TERMS AND CONDITIONS

1.   Purpose. The purpose of these Terms and Conditions are to further define the rights and obligations of MRAK, LLC, a Minnesota limited liability company dba Points North ("Points North") and its customer ("Customer") as set forth on the Invoice, Order, Proforma Invoice, or Quote (hereinafter defined individually or collectively, along with any other similarly entitled documents, as the "Invoice") with the Customer for use of the specified Software as a Service, whether ACA Reporter, Salary Advisor, Certified Payroll Reporting (each as defined below), or another Software as a Service provided by Points North and the related specified services of Points North (individually or collectively as applicable, the "Specified Software"), under the terms and conditions of the Agreement. These Terms and Conditions are incorporated by reference into the Invoice, and together therewith form an agreement between Points North and Customer (collectively, the "Agreement") (Points North and Customer shall collectively be referred to as the "Parties" or individually as a "Party"). These Terms and Conditions constitute a legally binding agreement between the Parties. By registering with, accessing, using, or purchasing the right to utilize the Specified Software, Customer acknowledges that Customer has read, understood, and agrees to be bound by these Terms and Conditions. If Customer is an entity, then the person entering into this Agreement on behalf of Customer represents and warrants that they have the authority to bind that entity to this Agreement.

2.   **NON-REFUNDABILITY. CUSTOMER AGREES THAT THE FEES STATED IN THE INVOICE ARE DUE AND OWING REGARDLESS OF WHETHER CUSTOMER LATER DESIRES TO TERMINATE THIS AGREEMENT AND REGARDLESS OF THE DURATION OR REASON FOR TERMINATION OF THIS AGREEMENT. CUSTOMER AGREES THAT ANY AMOUNTS PAID BY CUSTOMER TO POINTS NORTH PURSUANT TO THE INVOICE OR OTHERWISE IN CONNECTION TO THIS AGREEMENT ARE NON-REFUNDABLE, REGARDLESS OF THE DURATION OR REASON FOR TERMINATION OF THIS AGREEMENT.**

3.   **FITNESS. CUSTOMER HAS, PRIOR TO ENTERING INTO THIS AGREEMENT, DETERMINED THE FITNESS OF THE SPECIFIED SOFTWARE AND SERVICES FOR ITS USE, AND CUSTOMER ACKNOWLEDGES THAT ITS DECISION TO ENTER INTO THE AGREEMENT IS BINDING AND IS NOT BASED ON ANY REPRESENTATION OF POINTS NORTH OR ANY THIRD PARTY BUT RATHER BASED ON CUSTOMER'S INDEPENDENT DETERMINATION. POINTS NORTH DOES NOT ENDORSE, WARRANT, OR GUARANTEE THAT THE SPECIFIED SOFTWARE WILL BE SUITABLE FOR THE CUSTOMER'S PURPOSES. POINTS NORTH HEREBY DISCLAIMS ANY EXPRESS, IMPLIED, OR STATUTORY REPRESENTATIONS OR WARRANTIES, AND ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGMENT, AND FITNESS FOR A PARTICULAR PURPOSE.**

4.   Service Agreement. Subject to the terms and conditions stated herein, Points North hereby agrees to provide the Specified Software to the Customer as specified in the Invoice and defined in this Agreement. Customer acknowledges that this Agreement is separate from Customer's agreement with any payroll provider or other third party. The software and services associated with the Specified Software are described as follows, as applicable pursuant to the Invoice:

ACA Reporter Software. The ACA Reporter is a Points North hosted web-based application which enables tracking of employee hours and offers of coverage to be used to determine Affordable Care Act ("ACA") status based on the measurement cycles set up in ACA Reporter and based on the IRS regulations. The results of which will be used to populate the 1095-B or 1095-C forms and the corresponding 1094-B or 1094-C forms for each entity included in this Agreement. Electronic filing of the 1094-B or 1094-C form with the appropriate 1095-B or 1095-C forms is included and shall include the ability to electronically file through the ACA Reporter.

