

Time and Labor Management Agreement

This Time and Labor Management Agreement ("Agreement") dated _____ is by and between _____ ("Client") and ADP, Inc. with its principal office at One ADP Boulevard, Roseland, New Jersey 07068 ("ADP") for the procurement of Time and Labor Management services, equipment, computer programs, software (other than pre-packaged third-party software), and documentation ("TLM Products") from ADP in accordance with this Agreement. All references herein to "Client" shall refer to Client and its affiliates that are receiving the TLM Products pursuant hereto. For purposes of this Agreement "affiliate" shall mean with respect to any individual, corporation or partnership or any other entity or organization (a "person"), any person that controls, is controlled by or is under common control with such person in question. For purposes of the preceding definition, "control" as used with respect to any person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such person, whether through ownership of voting securities or by contract or otherwise.

1. Scope of Agreement.

ADP agrees to provide to Client, in accordance with these terms and conditions and any exhibits hereto (collectively, the "Agreement"), the data collection devices listed in the Sales Order, including, but not limited to any data collection devices such as Timeclocks and HandPunches, (the "Equipment") and any software contained therein or application used in connection with the Equipment or accessed by the Equipment through the Internet or Intranet (Equipment and software or application and related services, collectively referred to as the "TLM Products"). Any provisions of this Agreement relating to the Equipment shall not be applicable if Client does not obtain Equipment from ADP.

2. Term.

The initial term of this Agreement shall commence on the date hereof and shall continue on a month-to-month basis until terminated by ADP in accordance with the provisions of Section 13 or by either party on at least thirty days' prior written notice.

3. Use of TLM Products.

A. Client agrees that it will use the TLM Products in accordance with this Agreement and any online or shrink-wrap terms or license, or other accompanying documentation including but not limited to the Client's Sales Order made available to Client by ADP or its licensors ("Additional Terms"). For the hosted Enterprise eTIME product only, Additional license terms are available at www.adp.com/tlmlicenseterms.

B. Client will use the TLM Products only for its own internal and proper business purposes in accordance with this Agreement and will not sell, lease, allow access to or otherwise provide the TLM Products or any portion thereof, to any third party, including without limitation, any competitor of ADP. The TLM Products are hosted in the United States. The TLM Products are intended for use by United States and Canadian based employees and to permit the transmission of data from within or between the United States and Canada. The TLM Products may not be used or accessed from outside the United States or Canada or in any way that violates any applicable international, federal, state or local laws and /or regulations. In order to keep the products current, ADP may from time to time perform maintenance fixes and other upgrades to the TLM Products Client is then receiving. ADP will perform these upgrades on Client's behalf for all hosted products. For non-hosted products, Client will be required to install the upgrade provided by ADP in accordance with the written notice provided to Client.

C. Subject to the terms of this Agreement and the Additional Terms, ADP grants to Client a non-exclusive, non-transferable license to use the TLM Products provided hereunder. Client receives no rights to the TLM Products or any intellectual property of ADP or its licensors, except as expressly stated herein. All intellectual or proprietary rights relating to the TLM Products is reserved. The TLM Products are the licensed and/or owned property, and embody the proprietary trade secret technology, of ADP and/or its licensor(s) and are protected by copyright laws and international copyright treaties, as well as other intellectual property laws which among other things, prohibit the unauthorized use and copying of any TLM Product. The fees paid by Client to ADP for the TLM Products include a license fee that entitles the undersigned to use the TLM Products as set forth herein or any Additional Terms.

D. Equipment purchased and fully paid for by Client is not subject to the restrictions on use contained in paragraphs 3A, 3B and 3C above.

E. ADP will take reasonable precautions to prevent the loss of or alteration to Client data input into the TLM Products, including employing regular back-up procedures, but ADP cannot guarantee against any such loss or alteration. Accordingly, Client will, to the extent it deems necessary, maintain a procedure external to the TLM Products for the reconstruction of lost or altered data (e.g. maintaining printouts of Client data input into the TLM Products).

