

# General Terms and Conditions

This document is a translation of the Dutch version of the ADP General Terms & Conditions. In case of any conflicts between the Dutch version and this English version, the Dutch version is leading.

## General

### Section 1 DEFINITIONS.

Capitalized words in this Agreement that are not otherwise defined have the meanings shown below, for both singular and plural forms.

**1.1 "ADP Platforms"** means the Application Platforms and related Documentation in printed or electronic format delivered or made available to Client by ADP in connection with the Services, if any.

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

**1.3 "Agreement"** means the agreement composed of (i) its attached cover page, (ii) these General Terms and Conditions, (iii) any exhibits, annexes, appendices and schedules attached to these General Terms and Conditions.

**1.4 "Application Platforms"** means the computer software programs or custom developments in object code form, databases other than those made of Client's personal data and websites that are owned by or licensed to ADP and to be delivered to Client by ADP or to which Client shall be afforded access by ADP as part of the Services but excludes pre-packaged third party software.

**1.5 "Client Action"** means (i) any change, or enhancement in the ADP Platforms made by Client or any third party for the Client, (ii) Client's use of the ADP Platforms except as permitted under the Agreement or in combination with any hardware, software or other materials not expressly authorized by ADP, (iii) Client's use of other than the most current release of the ADP Platforms that results in a claim or action for infringement that could have been avoided by use of the current release, or (iv) the provision by Client to ADP of materials, designs, know-how, software or other intellectual property with instructions to ADP to use the same in connection with the Services.

**1.6 "Client File"** means an element of a client information system laying down the detailed agreements and procedures concerning the day-to-day execution of this Agreement. Other elements concern the structure and specifications of the Services required for adequate management and support (operational and/or functional) by ADP.

**1.7 "Client Group"** means Client and its Affiliates.

**1.8 "Confidential Information"** means all information that is confidential or proprietary provided by the disclosing party to the receiving party for use in connection with the Services, but does not include (i) information the receiving party already knows without breaching any confidential obligation (ii) information that becomes generally available to the public except as a result of disclosure by the receiving party in violation of the 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 also includes all trade secrets, processes, proprietary data including personal data, information or Documentation or any pricing or product

information the disclosing party provides to the receiving party as well as this Agreement.

**1.9 "Defect"** means a substantial deviation from the specification of the Service (including the making available of an ADP Platform) that is attributable to ADP.

**1.10 "Documentation"** means information about the Service and its execution, made available through help text of computer software or otherwise.

**1.11 "Managed Rules"** means all Dutch legislation and all regulations enacted by the relevant executive organisations (e.g. tax authorities and the social security organisation) as well as rules of relevant market players such as pension funds, employers associations and trade unions, as far as classified by ADP as Managed Rules.

**1.12 "New Release"** means a release of the ADP Platform or a part thereof in which rules have been modified and/or minor functional and/or technical modifications have been made and in which Defects may have been rectified.

**1.13 "New Version"** means a release of the ADP Platform or a part thereof in which the functionality and/or the technology has been substantially modified in relation to the previous version, or which has been made suitable for operation on a different operating system.

**1.14 "Non-Managed Rules"** means all rules of relevant market players such as pension funds, employers associations and trade unions not coming under the Managed Rules that may be included in the Payroll Program on Client's instructions.

**1.15 "Registered Employees"** means all persons for whom the Client is responsible for deductions at source in the sense of the Wages and Salaries Tax Act and/or the Social Insurance Co-ordination Act, as well as all employees of Affiliates of Client whose salaries are being processed under this Agreement.

**1.16 "Service Pack"** means a supplement to the ADP Platform used for remedying essential Defects.

**1.17 "Services"** means the work, services and activities described in this Agreement. Specifications of certain Services are published on <https://online.adp.nl/productenendiensten/beschrijvingen/engels.xml>. ADP is entitled to modify these specifications without prior notice in order to keep up with the developments such as changes in the law and regulations and technological developments.