Certified Payroll Reporting. Certified Payroll Reporting is a Points North hosted web-based application which provides clients with the ability to generate prevailing wage reports (also known as Davis-Bacon reports or certified payroll reports) after the conclusion of each of their pay

periods. The application utilizes data from a client's elected payroll and/or timekeeping solution(s) to be utilized in the population of these reports. Certified Payroll Reporting also allows for clients to store and manage their prevailing wage rates by project, work classification, employee, or a combination of these levels. The application is also capable of receiving time data before a pay period is to be processed, then applying rates to the hours received for import into a client's payroll solution.

Attendance Advisor. Attendance Advisor is a Points North hosted web-based application which provides clients with the ability to automate their unique attendance policies. As time data is loaded in from the client's timekeeping solution, points and actions are generated according to the client's policy rules. All attendance record data are stored and reportable within the system.

5.   Term of Agreement. This Agreement shall commence upon execution unless another commencement date is stated in the Invoice, in which case it shall commence on that date. If the Specified Software was purchase on the ADP Marketplace, then the term of this Agreement shall be automatically renewing month-to-month. For all other Specified Software the initial term of this Agreement shall be 12 months unless another initial term length is specifically stated on the Invoice. If the Invoice states that this Agreement's term is "end term negotiate" then this Agreement shall automatically terminate upon the expiration of the initial term unless the Parties agree otherwise in writing, If the Invoice states that this Agreement is "end term auto renewal" or does not state whether or not this Agreement automatically renews, then this Agreement shall automatically renew in increments equal to the initial term unless a notice of non-renewal is provided in writing from one Party to the other the requisite number of days in advance of the end of the term (the "Notice Period"). For the ACA Reporter, the Notice Period shall be ninety (90) days. For all other Specified Software, the Notice Period shall be thirty (30) days. Notwithstanding anything to the contrary contained herein, the Termination for Default provisions stated below may operate to terminate this Agreement sooner than as described in this section.

6.   Fees. Points North's fees to Customer are stated on the Invoice. Points North reserves the right to increase its fees from time-to-time by posting the modified fees in the relevant marketplace and/or by notifying Customer in writing of same. Customer's continued use of the Specified Software constitutes Customer's binding acceptance of such increased fees, effective upon the renewal (whether automatic or by affirmative agreement) of the term as described above.

7.   Customer's Responsibilities and Application Dependencies. Customer is solely responsible for the accuracy of the data used to generate reports or export files utilizing the Specified Software. Customer will utilize the Specified Software via applicable means per product requirements. Points North will not knowingly provide integration with any third-party software that is not supported by that third party software manufacturer or which is not compatible with the Specified Software. Failure of Customer or other third-party systems or procedures, including failure of Customer or third party in providing useable data (data transfer failure) to Points North, which requires Points North to adapt the Specified Software to correct or mitigate Customer's or third-party system's dependencies, would be grounds for Points North to either (a) termination this Agreement, or (b) bill Customer at Points North's current standard development rate for such work.

8.   Support. Support for the Specified Software will be generally available Monday - Friday 8:00am - 5:00pm Central time, excepting holidays and company-wide trainings or meetings. Points North does not warrant the availability of support. When provided, support shall be provided to Customer's designated administrator. Services to be provided using telephone or secure remote web connection. Customer shall maintain a support staff capable of using the Specified Software and performing client service support to Customer's staff, employers, and affiliates prior to engaging Points North's support services. Discovery provided on issues determined as imported data issues, IT issue, and/or third-party systems affecting the Specified Software are considered professional consulting services and are billable at the standard billable support rate.

