), acting as agent for its Service Provider, Rain Technologies Inc. ("Rain"), and Client, and set out the terms applicable to, as applicable, Netchex's provision of Earned Wage Assignment Services to Client, and Rain's provision of earned wage payments to employees of Client, in each case as further set out below. In the event of a conflict between these Terms and the MSA, these Terms shall control as to Client's receipt or use of, or Netchex or Rain's provision of, the Earned Wage Assignment Services. This Section 7 shall not apply to any Client who opts out of the Earned Wage Access Services.**

7.2 **EWA Services Enrollment and Services Description.** Netchex's Earned Wage Access Services (the "EWA Services") are now active for all Netchex customers. Accordingly, Client will automatically receive the EWA Services unless and until: (i) Client opts out of such EWA Services by toggling the "opt out" button in the Netchex application, or (ii) Netchex reasonably determines, on the basis of

Client's failure to take certain actions demonstrating its acceptance of these Terms, that Client has passively opted out of the EWA Services. Following its enrollment in EWA Services, Client may discontinue the EWA Services at any time by toggling the opt out button in the Netchex application. Netchex has engaged Rain as its service provider to provide earned wage payments to Client's employee(s).

7.3 **Netchex Acting as Agent for Rain.** By agreeing to these Terms with Netchex, acting as agent for Rain, (i) Client agrees to receive the EWA Services from Rain, facilitated by Netchex, as further described and pursuant to the terms set forth herein and (ii) Client expressly agrees and acknowledges that it is entering into a direct contractual relationship with Rain. When Client's employee(s) request access to their earned wages in Rain Mobile App to receive earned pay before the next regularly scheduled payday, Rain agrees to make payment of such earned wages to employee(s) in exchange for the employee's grant, assignment and transfer to Rain of all rights that the employee holds for the earned wages. Thereafter, Rain is the owner of all rights in and to the amount of wages paid by Rain to the employee(s). Accordingly, Client is ultimately obligated to make payment to Rain all amounts required to satisfy the rights granted to Rain in and to earned wages granted by Client employee(s). For the avoidance of doubt, any amount owed by Client to Rain to satisfy Rain's granted rights shall never exceed the amount originally owed by Client to such Client employee.

7.4 **Netchex Charges to Client's Account.** Client agrees that by accepting these terms that it shall be obligated to make payments to Rain for the full value of the intangible rights to the earned wages, which rights are obtained by Rain from the employee in exchange for receiving from Rain the earned wage payment; and Netchex, as agent and as acting as servicer to Rain, will facilitate Client's payment of the Earned Wage Payment Fee. Netchex, acting as the servicer to Rain for the purpose of facilitating Client's payments to Rain, will charge Client's Funding Account the amount equivalent to Client's employee(s) early wage payment including applicable taxes (the "Earned Wage Payment(s)"). Earned Wage Payment(s) will be identified as a separate line item on Client's regular monthly invoice. CLIENT HEREBY AUTHORIZES NETCHEX TO COLLECT THE EARNED WAGE PAYMENT FEE AND ANY TAXES FROM THE ACCOUNT DESIGNATED IN CLIENT'S FUNDING AUTHORIZATION AGREEMENT ("FUNDING ACCOUNT"). Such payment shall be processed on the next regularly scheduled payday of Client.

CLIENT ACKNOWLEDGES AND AGREES THAT NETCHEX WILL CONTINUE TO PROVIDE CLIENTS' EMPLOYEE(S) ACCESS TO THE EWA SERVICES AND ANY RESULTING EARNED WAGE PAYMENTS WILL CONTINUE TO BE DEDUCTED FROM CLIENT'S FUNDING ACCOUNT UNLESS AND UNTIL CLIENT REVOKES ITS AGREEMENT TO RECEIVE THE EWA SERVICES [by opting out through the Client Portal].

7.5 **Netchex Provision of Data to Rain.** In order to facilitate Rain's provision of EWA Services, Netchex must collect, transfer, and provide to Rain and its affiliates certain necessary data that includes (i) is payroll data relating to Client's employee(s)' earnings ("Payroll Data") controlled directly or indirectly by Client (regardless of Client's relationship to such employee(s)), (ii) timekeeping data, or similar data, relating to the dates or times of Client's employee(s)' work ("Timekeeping Data"), and (iii) within the class of data defined in clause (i) or clause (ii), is (A) Personally Identifiable Information about Client's employee(s) who are or were eligible for EWA Services or (B) aggregate data derived from any Personally Identifiable Information (as defined below) about two or more Client employee(s) eligible for EWA Services (collectively, "Employee-Employer Data"). As used herein, Personally Identifiable Information means information about Client's employee(s) that Netchex collects directly or indirectly from the Client in connection with Client's employee(s) use of the EWA Services.