**1.18 "User"** means a person that is authorised to use the ADP Platform on Client's behalf and has been created in the ADP Platform to that extend;

### Section 2 THE SERVICES.

**2.1 Provision of Services.** ADP shall provide the Client with the Services specified in this Agreement.

**2.2 Use of Services.** Client will use the Services in accordance with the instructions and reasonable policies established by ADP from time to time and communicated to Client. Client will use the Services only for the internal business purposes of the Client and its Affiliates receiving Services. Client warrants that each of its Affiliates receiving Services, if any, will comply with each of the provisions contained in this Agreement. Client shall maintain its internal systems, equipment and technical environments that meet the minimum specification as published by ADP from time to time (and available on demand) in order for ADP to provide the Services. Client shall otherwise cooperate with ADP in connection with ADP's provision of the Services. Client shall

monitor the delivery of the Services by ADP in accordance with its obligations under this Agreement. Client will promptly notify ADP of any error, omission or discrepancy discovered by Client. Client remains its own record keeper in compliance with applicable law and shall keep all reports and other output provided by ADP that are included in the Services. Client will keep all source documents of the information delivered to ADP or input by Client or on behalf of Client. However, as long as Client continues to receive the Services, ADP shall retain any historical transactional data used or created by ADP in the performance of the Services for the period required by applicable law after the date such data was initially used or created.

**2.3 Accuracy of Client Information.** All Services will be based upon information provided to ADP by Client and Client is responsible for the accuracy and timely input of all such information. Client will be responsible for any adverse effect that any Client delay or instruction may have on the performance of the Services by ADP.

**2.4 Communication Lines.** Except as otherwise provided in this Agreement, if the Services require the use by Client of communication lines, including the internet, to connect to ADP facilities, Client will be responsible for those communication lines. Client will pay all installation, use, service and repair charges for the communication lines. ADP will not be responsible for the reliability or availability of the communication lines used by Client to access the Services.

**2.5 Access to Services or Application Platforms.** For those Services or Application Platforms that certain employees or other Client's authorized users as contemplated herein ("Users") can access, Client shall ensure the Users comply with any applicable terms. ADP may suspend or discontinue access to the Services and/or to the Application Platforms by any User if ADP reasonably believes that such User has violated such terms or is otherwise using the Services and/or Application Platforms in an inappropriate manner. Client shall take any and all actions reasonably necessary to maintain the confidentiality of User names and passwords for those Services and/or Application Platforms.

**2.6 Use of Services via the Internet.** This provision applies to any Services which are being provided to Client via the Internet or which Client may access via the Internet, it being understood that the security of transmissions can never be guaranteed. ADP is not responsible for Client's access to the Internet, for any interception or interruption of any communications through the Internet, or for changes to or losses of data through the Internet. In order to protect Client and Client's data, ADP may suspend Client's use of the Services via the Internet immediately, without notice, pending an investigation, if any breach of security is suspected.

**2.7 Tax and legal advice.** ADP does not and will not provide the Client with any legal, regulatory, accounting or tax advice and Client will rely solely upon its own advisors with respect to any such advice.

**2.8 Third Party Software.** Client's use of any pre-packaged third party software will be governed by the terms and conditions of the applicable third party license agreements contained in the package delivered to Client hereunder with such pre-packaged third party software.

### **Section 3 FEES, TAXES AND PAYMENT TERMS.**

**3.1 Fees for Services.** Client shall pay ADP for the Services at the fees shown in this Agreement. Client shall pay those fees regardless of which entity in the Client Group receives the Services. The fees in this Agreement are based upon current requirements, specifications, volumes and quantities as communicated by Client to ADP and may be revised if Client's actual requirements or specifications vary materially, and/or client's volumes or quantities vary by more

than 20% from those communicated to ADP. The fees do not include amounts to be paid by Client to third parties in connection with the Services. Reasonable travel and out-of-pocket expenses are payable by Client in addition to the fees in this Agreement.

**3.2** ADP has the right to revise the standard charges annually. In the event of a revision of the standard charges the Client shall be advised in writing. Standard charges amended in this manner shall take effect from a date specified by ADP in the aforementioned notification, but in any event no sooner than two months after despatch of the notification to the Client. If ADP increases the standard charges by more than the percentage of the CBS Consumer Price Index figure for the preceding calendar year plus 5 percentage points the Client has the right to object in writing to the increase in charges within one month from the date of notification of the revised charges. If the Client does not lodge any objection the revised charges shall be deemed to have been accepted. In the event the Client lodges an objection in good time to the aforementioned revision of charges and fails to reach agreement with ADP about the adjustment to the standard charges, the Client has a right within two months of the date of the notification of the revised charges to terminate the agreement by the end of the calendar year by means of a registered letter, without either party being liable to pay compensation. If the Client makes use of this right the unaltered standard charges shall remain in force until the end of the then current calendar year.