F. **Client Content.** "Client Content" shall mean (i) all payroll, human resource and similar information provided by Client or its agents or employees, including transactional information, (ii) Client's trademarks, trade names, service marks, logos and designs and (iii) any other information or materials provided by Client, regardless of form (e.g., images, graphics, text, etc.), to be included in the TLM Products, whether included therein by ADP on behalf of Client as part of its setup services or directly by Client or any of its employees or agents. The following provisions shall apply with respect to Client Content:

i. Client shall be solely responsible for updating and maintaining the completeness and accuracy of all Client Content. Client shall indemnify and hold ADP harmless from and against any and all claims and causes of action brought against ADP, including any and all damages, losses, expenses,

attorney's fees, costs and liabilities sustained by ADP, to the extent that it is based upon a claim that any Client Content infringes or violates any patents, copyrights, trade secrets, or other proprietary rights of any third party.

ii. Client shall be responsible for obtaining all required rights and licenses to use and display all Client Content in connection with the TLM Products. Client hereby grants to ADP a non-exclusive, non-transferable license to use, edit, modify, adapt, translate, exhibit, publish, reproduce, copy (including back-up copies) and display the Client Content as reasonably necessary to provide TLM Products or perform the Services covered under this Agreement. ADP may use the Client's and its employees' and participants' information for purposes other than the performance of the Services but only in an aggregated, anonymized form, such that neither Client nor its employees or participants may be identified, and Client will have no ownership interest in such aggregated, anonymized data.

iii. Client and its employees shall not include or provide to ADP for inclusion in TLM Products any Client Content which is obscene, offensive, inappropriate, threatening, malicious, which violates any applicable law or regulation or any contract, privacy or other third party right or which otherwise exposes ADP to civil or criminal liability. ADP reserves the right to exclude or immediately remove from any TLM Product any Client Content which it determines in its sole discretion violates the previous sentence, provided that ADP has no obligation to review or monitor the Client Content.

4. Charges.

A. Specific charges for the TLM Products are provided on the Sales Order or other signed pricing proposal and shall be set at the rates set forth thereon for the first six months after the date this Agreement is accepted by Client (assuming no changes in requirements, specifications, volumes or quantities) (the "Initial Period"). Client shall pay ADP for the products and services added by Client after the date hereof at ADP's then prevailing prices for such services. ADP may increase prices at any time after the Initial Period upon at least 30 days prior written notice to Client if such change is part of a general price change by ADP to its clients for affected items.

B. Client shall pay monthly, as invoiced, for the use of the TLM Products ("Monthly Fee"). Such Monthly Fee shall include maintenance of Equipment if the Equipment is leased, and not purchased, by Client. Client shall also pay an installation and set-up fee for each unit of Equipment installed on Client's premises by ADP. If Client purchases the Equipment, it shall pay annually, as invoiced, for maintenance of the Equipment unless it executes a waiver as specified in Section 7(D).

5. Payment; Taxes.

A. There shall be added to all payments hereunder amounts equal to any applicable taxes levied or based on this Agreement (unless Client provides ADP with appropriate exemption certificates); exclusive of taxes based on ADP's net income.

B. **If Client is obtaining ezLaborManager® or ADP Workforce Now® Essential Time and Attendance, Client shall be billed for those TLM Products on the earlier of (i) the date that Client first begins to use the TLM Products in a production environment OR (ii) ninety (90) days from the Effective Date.** All invoices shall be paid by Client in full within 30 days of the invoice date. If Client fails to pay any amount due under this Agreement, whether by acceleration or otherwise, Client, upon demand, shall pay interest at the rate of 18% per annum (or 1-1/2% per month), but not to exceed the maximum allowed by law, on such delinquent amount from the due date thereof until the date of payment. Client is liable to pay ADP for any and all expenses ADP may incur, including interest and reasonable attorney's fees, in taking action to collect any amounts due ADP hereunder.

6. Installation.

Client shall also provide and install all power, wiring and cabling required for installation of the Equipment. The business day following the day on which (i) ADP, or its designee, determines that the Equipment has been placed in good working order in accordance with ADP's standard installation procedures, or (ii) 5 days after the Equipment is delivered and the Client fails to provide the required installation environment, shall be considered the "Warranty Commencement Date" for purposes of this Agreement.

7. Risk of Loss; Title to Equipment; Maintenance; Etc.

A. No loss, theft or damage after shipment of the Equipment to Client shall relieve Client from any obligations under this Agreement, and Client shall be liable for any such loss, damage or destruction (regardless of cause).

B. Client shall not make any alterations or attach any device not provided by ADP to the Equipment, nor shall Client remove the Equipment from the place of original installation without ADP's prior consent. ADP shall have the right to enter Client's premises to inspect the Equipment during normal business hours. This paragraph B shall not apply to Equipment previously purchased and fully paid for by Client.

C. Title to the Equipment shall remain in ADP. The Equipment is, and at all times shall remain, a separate item of personal property, notwithstanding its attachment to other equipment or real property. Client shall furnish any waivers or consents reasonably requested by ADP to give full effect to the intent of the preceding sentence. This paragraph C shall not apply to Equipment previously purchased and fully paid for by Client.