To facilitate the above transfer and provision of Employee-Employer Data, Client hereby grants to Netchex, and to Rain, through Netchex, acting as agent for Rain, now and in the future, a nonexclusive, transferable, sublicensable, perpetual, irrevocable, worldwide, royalty-free and fully paid-up license to upload, synchronize, reproduce, distribute, display, host, modify and create derivative works of and otherwise use Employer-Employee Data for any legal purpose in connection with the EWA Services. Netchex, acting as agent for Rain, agrees that Rain shall comply (and ensure that its affiliates shall comply) with all laws applicable to its collection, use, processing, maintenance, or disclosure of Employer-Employee Data, including, without limitation, applicable financial, privacy, and data security laws. Netchex, as agent for Rain, agrees that Rain will not transmit, maintain, disclose, or store Employee-Employer Data outside of the United States of America. Subject to the foregoing, Client acknowledges and consents to the access of such Employer-Employee Data by Rain service providers located outside of the continental United States.

7.6 **Client Eligibility; Right to Suspend Access to Services.** Netchex (and Rain, as principal) reserve the right to continually review and assess Client's eligibility for participation in the EWA Services program. If Client fails to timely and fully funding Earned Wage Payments, Netchex may, in its sole discretion, (i) temporarily or permanently suspend the provision of EWA Services to Client, and, (ii) if the Earned Wage Payments remain unfunded following written notice to Client, cease the provision of payroll services to Client until Client satisfies its obligations to pay Rain the outstanding Earned Wage Payments.

7.7 **Direct Enforcement; Assignment.** By agreeing with Netchex to receive the EWA Services pursuant to these Terms, Client expressly agrees (i) that Rain, as Netchex's principal and owner of all rights in and to rights assigned by Clients' employees, may directly

enforce these Terms against Client if required to obtain full and timely repayment of Earned Wage Payments, and (ii) that Rain may, at any time in its sole discretion, assign to any affiliate of Rain, or to any third party, any or all of Rain's rights to the Earned Wage Payment Fee.

8. POINTS-BASED EMPLOYEE RECOGNITION PROGRAM

As described further in this Section 8, Netchex will introduce a rewards program for recognition of participating employees ("Employee Recognition Program"). The terms and conditions set forth in this Section 8 are only applicable to Clients who purchase the Employee Recognition Program services. Use of the Employee Recognition Program by Client or its employees constitutes Client's acceptance of the terms set forth in this Section. This Section 8 shall not apply to any Client who (i) does not subscribe to the Employee Recognition Program or (ii) opts out of the Employee Recognition Program.

8.1 Employee Recognition Program Details.

   (a) **Funding**. Clients using this Service will be required to allocate a specified dollar amount PEPM that will be billed monthly in addition to Client's existing fees. Client will determine the amount to be contributed on a PEPM basis upon commencement of the Employee Recognition Program services. Thereafter, the amount to be contributed by Client on a PEPM basis may only be changed at the Term renewal.

   (b) **Points Allocation and Ownership**. Once Client has allocated the PEPM amounts to its employees, each Client employee will receive points to distribute to their peers for recognition purposes. Once points are allocated to an employee, the points belong solely to that employee. Points have no cash value and cannot be refunded. Further, points allocated to an employee are non-transferable and cannot be sold or bartered. Any points not redeemed by an employee upon leaving the Client company are forfeited by employee and cannot be redeemed after an employee's departure. Once awarded to an employee, points will not revert to Client.

   (c) **Redemption**. Points distributed to employees can only be redeemed for items available in Netchex's "store" at conversion values determined by Netchex, which may change at any time without prior notice. Netchex may add or remove items to the store at any time in its sole discretion. Minimum spend thresholds may apply for redeeming points at Netchex's store, and Netchex may apply or change such thresholds at any time in its sole discretion.

   (d) **Employee Opt-Out.** Employees may choose to opt-out and not participate in the Employee Recognition Program at any time. Opting out will result in the employee's forfeiture of any unredeemed points, and unredeemed points will not revert to Client's account.

   (e) **Points Expiration**. Points may have an expiration date, after which they will no longer be valid. Netchex will inform Client and its employees of applicable expiration dates in advance of expiration.

   (f) **Client Responsibilities**. Client is responsible for ensuring its employees are informed of and comply with the Employee Recognition Program rules and any changes to such rules.

   (g) **Participation Reports**. Netchex will provide regular reports to Client detailing the distribution and redemption of points and program participation by Client employees, which reports may include usage and other metrics as determined in Netchex's discretion.

   (h) **Netchex Communication and Support**. Netchex will provide periodic communications to Client and its employees regarding the operation and benefits of the Employee Recognition Program.

   (i) **Netchex Authority.** Participation eligibility, point balances, point calculations, and all other determinations related to the Employee Recognition Program shall be made by Netchex in its sole discretion.

8.2 Termination. Netchex may, in its discretion, terminate the Employee Recognition Program at any time and will set a date for all points to be redeemed in such an event. As to individual employee participation, Netchex may, in its discretion, terminate an individual employee's participation in the Employee Recognition Program for misconduct or violation of program rules.

8.3 Taxes. Netchex is not responsible for any tax implications for Client or employees resulting from the employee's redemption of points. Client is responsible for any tax reporting and compliance related to the rewards received by its employees. Netchex will provide necessary information to assist with Client's compliance but will not be responsible for tax-related issues.

8.4 Fraud Prevention and Abuse. Netchex will implement measures to prevent fraud and abuse within the Employee Recognition Program. Any fraudulent activity or abuse of the Employee Recognition Program may result in the Client employee's forfeiture of points and Client's possible exclusion from the Employee Recognition Program.