



Service Agreement

This Service Agreement (“Agreement”) is between you (“Client”) and Primepoint LLC, a New Jersey limited liability company (the “Company,” “we,” “us,” or “our”). This Agreement contains the terms and conditions that govern your use of our payroll and HR platform (the “Platform”), our websites (www.primepoint.com) and all related subdomains (the “Website”), and the products and services we provide to you (the “Services” and collectively with the Platform and the Website, our “Suite of Services”).

Please read these Terms of Service carefully before you start using any of our Suite of Services. By accepting electronically (clicking “I Accept”), installing, accessing or using Services, you agree to these terms. If you do not agree to this Agreement, then you may not use the Service. This Agreement contains the terms and conditions that govern the use of, and the terms and conditions upon which Primepoint, LLC (“Primepoint”), will provide to you, certain payroll processing, payroll tax service and other related payroll and HR services (collectively referred to as “Service”). The Service may be accessed through Primepoint’s websites (“Service Sites”).





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1. AGREEMENT TERM

- a. Subject to your compliance with these Terms of Service, this Agreement shall continue in full force and effect for one (1) year from the date of the first payroll processed. Thereafter, this Agreement will automatically renew each subsequent year unless one of us gives written notice to the other, at least thirty (30) days prior to the end of the current term, of election not to renew (the initial term plus any renewal term(s) are referred to as the "Term").

2. DATA PROVISION & VERIFICATION

- a. Primepoint will notify Client via electronic communication or by other means when all data necessary to begin the Service has been received and the enrollment process has been completed. Client shall then, prior to submitting its first payroll, review for completeness and accuracy the Payroll Information (as hereinafter defined). For purposes of this Agreement, "Payroll Information" shall mean all information posted for Client's review on the specified portion of the Service Site including, but not limited to, that which is used to calculate and pay employee payroll, track Client defined employee benefits, pay payroll taxes to applicable taxing agencies in compliance with the laws and regulations of such taxing agencies, produce payroll tax returns and W-2 statements and print checks on Client's account (if applicable). Client must correct incorrect or missing Payroll Information, either by itself or by notifying Primepoint in the manner specified in the electronic communication and within the time period specified therein. Client shall be fully responsible for the accuracy of all information supplied by it and/or approved by it, including, without limitation any IRS or other penalties and/or interest arising therefrom.
- b. Client agrees that by submitting each payroll (including the first payroll): (i) Client has approved all Payroll Information, (ii) Client has waived and released any claim against Primepoint arising out of any errors in the Payroll Information which Client has not itself corrected or has not requested Primepoint to correct, and (iii) any subsequent request for corrections will be considered special handling for which additional fees may be charged. Final audit responsibility rests with Client. Primepoint will not have any responsibility for verifying the accuracy of any data Client provides or directly inputs via the Service Site or any other method.
- c. Primepoint may permit, but shall not be obligated to permit Client's Payroll Approver, a designated Client representative and/or designated Client Administrator to communicate with Primepoint by telephone, electronic mail or other means about the Service. Primepoint has implemented security procedures for the purpose of verifying the identity of Client's Payroll Approver, Client





representative and/or designated Client Administrator (as applicable), and other security protocols. Client acknowledges that the security procedures instituted by Primepoint are commercially reasonable methods of providing security that any Payroll Information, Entries or other instructions communicated to Primepoint will be deemed to have been fully authorized by Client and Client shall be fully responsible for the accuracy of such information including, without limitation, any IRS or other penalties and/or interest arising therefrom; and that, notwithstanding such deemed authorization, Primepoint may in its sole discretion refuse to accept or act upon any such instructions

3. TAX SERVICES

- a. In order for the Service to be instituted, Client must submit accurate wage and payroll information to Primepoint during the enrollment process. The wage and payroll information must be reconciled with Client's payroll tax returns for the current calendar year and Client's wage and payroll tax information for the current quarter. Thereafter, Client shall timely and accurately (a) update all wage and payroll information as necessary to reflect changes and (b) respond with additional information requested from time to time by Primepoint. It is Client's responsibility to submit complete and accurate information to Primepoint in connection with the Service. Any penalty or interest incurred due to inaccurate information provided by Client will be the sole responsibility of Client. Client further agrees to not hold Primepoint accountable for such liability. Primepoint, at its option, may decide not to file Client's payroll tax returns, pay Client's payroll taxes or otherwise process Client's payroll if there are any unresolved problems with any information requested by Primepoint or submitted by Client. Primepoint's sole liability and Client's sole remedy for Primepoint's negligent failure to perform the payroll tax portion of the Service shall be (i) Primepoint will remit the payroll taxes received from Client to the appropriate taxing authority and (ii) Primepoint will reimburse Client or pay directly to the appropriate taxing authority any penalties resulting from such negligent error or omission by Primepoint.