D. Client understands that ADP, or its designee, pursuant to ADP's Hardware maintenance terms, will furnish maintenance services for the Equipment and conditions as set forth below and that such maintenance takes effect upon expiration of the warranty set forth in Section 10. If the Equipment is leased, the cost of such maintenance service is part of the Monthly Fee. If Client purchases the Equipment, maintenance is optional and may be obtained at an additional cost and a separate annual maintenance fee applies. A Client under the purchase option may terminate its receipt of maintenance services by providing written notice to ADP no less than 30 days prior to the end of the then current annual coverage period. ADP is not required to rebate to Client any maintenance fees relating to a current or prior coverage period. (NOTE: If a Client selects the purchase option but opts not to receive or terminates maintenance services hereunder, any such services provided by ADP at Client's request will be subject to ADP's then current charges for such services which will likely be significantly greater than the annual fee under the maintenance plan. Clients described in the preceding sentence must execute a waiver of maintenance services.) Client shall bear all delivery/shipping costs and all risk of loss during shipment/delivery of Equipment relating to maintenance services. Client shall permit ADP, or its designee, to have safe and complete access to the Equipment during normal business hours. ADP will maintain the Equipment free from defects in material and workmanship as follows:

- (i) Any parts found to be defective (except as specifically excluded below) shall be replaced or repaired, at ADP's or its designee's option, without charge for parts or labor, provided that the Equipment has been properly installed and maintained by Client and provided that such Equipment has been used in accordance with any documentation or Additional Terms provided by ADP or its designee and has not been subject to abuse or tampering.
- (ii) The foregoing repairs and replacements may be made only by ADP or its designee, and will be made only after ADP or its designee is notified of a problem, receives delivery from Client of the Equipment (which delivery shall not violate the provisions of paragraph B above) at issue and determines that it results from defective materials or workmanship. Notwithstanding the foregoing, ADP may deliver a temporary replacement item for Client's use while such determination is being made with respect to the Equipment in question.
- (iii) Repairs and replacements required as a result of any of the following shall not be included in the foregoing maintenance services and shall be charged at ADP's then current rates: a) Damage, defects or malfunctions resulting from misuse, accident, neglect, tampering, unusual physical or electrical stress, or causes other than normal or intended use; b) Failure of the Client to provide and maintain a suitable installation environment; c) Any alterations made to or any devices not provided by ADP attached to the Equipment; and d) Malfunctions resulting from use of badges or supplies not approved by ADP.

E. Certain terms in this Agreement apply only if Client leases Equipment and certain terms apply only if Client purchases Equipment. If Client initially leases Equipment and subsequently purchases and pays for such Equipment, the terms herein applicable to purchased Equipment shall thereafter apply to the Equipment purchased by Client in lieu of the terms herein applicable to the leased Equipment.

8. Return on Termination.

Immediately upon termination or cancellation of this Agreement, for any reason whatsoever, Client shall, at its expense, return the TLM Products to ADP in accordance with ADP's instructions. The Equipment shall be returned to ADP in as good condition as received by Client, normal wear and tear excepted. In the event the Equipment is not returned, Client agrees to purchase the Equipment at prevailing manufacturer's suggested retail price. This Section 8 shall not apply to Equipment previously purchased and fully paid for by Client.

9. Online Access/Hosting

A. Client, and its authorized employees, may access TLM Products through the internet or an intranet at a website (the "Site") hosted by ADP on behalf of Client as provided herein in order to input information relating to its employees' time and attendance and related information. Client acknowledges that ADP does not review the accuracy or completeness of any submissions to the Site made by Client or Client's employees. Client agrees that it is its sole responsibility to submit information relating to the use of the TLM Products and any associated ADP services and to verify the accuracy and completeness of any information submitted by Client or its employees. Client acknowledges that by submitting communications through the Site, no confidential, fiduciary, and contractually implied or other relationship is created between ADP and

Client other than pursuant to this Agreement. In addition, Client acknowledges that security of transmissions over the Internet cannot be guaranteed. In order to access and use the Site, Client and its authorized users will be required to provide a current username and password. Client will instruct its users to take all actions necessary to maintain the privacy of their username and password, including, without limitation, safeguarding their username and password in a private and secure place. Client will instruct its authorized users that in the event that they have reason to believe that an unauthorized third party has access to Client's account, they should promptly notify ADP. ADP is not responsible for (i) Client's access to the Internet, (ii) interception or interruptions of communications through the Internet, or (iii) changes or losses of data through the Internet. In order to protect Client's data, ADP may suspend Client's, or any of its authorized users' use of the TLM Products via the Internet immediately, without notice, pending an investigation, if any breach of security is suspected.