9.   <u>License Grants.</u> Points North hereby grants the Customer a non-exclusive, non-transferable single-site license to access and use the Specified Software solely for the purposes of the Agreement and subject to the terms of this Agreement. Title and ownership of the Specified Software and of the copyright in the Specified Software remain with Points North. Customer may not make copies of the Specified Software, nor assign, sell, distribute, lease, rent, loan, sublicense or otherwise transfer the Specified Software. Customer may not alter, modify or adapt (nor cause to be altered, modified or adapted) the Specified Software. This license will terminate if Customer ceases use of the Specified Software or breaches any of the terms and conditions in this agreement, including and without limitation, non-payment to Points North of amounts due hereunder. If not terminated sooner, this license shall terminate upon the earlier of the termination or expiration of this Agreement.

10.   <u>Proprietary Rights and Use.</u> The Specified Software is owned and operated by Points North and protected by United States copyright, trademark, and other proprietary laws, international conventions, and other relevant and applicable laws. Points North retains all right, title and interest in and to the Specified Software. Customer may not sell, license, distribute, copy, modify, publicly perform or display, transmit, publish, edit, adapt, creative derivative works from, or otherwise make unauthorized use of the Specified Software. Customer will not (a) decompile or reverse engineer the Specified Software or take any other action to discover the source code or underlying ideas or algorithm of any components thereof; (b) copy the Specified Software; (c) post, publish or create derivative works based on the Specified Software; or (d) remove any copyright notice, trade or service marks, brand names and the like from the Specified Software or related documentation. Customer shall only utilize the Specified Software for legal and intended purposes. Customer shall not access the Specified Software with any bot, spider, crawler, or other automated system or process, or bypass exclusion files or other measures which Points North may use to prevent or regulate access to the Specified Software. Points North reserves all rights not expressly granted in this Agreement.

11.   **<u>LIMITATION OF LIABILITY.</u> POINTS NORTH'S LIABILITY TO CUSTOMER FOR ANY ALLEGED BREACH OF THIS AGREEMENT OR OTHERWISE RELATED TO THIS AGREEMENT SHALL BE IN ALL CIRCUMSTANCES LIMITED TO AN AMOUNT WHICH IS NO GREATER THAN THE AMOUNTS WHICH CUSTOMER PAID POINTS NORTH UNDER THIS AGREEMENT. IN NO EVENT WILL POINTS NORTH BE LIABLE TO CUSTOMER FOR ANY LOST PROFITS OR OTHER INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF ANY ALLEGED BREACH OF THE AGREEMENT OR THE USE OR INABILITY TO USE THE SPECIFIED SOFTWARE. CUSTOMER'S SOLE AND EXCLUSIVE REMEDIES RELATED TO THIS AGREEMENT ARE DEFINED IN THIS AGREEMENT, AND CUSTOMER SHALL HAVE NO REMEDY AGAINST ANY OTHER PARTY. CUSTOMER EXPRESSLY AGREES THAT THE USE OF THE SPECIFIED SOFTWARE IS AT CUSTOMER'S OWN RISK AND IS PROVIDED BY POINTS NORTH ON AN "AS IS" BASIS AND WITHOUT WARRANTIES OR REPRESENTATIONS OR ANY KIND.**

12.   **<u>INDEMNIFICATION.</u> CUSTOMER SHALL INDEMNIFY AND DEFEND POINTS NORTH, ITS AFFILIATED COMPANIES, CONTRACTORS, EMPLOYEES, AGENTS, LICENSORS, AND PARTNERS, FOR ANY AND ALL CLAIMS, LOSSES, DAMAGES, LIABILITIES, OR EXPENSES, INCLUDING REASONABLE ATTORNEYS' FEES, ARISING OUT OF CUSTOMER'S USE OR MISUSE OF THE SPECIFIED SOFTWARE, CUSTOMER'S VIOLATION OF THESE TERMS AND CONDITIONS OR THIS AGREEMENT, OR CUSTOMER'S BREACH OF ANY REPRESENTATIONS, WARRANTIES, AND COVENANTS. POINTS NORTH RESERVES THE RIGHT, AT CUSTOMER'S EXPENSE, TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER FOR WHICH CUSTOMER IS REQUIRED TO INDEMNIFY POINTS NORTH, AND CUSTOMER AGREES TO COOPERATE WITH POINTS NORTHS' DEFENSE OF THESE CLAIMS. POINTS NORTH WILL USE REASONABLE EFFORTS TO NOTIFY CUSTOMER OF ANY SUCH CLAIM, ACTION, OR PROCEEDING UPON BECOMING AWARE OF IT.**