4. ACCOUNT DEBITING

- a. On or prior to Client's payroll direct deposit and/or payroll tax deposit date or other applicable settlement or due date, Client authorizes Primepoint to initiate debit entries to Client's account ("Client's Account") at the depository financial institution ("Depository"), and to debit Client's Account in such amounts as are necessary to (i) fund Client's direct deposits, (ii) pay any fees or charges associated with the Service, including, without limitation, finance charges, (iii) pay Client's payroll





taxes, (iv) pay any debit, correcting or reversing entry initiated pursuant to this Agreement which is later returned to Primepoint, and (v) pay any other amount that is owing under this Agreement or in connection with the Service. This authorization is to remain in full force and effect until Primepoint has received written notice from Client of its termination in such time and such manner as to afford Primepoint and Depository a reasonable opportunity to act upon it. Client will maintain in Client's Account as of the applicable settlement date and time immediately available funds sufficient to cover all credit entries Client originates through Primepoint. Client's obligation to pay Primepoint for each credit entry matures at the time Primepoint transmits or otherwise delivers the credit entry to the Automated Clearing House ("ACH") or gateway operator and is unaffected by termination of the Service. Primepoint may set off against any amount it or an Affiliate owes to Client in order to obtain payment of Client's obligation as set forth in this Agreement. Client acknowledges that the origination of ACH transactions to its account must comply with the provisions of U.S. law. Amounts withdrawn for payroll taxes will be held by Primepoint at Primepoint's financial institution (the "Payroll Tax Account") until such time as those payments are due to the appropriate taxing agencies, and no interest will be paid to the Client on these amounts.

- b. If Client does not have sufficient funds in Client's Account to pay disbursements, fees, payroll taxes or any other amounts due under this Agreement at the time required, or if Client refuses to pay, Primepoint may (i) debit the Payroll Tax Account or any account at Primepoint's financial institution or any Affiliate owned in whole or in part by Client to pay disbursements, fees or charges, payroll taxes, or other amounts due, (ii) refuse to pay any unremitted payroll taxes, in which case the payroll tax liability will become the sole responsibility of Client, (iii) refuse to perform further services, and/or (iv) immediately terminate this Agreement. Primepoint may recover from Client any costs including, without limitation, reasonable attorneys' fees and expert witnesses' fees Primepoint may incur in connection with any termination of this Agreement or collection of amounts due hereunder.

5. ACH ORIGINATION

- a. The Service will enable Client, by using the Service Site, to enter the Payroll Information and to approve and submit it to Primepoint for creation, formatting and transmission of Entries in accordance with the Rules. Primepoint may reject any Payroll Information or Entry which does not comply with the requirements in this Agreement or the Rules or with respect to which Client's Account does not





contain sufficient available funds to cover the payroll. If any Payroll Information or Entry is rejected, Primepoint will make a reasonable effort to notify Client promptly so that Client may correct such Payroll Information or request that the Primepoint correct the Entry and resubmit it. A notice of rejection will be effective when given. Primepoint will have no liability to Client by reason of the rejection of any Payroll Information or Entry, the fact that notice is not given at an earlier time than that provided for in this Agreement or for any loss resulting from Primepoint's failure to provide notice.

- b. Client will have no right to cancel or amend any Payroll Information received by Primepoint after it has been approved by Client's Payroll Approver and submitted to Primepoint. However, if Client's request complies with the security procedure, Primepoint may use reasonable efforts to act on it prior to transmitting the Entries to the ACH provider, but will have no liability if the cancellation or amendment is not affected. Client will reimburse Primepoint for any expenses, losses or damages Primepoint may incur in effecting or attempting to effect Client's request.
- c. Except for Entries created from Payroll Information that have been reapproved and resubmitted by Client in accordance with the requirements of this Agreement, Primepoint will have no obligation to retransmit a returned Entry to the ACH or gateway operator if Primepoint complied with the terms of this Agreement with respect to the original Entry.
- d. Primepoint will process the Payroll Information and Entries in accordance with its processing schedule, provided (i) the Payroll Information is approved by Client and received by Primepoint no later than Client's applicable cut-off time on a business day and (ii) the ACH is open for business on that business day. If Primepoint receives approved Payroll Information after Client's cut-off time, Primepoint will not be responsible for failure to process the Payroll Information on that day. If any of the requirements of clause (i) or (ii) of this Subsection are not met, Primepoint will use reasonable efforts to process the Payroll Information and transmit the Entries to the ACH with the next regularly scheduled file created by Primepoint which is on a business day on which the ACH is open for business.
- e. At Client's request, Primepoint will make a reasonable effort to reverse an Entry, but will have no responsibility for the failure of any other person or entity to honor Client's request. Client agrees to reimburse Primepoint for any expenses incurred in attempting to honor such request.
- f. Client acknowledges that it is the originator of each Entry and that under the Rules, Primepoint makes to Client's Depository bank certain warranties with respect to each Entry. Client agrees to reimburse Primepoint for any loss Primepoint incurs, including its reasonable attorneys' fees and legal expenses,