B. Web Hosting Services. ADP shall provide the hosting environment including any hardware and software required to host the Site (the "System"). Client acknowledges that the System may be used to provide similar services to other clients and that Client acquires no rights therein. The hours of availability for any hosted products can be found at www.productdescription.majoraccounts.adp.com (which may be modified from time to time).

10. Warranty.

A. ADP represents and warrants to Client that the Equipment shall be free from defects in material and workmanship at the Warranty Commencement Date (as defined in Section 6) thereof and for 90 days thereafter.

B. EXCEPT AS SPECIFICALLY PROVIDED, THE EQUIPMENT IS PROVIDED "AS IS" AND NEITHER ADP NOR ITS LICENSORS MAKE ANY WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY IMPLIED WARRANTIES OR MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

11. Confidentiality

All Confidential Information disclosed hereunder will remain the exclusive and confidential property of the disclosing party. The receiving party will not disclose the Confidential Information of the disclosing party and will use at least the same degree of care, discretion and diligence in protecting the Confidential Information of the disclosing party as it uses with respect to its own confidential information. The receiving party will limit access to Confidential Information to its employees and authorized representatives with a need to know and will instruct them to keep such information confidential.

Notwithstanding the foregoing, the receiving party may disclose Confidential Information of the disclosing party (a) to the extent necessary to provide the services covered by this Agreement, provided that any disclosure to a third party is made in confidence if such disclosure was not requested by the disclosing party, (b) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (c) as appropriate to respond to any summons or subpoena or in connection with any litigation, (d) relating to a specific employee, to the extent such employee has consented to its release, (e) to any affiliate of the disclosing party covered by this Agreement and (f) to the extent necessary to enforce its rights under this Agreement. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of the disclosing party that is in its possession. Notwithstanding the foregoing, ADP may retain information for regulatory purposes or in back-up files, provided that ADP's confidentiality obligations hereunder continue to apply.

For purposes of this Section, "Confidential Information" shall mean: all information of a confidential or proprietary nature provided by the disclosing party to the receiving party for use in connection with the TLM Products but does not include (i) information that is already known by 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. Confidential Information of ADP also includes all ADP trade secrets, processes, proprietary data, information or documentation related thereto, or any pricing or product information furnished to Client by ADP. Confidential Information of Client also includes all personally identifiable payroll and employee-level data.

12. Limitation of Liability.

A. ADP's sole obligation in case of any breach of its representations and warranties set forth in Section 10(A) shall be to correct, repair or replace, at ADP's option, any defective items. ADP's aggregate liability under this Agreement during any calendar year for damages (monetary or otherwise) under any circumstances for claims of any type or character made by Client or any third party arising from or related to TLM Products will be limited to the lesser of (i) the amount of actual damages incurred by Client or (ii) the average monthly charges for three (3) months for the affected TLM Product during such calendar year. ADP will issue Client a credit(s) equal to the applicable amount and any such credit(s) will be applied against subsequent ADP service fees. The foregoing limitation shall not apply to actual damages incurred by Client as a direct result of the criminal or fraudulent acts or willful misconduct of ADP or any of its employees. The foregoing limitations shall be the extent of ADP's liability under this Agreement; notwithstanding the form of any claims made hereunder (e.g., contract, negligence or otherwise), and shall constitute Client's sole remedies.

B. ADP shall not be liable or deemed to be in default for any delay or failure to perform under this Agreement or for interruption of service resulting, directly or indirectly, from any cause beyond ADP's reasonable control.

C. IN NO EVENT WILL ADP OR CLIENT BE RESPONSIBLE FOR SPECIAL, INCIDENTAL, INDIRECT, PUNITIVE, CONSEQUENTIAL OR OTHER SIMILAR DAMAGES WHICH THE OTHER MAY INCUR OR EXPERIENCE ON ACCOUNT OF ENTERING INTO OR RELYING ON THIS AGREEMENT INCLUDING, BUT NOT LIMITED TO DAMAGES FOR BUSINESS EXPENSE, LOST DATA, MACHINE DOWNTIME OR DAMAGE TO CLIENT OR CLIENT'S CUSTOMERS CAUSED BY ANY DEFICIENCY, DEFECT, ERROR OR MALFUNCTION IN THE EQUIPMENT, EVEN IF ADP OR CLIENT HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