13.   Destruction and Access to Data. Customer acknowledges and agrees that Customer's ability to access any Customer data entered into the Specified Software or produced by the Specified Software is subject to the terms of this Agreement and limited to the term of this Agreement. Customer shall have no right to access Customer's data following the expiration or termination of this Agreement, regardless of the reason for such expiration or termination. Points North has no obligation to retain Customer's unprocessed data after generating its reports or other work product through the Specified Software, Customer shall not rely on Points North for the storage of such data, and Points North reserves the right to purge its records and files of such data without further notice to Customer. Points North makes no representation or warranty as to the retention of Customer's data. Points North reserves the right to purge its records and files of Customer's data or reports or other work product generated through the Specified Software following the expiration or termination of this Agreement, without further notice to Customer.

14.   Specified Software Availability.   The Specified Software shall be generally available to the Customer during the term of this Agreement except for planned maintenance and unplanned outages which may occur from time-to-time within industry standards. Outages, whether planned or unplanned, which are within industry standards do not constitute a default hereunder.

15.   Termination for Default. In the event that Customer defaults in the performance of its duties or obligations hereunder, Points North may immediately terminate this Agreement and/or disconnect Customer's access to the Specified Software, in Points North's sole discretion. In the event that Points North defaults in the performance of its duties or obligations hereunder, Customer shall provide written notice to Points North specifying said default and Points North shall have twenty (20) days to substantially cure such default after such written notice, or, with respect to those defaults which cannot reasonably be cured within twenty (20) days, then Points North shall have forty-five (45) days to cure. If Points North fails to cure within the applicable cure period, then the Customer may, as its sole and exclusive remedy for the breach, terminate this Agreement by giving written notice thereof to the Points North which specifies the date of termination.

16.   Termination for Insolvency. If a petition in bankruptcy is filed by or against Customer and s not dismissed within thirty (30) days, or if Customer is adjudicated bankrupt, or Customer makes any assignment for the benefit of creditors, or becomes insolvent, is placed in the hands of a trustee or receiver, fails to satisfy any judgment against it or is unable to pay its debts as they become due, whichever is sooner, then Points North shall have the right to terminate this Agreement without any notice whatsoever. Upon such termination for any reason under this subparagraph, Customer, its receiver, representatives, trustees, agents, administrators, successors and assigns shall have no further rights hereunder, and neither this Agreement nor any right or interest herein shall be deemed an asset in any insolvency, receivership, and/or bankruptcy.

17.   Force Majeure. Points North shall not be responsible for failure to fulfill its obligations under this Agreement due to causes beyond its reasonable control including, but not limited to, failure by Points North's suppliers and the Customer to furnish equipment, software, parts or labor; war, sabotage, insurrection, riots, pandemic, civil disobedience and the like, acts of governments and agencies thereof, labor disputes, accidents, fires or acts of God. In such event, the Points North shall perform its obligations hereunder within a reasonable time after the cause of the failure has been remedied and the Customer shall be obligated to accept such delayed performance.

18.   Dispute Resolution. In the event of a dispute between the Parties, Points North and the Customer agree to work cooperatively and in good faith to resolve the dispute amicably at appropriate, mutually determined management levels. In the event that a resolution at such management levels does not occur, the dispute shall be subject to arbitration to be conducted in Duluth, Minnesota, under the auspices and commercial rules of the American Arbitration Association, and the Parties submit to the jurisdiction of such arbitration. Notwithstanding the foregoing, in the event of nonpayment by Customer of any amounts due under this Agreement, Points North shall not be obligated to negotiate or arbitrate and shall have the discretion to instead immediately pursue such amounts in the state or federal courts of St. Louis County, Minnesota, and Customer hereby submits to the jurisdiction of such courts.