as the result of a breach of a warranty made by Primepoint unless the breach resulted solely from Primepoint's own gross negligence or intentional misconduct.

- g. Client acknowledges that under the Rules, Primepoint indemnifies certain persons. Client agrees to reimburse Primepoint any loss Primepoint incurs, including its reasonable attorneys' fees and legal expenses, as the result of the enforcement of an indemnity, unless enforcement resulted solely from Primepoint's own gross negligence or intentional misconduct.

6. ACH / NACHA COMPLIANCE

- a. Client expressly authorizes Primepoint to originate ACH entries on Client's behalf to the Receiver's (government agencies, service provider, employees, etc.) account.
- b. Origination, receipt, return, adjustment, correction, cancellation, amendment and transmission of Entries must be in accordance with the NACHA Operating Rules & Guidelines in which Primepoint is a participant and, with respect to credit entries which constitute Payment Orders, Article 4A of the Uniform Commercial Code as adopted in the state whose law governs this Agreement, as both are varied by this Agreement, and as both are amended from time to time. Client agrees that it will not submit Payroll Information that will result in Entries that would violate the laws of the United States or any other applicable laws or regulations. Client acknowledges that it has had an opportunity to review and agrees to comply with and be bound by the Rules. Client will be responsible for promptly obtaining all future rule amendments.
- c. Client expressly acknowledges that Primepoint does not intentionally or knowingly engage in or support International ACH Transactions ("IATs"), as defined in the NACHA Operating Rules & Guidelines. Client represents and warrants that (i) the direct funding for the Entries originated by Primepoint on behalf of Client does not come from or involve a financial agency office that is located outside the territorial jurisdiction of the United States; (ii) Client will not instruct Primepoint to create, originate or transmit Entries that are IATs or Entries using a Standard Entry Class Code (as defined in the NACHA Rules) other than IAT if such Entries are required to be IATs under the NACHA Rules; and (iii) Client will not engage in any act or omission that causes or results in Primepoint creating, originating or transmitting an IAT or a payment that should have been categorized as an IAT pursuant to the NACHA Rules.
- d. Client expressly acknowledges that Primepoint retains the right to audit Client's compliance with the NACHA Rules & Guidelines. Primepoint may, in its sole discretion, temporarily or permanently suspend providing the Service to Client,





without liability, if Primepoint has reason to believe that Client has breached any of foregoing representations and warranties in this agreement. Client shall indemnify Primepoint against and hold Primepoint harmless from any losses incurred by Primepoint in connection with Client's breach of the foregoing representations and warranties in this paragraph.

7. SERVICE FEES & PAYMENT TERMS

- a. The fee structure for all Services offered by Primepoint to Client are detailed in the Service Proposal provided to Client. Payment terms are net 30 days if not specified in the proposal.

8. SERVICE CHANGES

- a. Primepoint reserves the right to change the terms, conditions, and fees for the Service at any time. Primepoint will endeavor to, but shall not be obligated to, provide thirty (30) days prior notice of any material change, including fees. Notice may be provided in writing, electronically or via the Website. If Client does not wish to be bound by such change, it may discontinue using and terminate the Service before the change becomes effective. If Client continues to use the Service after the change becomes effective, it will be bound by the change. Client has the responsibility to assure that Client's address, including any electronic address(es), and account information in Primepoint's records, is accurate. The timing of an advance notice of change may be shortened when permitted or required by law.

9. SECURITY

- a. Client will designate and authorize one or more individual users of the Service with authority to act on behalf of and to bind the Client (designated as "Master Administrator"), which authorized individuals will access the Service by entering a confidential user ID and password created by following the instructions provided on the a specified portion of the Service Site and which will entitle them, depending on their designation (whether as Client's Payroll Approver, Principal or Administrator), to have authority to review, modify and/or approve on behalf of Client. Client's Payroll Approver will approve and submit the Payroll Information thereby authorizing Primepoint to create and transmit ACH credit or debit entries ("Entries"; each, an "Entry") necessary to process Client's payroll and payroll tax transactions, by entering his or her confidential user ID and password which he or



she has created by following the instructions provided on the specified portion of the Service Site.