**3.3 Taxes.** Prices under this Agreement are exclusive of VAT or any applicable goods and services taxes. Such taxes will be added where applicable and paid by Client.

**3.4 Invoices; Payment Terms.** Invoicing is unique and centralized for all the Client's Affiliates per country. Client shall pay all invoices in full within 30 days of invoice date. In the event of a dispute regarding any part of an invoice, Client must (i) notify ADP within 10 days of receipt of the invoice and (ii) pay any undisputed amounts on the invoice. If ADP is not notified of a disputed invoice within this time frame, the invoice will be deemed undisputed and will be due and payable in accordance with the terms of this section 3.4. All amounts not paid when due are subject to a late payment charge as defined in this Agreement. The payment of Services provided by ADP falls due after the activities have been performed. A licence agreement for a ADP Platform is however payable in advance, on the first occasion on the first day of the month following that in which the installation of the ADP Platform took place and subsequently on the first day of each month during the term of the agreement.

**3.5 Collection Expenses.** In addition to the legal interest, Client will reimburse ADP for all expenses ADP may incur, including reasonable attorney fees, in collecting any amounts past due under this Agreement. The extra-legal collection costs are being set at 15% of the total sum subject to a minimum of EUR 250 (two hundred and fifty euros).

### **Section 4 WARRANTIES.**

**4.1 Warranties by ADP.** ADP warrants to the Client that (i) it has full capacity, authority and all necessary licenses, permits and consents to perform its obligations under this Agreement, and (ii) the Services will be supplied and supported by appropriately qualified and trained personnel acting with due skill, care and diligence, and (iii) the Services will be performed in compliance with all laws, and regulations applicable to ADP in its provision of the Services, and (iv) the Services satisfy the levels and standards detailed in this Agreement, and (v) in case of Defects caused by ADP, ADP shall correct the Defect, without prejudice to the other provision of this Agreement.

**4.2 Client Warranties.** Client warrants that (i) it has full capacity and authority to execute this Agreement on behalf of its Affiliates that are to receive the benefit of the Services, if any, and binds such Affiliates for the proper performance of the obligations contained in this Agreement and (ii) it has, and will continue to have, full capacity, authority and all necessary licenses, permits and consents to perform its obligations under this Agreement.

## **Section 5 INTELLECTUAL PROPERTY.**

**5.1 Access and Use Rights.** ADP grants to the Client and its Affiliates who are to receive the benefit of the Services the right to access and use solely for the internal business purposes of the Client and such Affiliates, the ADP Platforms delivered or made available to Client in connection with the Services. Such access and use rights shall be personal, non-exclusive and non-transferable and.

**5.2 Ownership of Proprietary Rights.** The ADP Platforms made available to Client in connection with the Services, will at all times remain the exclusive, sole and absolute property of ADP or the third parties from whom ADP has obtained the right to use the ADP Platforms. Except for the license granted to Client in this Agreement, for the duration of and within the limits provided for in this Agreement, Client will have no other right in relation to the ADP Platforms. ADP retains, to the extent permitted by law, the exclusive right to correct any error affecting the Application Platforms. All rights, title and interest in or to any copyright, trademark, service mark, trade secret, and other proprietary right relating to the ADP Platforms and the related logos, product names, etc. are reserved and all rights not expressly granted are reserved by ADP and such third parties. Should client wish to achieve interoperability of any other software program with the relevant portion of the Application Platforms and provided that the information has not previously been made readily available to Client, Client shall request in writing and ADP may provide the information solely necessary to allow Client to achieve interoperability at Client's cost. Client may not obscure, alter or remove any copyright, trademark, service mark or proprietary rights notices on any ADP Platforms.