19.   Non-Payment By Customer. Customer agrees to make all payments owed hereunder when due. If any amount owed from Customer to Points North under this Agreement is thirty (30) days or more past due, then Customer shall be liable to Points North for (a) a late fee in the amount of five percent (5%) of the past due amount; (b) eight percent (8%) interest per annum on unpaid amounts; and (c) Points North's costs of collection including, without limitation, reasonable attorneys' fees and expenses. Points North shall also have the right to immediately disconnect Customer's access to the Specified Software.

20.   Governing Law. This Agreement shall be governed by, construed, interpreted and enforced in accordance with the laws of the State of Minnesota applicable to agreements made and performed there, without regard to its conflicts of laws principles.

21.   Notices. Any and all notices, requests, demands or other communications which relate to the other Party's failure to perform or which otherwise affect either Party's rights under this Agreement shall be deemed properly given when furnished by receipted hand-delivery to the other Party, deposited with an express courier, or deposited with the U.S. Postal Service (postage prepaid, certified mail, return receipt requested). Except in situations involving hand-delivery, the sender shall address all notices, requests, demands or other communications to the recipient at the address below, with a courtesy copy sent via email to the recipient's last known email address.

If to the Customer, the communication shall be sent to the authorized company representative and address listed on the Agreement unless otherwise stated.   If to Points North, the communication shall be sent to:

<div align="center">

MRAK LLC dba Points North.
Attention: Finance Department
371 Canal Park Drive, Suite 210
Duluth, MN 55802
accountingsupport@points-north.com

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22.   Binding Effect. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors.

23.   Severability and Effect of Laws. The provisions of this Agreement shall obligate the Parties only to the extent that such provisions are lawful. Any provision of this Agreement which is prohibited by law shall be ineffective (but only to the extent that, and in the locations where, such prohibition shall be applicable). The remainder of the Agreement shall remain in full force and effect; provided, however, that both Parties agree the Agreement can continue to be performed in furtherance of the Agreement's original objectives.

24.   Prior Agreements. This Agreement constitutes the entire Agreement of the Parties with respect to the Specified Software. Any prior or contemporaneous agreements or understandings between the Parties with respect to the Specified Software are hereby terminated and superseded by this Agreement.

25.   Waiver. All waivers of and consents to any terms and conditions of this Agreement (or any rights, powers or remedies under it) by either Party must be in writing in order to be effective. No waiver or consent granted with respect to one matter or incident shall be construed to operate as a waiver or consent with respect to any different or subsequent matter or incident.

26.   Assignments. Neither Party may assign or otherwise transfer this Agreement, or any of its rights or obligations hereunder, without the prior written consent of the other Party, which consent shall not be unreasonably withheld, provided that Points North may assign its right and interest in connection with a sale of the Specified Software, or sale of substantially all of its assets. Any attempted assignment in violation of the foregoing shall be null and void from the beginning and without effect.

27.   Modification. Points North reserves the right to change, modify, add, or remove portions of these Terms and Conditions at any time by posting the amended Terms and Conditions to the relevant marketplace and/or by notifying Customer in writing of same. In the event that such modifications

materially alter Customer's rights or obligations, Points North will use commercially reasonable efforts to notify Customer directly of the change via email. Customer's continued use of the Specified Software constitutes Customer's binding acceptance of such changes. Except as stated elsewhere, such amended Terms and Conditions will automatically be effective upon the earlier of (a) Your use of the Specified Software with actual notice of the new Terms and Conditions, or (b) thirty (30) days after they are initially posted. Customer may not modify these Terms and Conditions or the Agreement without a written agreement executed by Customer and by the Director or President of Points North.