13. Default by Client; Remedies Upon Default.

If Client (i) defaults in the payment of any sum of money hereunder, (ii) fails to install, remove, or disconnects the Equipment from Client's existing computer system, (iii) defaults in the performance of any other of its obligations under this Agreement, or (iv) commits an act of bankruptcy or becomes the subject of any proceeding under the Bankruptcy Act or becomes insolvent, or if any substantial part of Client's property becomes subject to any levy, seizure, assignment, application or sale for or by any creditor or governmental agency, then, in any such event, ADP, at its option may (a) terminate or suspend any Client's access to the TLM Products, (b) terminate this Agreement, (c) whether or not this Agreement is terminated, take immediate possession of the Equipment, wherever situated, and for such purpose enter upon any premises without liability for so doing, (d) sell, dispose of, hold, use or lease the Equipment, as ADP in its sole discretion may decide, and (e) declare any and all amounts due under this Agreement to be immediately due and payable without further demand and may invoke any and all other remedies permitted by applicable law. Client agrees to reimburse ADP for any and all expenses ADP may incur, including interest, costs and reasonable attorneys' fees, in taking any of the foregoing actions. The remedies set forth in clauses (c) and (d) above shall not apply to any Equipment purchased and fully paid for by Client. The remedies contained in this Section 13 are cumulative and in addition to all other rights and remedies available to ADP under this Agreement, by operation of law or otherwise.

14. Government Regulations and Manufacturer Requirements.

Client will be responsible (i) for compliance with all laws, governmental regulations and manufacturers' requirements affecting its business, and (ii) for any use Client may make of the TLM Products to assist Client in complying with such laws, governmental regulations, and manufacturers' requirements and ADP shall not have any responsibility relating thereto (including, without limitation, advising Client of Client's responsibilities in complying with any laws, governmental regulations or manufacturers' requirements affecting Client's business).

15. General.

A. Client acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in the Agreement.

ADP, Inc.

ADP Sales Associate _____

Name _____
(type or print)

Title _____ **Date** _____

This Agreement contains the entire agreement of the parties as to the TLM Products and such Agreement supersedes all existing agreement and all other oral, written or other communications between them concerning the TLM Products. Client hereby acknowledges that any and all representations made by ADP and its employees, either orally or in writing, which are not specifically included in the terms and conditions of this Agreement or in a written addendum signed by an authorized officer of ADP are not material to this Agreement and are not binding upon ADP. This Agreement shall not be modified in any way except in a writing signed by both parties.

B. Neither party may assign its rights, duties or obligations that arise under this Agreement without the prior written consent of the other party. This Agreement shall be binding upon and shall inure to the benefit of ADP and Client and their respective successors and permitted assigns.

C. If any provision of this Agreement shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remaining provisions shall not be in any way be affected or impaired thereby.

D. All notices shall be in writing and shall be delivered or sent by recognized courier or registered or certified mail, return receipt requested, to the addresses indicated on the face hereof with an additional copy to Automatic Data Processing, Inc., One ADP Boulevard, Roseland, N.J. 07068. Attention: General Counsel, or to such other addresses as the parties shall specify by notice given pursuant hereto.

E. The headings in this Agreement are intended for convenience of reference only and shall not affect its interpretation.

F. The individuals executing this Agreement on behalf of ADP and Client each hereby represent that they are duly authorized by all necessary action to execute this Agreement on behalf of their respective principals. This Agreement shall be governed by the laws of the State of New Jersey.

G. The terms of this Agreement are subject to any Additional Terms. In the event of a conflict between the terms of this Agreement and such Additional Terms, the documentation shall control in the following order, (1) this Agreement, and (2) other Additional Terms.

H. The failure of either party at any time to enforce any right or remedy available to it under this Agreement or otherwise with respect to any breach or failure by the other party shall not be construed to be a waiver of such right or remedy with respect to any other breach or failure by the other party.

I. The parties hereto expressly understand and agree that each party is an independent contractor in the performance of each and every part of this Agreement, is solely responsible for all of its employees and agents and its labor costs and expenses arising in connection therewith.

J. With respect to the TLM Products covered hereby, ADP suppliers, vendors and referral partners may enforce the same disclaimers and limitations against Client as ADP may under Sections 10(B) and 12 of this Agreement. Other than ADP suppliers, vendors and referral partners, who are intended third party beneficiaries with respect to Sections 10(B) and 12, nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. ADP has no obligation to any third party (including, without limitation, client's employees and/or any taxing authority) by virtue of this Agreement.

CLIENT

Client Signature _____

Name _____
(type or print)

Title _____ **Date** _____