**5.3 ADP Infringement Indemnity.** ADP will defend Client in any suit or cause of action alleging that the ADP Platforms as provided by ADP and used in accordance with the terms of this Agreement infringe upon any patent, copyright, trade secret, or other proprietary right of a third party in the country where the ADP Platforms have been delivered or made available to Client by ADP. ADP will pay damages finally awarded by a court of competent jurisdiction against Client, or any settlement amount agreed to be paid, and related reasonable expenses incurred by Client in any such suit or cause of action, provided that, (i) ADP is promptly notified in writing of such suit or cause of action, (ii) ADP controls any negotiations or defense and Client assists ADP as reasonably required by ADP, and (iii) Client takes all reasonable steps to mitigate any potential damages that may result. The foregoing infringement indemnity will not apply and ADP will not be liable for any damages assessed in any suit or cause of action to the extent resulting from a Client Action. If any ADP Platform is held or believed to infringe on any third-party's intellectual property rights, ADP may, in its sole discretion, (a) modify the ADP Platform to be non-infringing, (b) obtain for Client a license to continue using such ADP Platform, or (c) if neither (a) nor (b) are practical, terminate this Agreement as to the infringing ADP Platform and return to Client the related fees paid by Client to ADP in advance, if any. This section 5.3 states ADP's entire liability and Client's exclusive remedies for infringement of intellectual property rights of any kind.

**5.4 Client Infringement Indemnity.** Client will defend ADP against, and pay damages assessed in, any suit or cause of action alleging infringement upon any patent, copyright, trade secret, or other proprietary right of a third party in the country where Client is located, to the extent that any such suit or cause of action results from an allegation of a Client Action.

## **Section 6 DATA PRIVACY – NONDISCLOSURE.**

**6.1 Data Privacy.** Each Party warrants that it shall comply at all times with its obligations under the EU Directive on Data Protection (95/46/EC) (further "the Privacy Directive") and especially the local legislation derived from this directive, applicable in the specific country, and any future, equivalent or associated legislation enacted in replacement of this local legislation (further "the Privacy Law"). Client and/or Client Affiliate acts as 'Controller' and ADP and/or ADP Affiliate acts as 'Processor' under this agreement as defined in the Privacy Directive. In this respect ADP will, including without limitation:

- I. act, as a data processor, only on and comply with the Client's instruction in relation to the processing of Personal Data as given and varied from time to time by the Client;
- II. take appropriate technical and organizational measures, taking into account the state of technologies and the costs of implementation, against unauthorized or unlawful processing or further processing of the Client's personal data, and against accidental loss or destruction of, and damage to the personal data.

Notwithstanding anything to the contrary ADP reserves the right to use suppliers and subcontractors including for processing, hosting and storage purposes, which the Client accepts, whereby ADP remains responsible for the quality of the Service and the suppliers and subcontractors compliance with the Privacy Law. In this respect Client consents that Personal Data may be processed, hosted and stored by an ADP Affiliate situated outside the European Union, including but not limited to USA, Canada, Tunisia and India in accordance with the above requirements. ADP confirms that where Personal Data is processed, hosted or stored outside the European Union, an enforceable agreement based upon the EU Model Clauses Data Transfer Agreement for the transfer of Personal Data outside the European Union ('the EU Transfer Agreement') is in place and is maintained in force throughout the Initial Term and any Renewal Terms of the Agreement.

**6.2 Nondisclosure.** All Confidential Information disclosed under this Agreement 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 with a need to know the Confidential Information and will instruct those employees to keep the information confidential. It is understood, however, that ADP may disclose the Client's Confidential Information on a need to know basis to (i) ADP's subcontractors who are performing Services, provided that ADP shall remain liable for any unauthorized disclosure of the Client's Confidential Information by those subcontractors, and to (ii) third party organizations such as social security or tax authorities, and to (iii) Client's Affiliates, and to (iv) ADP Affiliates and their employees. In addition, ADP will establish and follow reasonable security measures to prevent unauthorized access to Client's data files. Notwithstanding the foregoing, the receiving party may disclose Confidential Information (i) to the extent necessary to comply with any law, rule, regulation or ruling applicable to it, (ii) as appropriate to respond to any summons or subpoena or in connection with

any litigation and (iii) to the extent necessary to enforce its rights under the Agreement. Upon the request of the disclosing party, the receiving party will return or destroy all Confidential Information of this disclosing party that is in its possession excluding Confidential Information required to be retained by Law or deemed necessary for legal defense in case of any claims. The provisions of this section 6.2 will survive the termination of this Agreement for a term of three years.

## **Section 7**                    **LIABILITY.**

**7.1 Mitigation of Damages.** ADP and Client will each use reasonable efforts to mitigate any potential damages or other adverse consequences arising from or related to the Services.