- b. Client acknowledges that Primepoint has implemented security procedures for the purpose of verifying the authenticity of an instruction approving, releasing, cancelling or amending the Payroll Information used to create Entries to be originated by Primepoint for the benefit of Client, and not for the purpose of detecting errors in Payment Orders. Client has reviewed various security procedures and has determined that the security procedures designated above constitute a commercially reasonable method of providing security against unauthorized Payment Orders and best meets Client's requirements, given the size, type and frequency of the Payment Orders it will issue to Primepoint.
- c. Client will, and will cause its employees to, take reasonable steps to maintain the confidentiality of the security procedure and the user IDs and passwords and related instructions provided by Primepoint. If Client believes or suspects that any such user IDs and passwords or related instructions have been known or accessed by unauthorized persons, Client will immediately notify Primepoint in a manner affording Primepoint a reasonable opportunity to act on the information, and Client acknowledges that failure to immediately notify Primepoint could result in loss of funds and unauthorized access to confidential information concerning Client and its employees. Primepoint reserves the right to prevent access to the Service should Primepoint have reason to believe the confidentiality of the security procedure or the confidentiality of the user IDs and passwords have been compromised.
- d. Client will be bound by any Payment Order received and verified by Primepoint in compliance with the designated security procedure, and Client shall indemnify Primepoint against and hold Primepoint harmless from any loss suffered or liability incurred by, or arising from, the execution of a Payment Order in good faith and in compliance with such security procedures.
- e. If a Payment Order describes the receiver inconsistently by name and account number (i) payment may be made on the basis of the account number even if it identifies a person different from the named receiver or (ii) Primepoint may in its sole discretion refuse to accept or may return the Payment Order. If a Payment Order describes a participating financial institution inconsistently by name and identification number, the identification number may be relied upon as the proper identification of the financial institution. If a Payment Order identifies a non-existent or unidentifiable person or account as the receiver or the receiver's account, Primepoint may in its sole discretion refuse to accept or may return the Payment Order.



- f. Client will promptly notify Primepoint of the identity of each person authorized to receive information regarding the security procedure (each singly or in the aggregate, an “Authorized Person”), including but not limited to Client’s Payroll Approver, and of any change in any other Authorized Person (Principal or Administrator). Primepoint will have a reasonable time after receipt of a notice to act on it.

10. LIMITED SOFTWARE LICENSE

- a. Primepoint hereby grants Client a limited, nonexclusive, royalty free license to access and utilize Primepoint’s software (the “Software”) solely for the purpose of facilitating Primepoint’s collection of the wage and payroll information and other information Primepoint needs to furnish Services to Client. Client shall access the Software solely through Primepoint’s Websites. Primepoint will not transfer legal title or physical possession of any Software to Client. Client shall not be entitled to download any Software onto Client’s servers, to duplicate or make copies of any Software, or to use the Software for any purpose other than as described in this paragraph. Client also may not license, sublicense, or otherwise transfer any rights in the Software to another person or entity without the prior written permission and continued control of Primepoint. The parties acknowledge that the Software is of no intrinsic value to Client, and no portion of any of the fees related to the Service or charges paid by Client to Primepoint hereunder shall be treated as a royalty for the limited license that Primepoint is granting to Client hereunder.

11. DISPUTE RESOLUTION

- a. Client and Primepoint hereby knowingly, voluntarily, intentionally and irrevocably waive the right to a trial by jury in respect to any litigation based hereon or relating to the service or any other unresolvable dispute or controversy between the parties. Further, client and Primepoint hereby agree that any litigation will proceed on an individual basis and will not be part of any class action.
- b. Consent to Jurisdiction - Client and Primepoint each irrevocably submits (for itself and in respect of its property) to the exclusive jurisdiction of any state or federal court sitting in Burlington County, New Jersey, in any action or proceeding arising out of, or relating to, this Agreement and acknowledges and agrees that all claims in respect of the action or proceeding may be heard and determined in any such court. Client also agrees not to bring any action or proceeding arising out of, or





relating to, this Agreement in any other court. Client waives any defense of inconvenient forum to the maintenance of any action or proceeding so brought.