28. <u>Implementation, Configuration, and Deployment.</u> To the extent Customer pays for the Specified Software to be implemented, configured, and/or deployed pursuant to the Invoice, as applicable, the following terms shall apply:

   a. <u>Implementation</u>. The timeframe for implementation of the Specified Software shall be from the date this Agreement is executed until the deployment date agreed to by Customer and Points North. Points North shall provide electronic notification of implementation completion to the Customer.

   b. <u>Configuration and Deployment.</u> Points North will work with Customer to complete the necessary configuration of the Specified Software and will configure the setup components which are not accessible by Customer. Customer shall provide data files to be uploaded into the Specified Software by Customer that meet the specifications of Points North. Points North will work with the Customer and payroll providers utilized by Customer to help facilitate generation of data files. Points North shall notify the Customer when configuration and deployment is complete, at which time any changes will be considered professional services and will be invoiced at the then-current standard hourly rate.

   c. <u>Customer Cooperation Required.</u> The Customer has a duty to cooperate with Points North during implementation, configuration, and deployment of the Specified Software. Failure of Customer to respond to requests for data or other implementation, configuration, or deployment items for a period of 30 calendar days or more will constitute a default under this Agreement

29. <u>Testing and Training.</u> To the extent the Customer pays for the Specified Software to be tested or for the Customer to be trained in its use, the following terms shall apply, to the extent applicable pursuant to the Invoice:

   a. **Testing.** Testing of the Specified Software is completed during deployment and training. Testing does not include IT support regarding permissions, security issues, or other Customer IT infrastructure issues, nor does it include Points North resources in identifying, interpreting, troubleshooting, or translating third party or Customer data errors affecting the provided Specified Software and its logic. Such assistance is strictly considered professional services and is billable at the Points North standard hourly rate.

   b. **System Training.** Training will occur during the implementation period. Customer will make all applicable staff relative to use of the Specified Software available for a training. Points North provides user and "train the trainer" in its training model. Customer may request additional training sessions beyond the initial session, which Points North may provide at Points North's standard hourly rate.

30. <u>Additional Terms For ADP Marketplace Customers.</u> The following additional terms are applicable solely to Customers who purchase the Specified Software through the ADP Marketplace:

   1. This Agreement is between Developer and the Customer.

   2. Developer, and not ADP or its vendors, is solely responsible for providing, maintaining, supporting and updating the Application and its associated services. Developer shall provide product support for the Application. Customer may access support via the following means:

Email: support@points-north.com

3. DEVELOPER HEREBY DISCLAIMS ON BEHALF OF ADP AND APPDIRECT ANY EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS OR WARRANTIES, AND ALL OTHER WARRANTIES, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT AND FITNESS FOR A PARTICULAR PURPOSE.

4. Customer's and End Users' sole and exclusive remedies shall be against Developer. ADP and AppDirect shall have no liability or obligation to Customers or End Users.

5. Customers and End Users will not (i) decompile or reverse engineer the ADP Marketplace or take any other action to discover the source code or underlying ideas or algorithm of any components thereof, (ii) copy the ADP Marketplace, (iii) post, publish or create derivative works based on the ADP Marketplace, or (iv) remove any copyright notice, trade or service marks, brand names and the like from the ADP Marketplace or related documentation.

6. ADP and AppDirect are third party beneficiaries of the above described terms and each are entitled to enforce such terms as if they each were a party to this agreement.

7. Subject to the remainder of this Section 7, Developer shall indemnify, defend and hold harmless Customer and its employees from and against any and all suits, actions, damages, costs, losses, expenses (including reasonable outside attorneys' fees) and other liabilities (each, a "Claim") arising from or in connection with allegations that the Application or any related services violates or infringes any intellectual property right of a third party, invades or infringes any right of privacy, or right of publicity, of any person or entity. Developer shall, at its sole expense, conduct the defense of any such Claim and all negotiations for its settlement or compromise; provided, however, that: (a) no settlement or compromise of such a Claim shall be entered into or agreed to without Customer's prior approval (not to be unreasonably withheld or delayed): and (b) Customer shall have the right to participate, at its own expense, in the defense and/or settlement of any such Claim to the extent necessary to protect its own interests.

This document was last updated on 01/26/2024.