**7.2 Limit on Monetary Damages.** Notwithstanding anything to the contrary in this Agreement and only to the extent permitted by applicable law, ADP's aggregate liability under this Agreement for damages (monetary or otherwise) under any circumstances for claims of any type or character arising from a breach of any obligation related to a particular Service under this Agreement will be limited to the amount of direct damages incurred by Client, provided, however, that ADP's aggregate liability, under this Agreement, in any calendar year (other than and subject to section 5.3) will not exceed six times the average charge for one monthly recurring fee paid or to be paid by Client to ADP in such country during such calendar year. Should the number of months of Services equal to zero, ADP's aggregate liability will not exceed six times the charge for one monthly recurring fee expected to be paid by Client to ADP based upon the agreed volume. The foregoing limitation shall not apply to actual damages incurred by Client as a direct result of a gross negligence or willful misconduct of ADP or any of its employees. Neither party excludes or limits liability to the other party for death or personal injury arising from its negligence. Notwithstanding the provisions set forth above, ADP will not be responsible for indirect damages (including lost profits, harm to reputation) that the Client may incur or experience in connection with this Agreement or the Services. ADP is not liable except if Client has served notice of default upon ADP and has granted ADP a reasonable period to cure its default and ADP has not cured its default within that period.

**7.3** ADP is not liable except if Client has submitted to ADP a sufficiently substantiated claim in writing within one year after the Client has discovered or reasonably could have discovered the damage.

## **Section 8**                    **TERM AND TERMINATION.**

**8.1 Initial Term.** This Agreement will be effective - with retroactive effect if applicable - as of the date of execution of this Agreement and will remain in effect until the Expiry Date as defined in this Agreement.

**8.2 Renewals.** After the Initial Term, this Agreement will automatically renew for additional periods that equal the Initial Term rounded up to the nearest multiple of 12 months (each a "Renewal Term") unless either party notifies the other party by registered letter with acknowledgement of receipt at least six (6) months prior to the end of the Initial Term or the current Renewal Term that it does not want to renew the Agreement..

**8.3 Termination by Client.** If (i) ADP fails to perform any material obligation under this Agreement and that failure continues for 60 days after ADP receives written notice from Client, by registered letter with acknowledgement of receipt, specifying in reasonable detail the nature of that failure, or, (ii) subject to section 8.5 below, Client gives a 6 months prior written notice, the Client may terminate this Agreement by

further written notice to ADP, by registered letter with acknowledgement of receipt.

**8.4 Termination by ADP.** If (i) Client fails to pay any amount due under this Agreement within 10 days after the due date and that failure continues for 5 days after Client receives written notice from ADP, by registered letter with acknowledgement of receipt, (ii) Client fails to perform any other material obligation and that failure continues for 60 days after Client receives written notice from ADP, by registered letter with acknowledgement of receipt, specifying in reasonable detail the nature of that failure, ADP may terminate this Agreement by further written notice to Client, by registered letter with acknowledgement of receipt.

**8.5 Early Exit Fee.** If Client terminates this Agreement or the Services for any reason, except in accordance with section 8.3 (i) of this Agreement, or, if ADP terminates this Agreement in accordance with section 8.4, Client shall pay to ADP an early exit fee ("Early Exit Fee") equal to 80% of A multiplied by B, where A equals the number of months remaining in the Initial Term, or in the Renewal Term in progress, of the Agreement or the Services in the relevant country as the case may be, at the effective date of termination, and B equals the monthly fee for the relevant Services, in addition to the unpaid implementation fees, if any. If Client terminates this Agreement prior to the Go-live date or prior to the end of the two (2) first years following the Go-live date for any reason, except in accordance with section 8.3 (i) of this Agreement, the Early Exit Fee to be paid by Client shall equal to 100% of A multiplied by B, in addition to the unpaid implementation fees, if any. In case of any reduction in Client's volume or usage of the Services by more than 30% of the agreed volume or usage, both parties agree and acknowledge that they shall meet and negotiate in good faith in order to define the conditions of a new offering if any, and/or the financial conditions upon which ADP will continue to provide the Services. In the event both parties would not reach an agreement upon a one month timeframe, such reduction in Client's volume or usage of the Services may be treated by ADP as a termination of the Agreement for purposes of this provision.