12. SERVICE TERMINATION

- a. Subject to Client's compliance with the terms of this Agreement and satisfactory completion of the enrollment process, Primepoint will commence provision of the Service to the Client. Primepoint may, at its discretion, decline to offer the Service to Client in the event that the enrollment process is not satisfactorily completed, Primepoint is unable to verify satisfactory credit of the Client and/or its principals and/or for any other reason in the sole discretion of Primepoint. The Service will continue until such time as Client or Primepoint gives thirty (30) days' prior written notice, unless termination is for cause. Primepoint may immediately terminate this Agreement upon notice to Client if Client is in violation of a material provision of the Contract Documents, including but not limited to, the payment when due of any fees, charges, or payroll taxes, or if Client chooses not to accept a change in any term or condition of this Agreement or Client misrepresents any data or information required by Primepoint in connection with the Service or at any other time. Primepoint may immediately terminate this Agreement without notice to Client if Client files, or has filed against it, a petition under the U.S. Bankruptcy Code or a similar state or federal law. The termination of the Service or this Agreement will not affect Client's or Primepoint's rights with respect to transactions which occurred before termination. Upon termination, any outstanding funds that have been previously collected, and will not be paid by Primepoint, LLC, will be returned to Client less any outstanding fees.

13. GENERAL TERMS AND CONDITIONS

- a. Primepoint, its employees and agents will hold in strict confidence all data furnished by Client or produced by Primepoint under this Agreement; provided, however, that such parties will not be held liable if such data is released through other sources, or if Primepoint, its employees and agents release the data because of a reasonable belief that Client has consented to such disclosure.
- b. To assure that Client's inquiries are handled promptly, courteously and accurately, Primepoint may monitor and/or record telephone conversations and electronic communications between Client and Primepoint without additional prior notification to Client or Client's employees, and Client hereby consents to such monitoring and recording on behalf of itself and its employees, and will so advise Client's employees who communicate with Primepoint by telephone or electronic means.





- c. Client consents to and authorizes Primepoint at any time to obtain background and/or credit reports on Client for purposes of verifying identity and/or evaluating the creditworthiness of Client in connection with the Service and this Agreement.
- d. In performing the Service, Client agrees that Primepoint is not acting in a fiduciary capacity for Client or its benefit. In addition, neither use of the Service nor anything contained in this Agreement relieves Client of Client's obligations under federal or state laws or regulations to retain records relating to the data contained in Primepoint's tape or disk files.
- e. Client agrees to indemnify, defend and hold Primepoint and its agents, contractors, services and affiliates, including its and their respective directors, officers, employees, agents and contractors (each, an "Indemnified Party"), harmless against all liabilities, claims, demands, damages, losses, fines, judgments, disputes, costs, charges and expenses made by Client or others resulting from, arising out of or related to (i) Primepoint's or any other Indemnified Party's provision of the Service, (ii) reliance on information and data furnished by Client or (iii) activities that Primepoint or any other Indemnified Party undertakes at Client's request, or at the request of anyone Primepoint or any other Indemnified Party believes in good faith to be an authorized agent of Client including, without limitation, costs, reasonable attorneys' fees and expert witnesses' fees incurred in connection with such claims. Primepoint will have the right to disburse or withhold any sum which Primepoint is authorized to disburse or withhold. Client agrees that neither Primepoint nor any other Indemnified Party will be liable for any loss or damage caused by Primepoint's or any other Indemnified Party's delay in furnishing services, products and/or equipment. Client acknowledges that neither Primepoint nor any other indemnified party makes any warranties, express or implied, with respect to the Service, the software materials, the online services, and any equipment or software used in connection with the service, including without limitation the warranties of merchantability and of fitness for a particular purpose, title and non-infringement.
- f. Governing Law. This Agreement shall be interpreted and construed in accordance with the laws of the State of New Jersey, without regard to the conflicts of laws principles thereof.
- g. Assignment. Client shall not assign this Agreement without the prior written consent of Primepoint. The provisions of this Agreement shall inure to the benefit of, and be binding upon, the parties and their respective successors and permitted assigns. Primepoint may assign this Agreement at any time in its sole discretion.
- h. Electronic Transmission. The Agreement and any amendments hereto, by whatever means accepted, shall be treated in all manner and respects as an original contract and shall be considered to have the same binding legal effect as





if it were an original signed version thereof delivered in person. At the request of Primepoint, Client shall execute or re-execute original forms of this Agreement and shall deliver them to Primepoint. Neither party hereto shall argue that a contract was not formed hereunder based on either (i) the use of electronic means to deliver a signature or to indicate acceptance of this Agreement or (ii) the fact that any signature or acceptance of this Agreement was transmitted or communicated through electronic means; and each party forever waives any related defense.