**8.6 Effect of Termination.** Upon expiration or termination of this Agreement or any Services for any reason, (i) all licenses and other rights granted to Client under this Agreement or in connection with the terminated Services, will automatically terminate, (ii) all Confidential information provided by either party to the other under this Agreement or in connection with the terminated Services, will be provided upon first request of the requesting party, and (iii) all earned and unpaid fees and expenses will become immediately due and payable, and (iv) Client shall destroy all copies of ADP Platforms delivered by ADP as per the Agreement and certify in writing that such ADP Platforms have been destroyed and that Client does not keep any copy of ADP Platform. For the avoidance of doubt, Client proprietary data will be provided by ADP at ADP standard flat format.

## **Section 9**                    **MISCELLANEOUS PROVISIONS.**

**9.1 Amendment.** Parties can modify this Agreement and/or any Services provided under this Agreement only in writing. The Client may also instruct ADP to carry out supplementary activities within the context of this Agreement. Instruction for supplementations and/or amendments to the performance of the activity/delivery of the administrative documents in principle shall be advised in writing to ADP. Acceptance by ADP takes place by way of written confirmation of the order, or by the execution of the order. In the event of doubt concerning the content of the services the particulars in ADP's Client File or other records of ADP shall be decisive, unless the contrary is proved.

**9.2 Assignment.** Neither this Agreement, nor any of the rights or obligations under this Agreement, may be assigned by any party without the prior written consent of the other party, except in case of intra-Group assignment. For purposes of this section 9.2 the ADP Group is composed of all majority owned subsidiaries of Automatic Data Processing, Inc.

**9.3 Subcontracting.** ADP reserves the right to subcontract any or all of the Services, in whole or in part, provided that ADP remains fully responsible under this Agreement for the performance of any such subcontractor, except that ADP shall not be responsible for the actions or omissions of any third party providing access to the internet, copying, delivery or courier services, including the postal service or any third party courier service. ADP is authorised to terminate the Agreement prematurely in the event that the right of ADP to make available the ADP Platform or any part thereof is being terminated or threatens to be terminated, or in the event that, because of technological developments or market developments, ADP has withdrawn the ADP Platform or any part thereof from its product portfolio. In such events ADP shall be obliged, insofar as reasonably possible, to arrange for replacement of that part or those parts, to be delivered by ADP or directly by a third party.

**9.4 Hiring personnel.** If within the scope of a transfer of undertaking as meant in article 7:663 Dutch Civil Code or if a contractual obligation between ADP and Client requires ADP or any of its Affiliates to employ any personnel, employee or agent of any member of the Client Group, Client will reimburse ADP for any and all costs and expenses related to and arising from the employment of such person, including costs related to any severance or similar payments made by ADP or its Affiliate to such person.

**9.5 Entire Agreement.** This Agreement is the entire agreement and understanding between the parties with respect to its subject matter and merges and supersedes all prior discussions, agreements and understandings of every kind and nature between them, and no party will be bound by any representation, warranty, covenant, term or condition other than as expressly stated in this Agreement. Purchase Orders submitted by Client are for Client's internal administrative purposes only and the terms and conditions contained in those purchase orders will have no force and effect.

**9.6 No Third Party Beneficiaries.** Nothing in this Agreement creates, or will be deemed to create, third party beneficiaries of or under this Agreement. Client agrees that other than ADP's obligations to Client Group in this Agreement, ADP has no obligation to any third party (including, without limitation, Client's employees and/or Client's Affiliates' employees and/or any administrative authorities) by virtue of this Agreement. However, the exceptions, defenses, limitations of responsibility and limitations of liability are stipulated not only for the relevant party, but also for the benefit of its employees, agents, contractors, suppliers, subcontractors, officers, directors and shareholders.

**9.7 Force Majeure.** Any party to this Agreement will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations due to a force majeure event as defined by applicable law and subsequent case law. Such non-performance will not constitute grounds for default.

**9.8 Headings.** The section headings in this Agreement are intended for convenience of reference and will not affect its interpretation.

**9.9 Notices.** All communications required to be sent or given under this Agreement will be sent in writing to Client or to ADP at the address shown on the cover page of this Agreement or to any other address a party may identify in writing from time to time and will in any event be deemed duly given and effective, (i) immediately if delivered in person; (ii)

upon receipt if mailed by certified mail return receipt requested; or (iii) upon confirmation of receipt.

**9.10 Severability.** If any provision of this Agreement is held invalid, illegal, or unenforceable, the validity, legality or enforceability of the remainder of this Agreement will not in any way be affected or impaired.

**9.11 Use of Client's Name.** ADP may include Client's name and corporate logo in its client reference lists.

**9.12 Amicable procedure.** Prior to any legal proceeding, ADP and Client shall enter into an amicable procedure of conciliation in case of any disputes that may arise between ADP and Client regarding the performance or interpretation of the Agreement. In that event, the party willing to refer to this provision will have to notify the other, by certified mail return receipt requested, of its intention to undertake the said amicable procedure by specifying the difficulties encountered. Such a procedure shall not prevent nor limit any party from seeking injunctive relief nor taking any action to protect any rights regarding statute of limitation.

**9.13 Quotations.** Quotations are not binding upon ADP.

**9.14 Governing Law. Jurisdiction.** This Agreement shall be governed by the laws of The Netherlands. If within thirty days following the beginning of the amicable procedure set out in section 9.12, the aforementioned amicable procedure does not lead to an agreement between ADP and Client, any disputes that may arise between ADP and Client regarding the performance or interpretation of this Agreement shall be subject to the exclusive jurisdiction of the competent court in Rotterdam or by the Court of Appeal in The Hague, unless mandatory legislative provisions prescribe otherwise.

## Payroll Processing

### Section 10 DELIVERY OF THE SERVICES.

**10.1** Client orders ADP to perform the Service for the Registered Employees. ADP accepts this order.

**10.2** ADP shall carry out the computer service with care in accordance with the procedures and understandings laid down in writing and in accordance with the Documentation. Documentation shall be maintained by ADP.

**10.3** ADP guarantees that the Service will be continually, promptly and correctly brought into line with the applicable Dutch legislation and other Managed Rules, and, upon notification by Client, can be updated so as to be in compliance with the Non-Managed Rules.

**10.4** Client vouches that all the items, data, software, procedures and instructions it has provided to ADP for the implementation of the computer service are at all times correct and complete and that all the data-carriers provided to ADP comply with the latter's specifications.

### Section 11 COOPERATION OF CLIENT.

**11.1** The calculation rules and/or calculation methods in a payroll administration as laid down by Dutch legislation and rules shall be applied by ADP insofar as the latter is aware that these apply to the Client's payroll administration. Client is responsible for advising ADP in good time of the prescribed or optional or other computation rules and/or calculation methods that ADP is required to apply.

**11.2** To the extent that Client wants ADP to apply Non-Managed Rules, Client shall so advise ADP in good time - while stating its choices, if any -, and advise ADP of any change in the Non-Managed Rules, and furthermore provide ADP with all useful and necessary data and/or information in these areas.

**11.3** If it has been agreed that Client shall avail over certain software functionality than the obligations of ADP under this Agreement are subject to either Client having in

operation a computer program supplied by ADP or approved by ADP, and Client installing in due time updates made available therefore, or Client delivering the data using the software functionality that ADP under certain conditions makes available through the internet.

## **Section 12 GUARANTEE.**

**12.1** In case of Defects in the results of the Service for which ADP is expressly responsible under this Agreement, ADP shall repeat the Service in order to remedy these Defects to the best of its ability provided that Client advises ADP of the Defects in writing and in detail as quickly as possible but no later than one week after receipt of the results of the Service. The repetition shall be carried out free of charge.

**12.2** In the event of shortcomings that appear not to be imputable to ADP, e.g. because they are the result of error or omission on the part of the Client, such as the provision of incorrect or incomplete data, ADP will charge for the costs of any repetition.

**12.3** Client is responsible for its choice of the output medium and indemnifies ADP against possible consequences of its choice. In this respect ADP turns Client's attention among others to the articles 7:619 and 7:628 of the Dutch Civil Code and informs Client that there is legal uncertainty as to whether or not a solely digital pay slip complies with the requirements which the legislator has stated. ADP can not guarantee that the sole digital availability of the pay slip to the Registered Employees of Client meets the due statutory requirements.

## **ADP Platform licenses**

### **Section 13 INTELLECTUAL PROPERTY; LICENSE.**

**13.1** In deviation of the provisions in the second sentence of section 2.2 and in section 5.1 the use within the scope of payroll processing by ADP for Registered Employees of Affiliates of Client is permitted.

**13.2** The maximum number of Users for which the ADP Platform is designed, is determined by the technical boundaries of the ADP Platform or the computer system, unless specified otherwise in this Agreement.

### **Section 14 MAINTENANCE.**

**14.1** ADP shall maintain the ADP Platform – with the exception of custom software - and rectify Defects therein to the best of its ability. The costs of maintenance and the rectification of reproducible Defects are included in the licence fee.

**14.2** ADP does not guarantee that the ADP Platform will work without interruption or Defects or that all Defects will be rectified.

**14.3** In the event that Client detects a reproducible Defect in the ADP Platform Client shall notify ADP in detail of that Defect in accordance with ADP's customary procedures. Upon receipt of that notification ADP shall seek to rectify the Defect and/or make improvements to the ADP Platform. Depending on the urgency the results will be made available to the Client in the manner and at the time determined by ADP.

**14.4** ADP is authorised to make temporary solutions or to introduce workarounds or problem-avoiding restrictions in the ADP Platform.

**14.5** By maintenance is not understood the provision of New Versions of the ADP Platform, neither the repair of mutilated or lost data.

### **Section 15 USER SUPPORT.**

**15.1** ADP will support the user in the day-to-day use of the ADP Platform. The licence fee includes the costs of telephone assistance during normal office hours for answering routine enquiries. ADP may impose restrictions on the telephone assistance to be provided. For all other forms of support ADP will provide services at the standard charges applying at the time.

**15.2** Upon the initial commissioning or if there are reasonable doubts concerning the required level of knowledge at a later stage, ADP shall familiarise the Client and/or the latter's staff with the use of the ADP Platform. A charge may be made for participation in training courses and/or for user-training.

**15.3** Training courses and user-training will be organised by ADP on an individual or group basis. If in the opinion of ADP the number of applications so justifies, ADP shall be authorised to combine the training courses or user-training into one or more other training courses or to hold these at a later date or time.

**15.4** The cost of repair activities in the event of user error or inexpert use by the Client or of other factors not attributable to ADP are not included in the license fee.

### **Section 16 NEW VERSIONS.**

**16.1** ADP is in reasonableness entitled to keep up with automation-technical developments, which may have consequences for the version management and availability. ADP shall inform Client timely in regard to this.

**16.2** ADP has the right to replace previously supplied versions by a New Version, and is entitled to impose additional conditions.

### **Section 17 GENERAL.**

**17.1** ADP will take maximum effort to realise the availability of the ADP Platform minimally in accordance with the ADP standard hours of availability, but can not guarantee the availability. Beyond the standard hours of availability the ADP Platform will normally be available. However, ADP is authorized at all times to limit the availability outside of the standard hours of availability.

**17.2** ADP reserves the right to render the ADP Platform into (temporary) inoperability, to restrict or to alter the access to the ADP Platform, without being liable for any damages. ADP may only take actions leading to inoperability, restriction or alteration after having notified the Client, unless the measure cannot endure delay in view of the gravity of the reason.

**17.3** ADP takes care of at least daily back up of the data in its possession. If by whatever cause data is lost, ADP's responsibility does not extend beyond the obligation to reconstruct the data by means of the latest available back-up.

**17.4** The obligation to rectify Defects shall lapse if the computer system does not comply with the relevant ADP requirements or otherwise is unsuitable to have the ADP Platform operated there on, or if the Client makes or commissions changes to the ADP Platform and/or the computer system without the written consent of ADP.

**17.5** In the event that ADP made available to Client a copy of the ADP Platform, then the following applies:

**17.5.1** The Client shall ensure the updating and maintenance of data files linked to the ADP Platform and for the timely making of backups of the data files.

**17.5.2** The Client shall be deemed to have installed and taken into use a New Release (taking the form of a New Version or New Release) or supplement (Service Pack) with the ADP Platform within six months after they became available if they incorporate modifications as a result of

changes in the Managed Rules or the Non-Managed Rules. Notwithstanding the foregoing, six months after a New Version or New Release or Service Pack of the ADP Platform has been made available ADP shall no longer be obliged to process data, provide support and perform maintenance if the New Version or New Release or Service Pack has not been taken into use.

**17.5.3** ADP is authorised to check or have checked at Client's premises whether the use of the ADP Platform is in compliance with the conditions set forth in this Agreement. Client shall co-operate in such checks and their preparation, and in this respect shall give ADP access to the appropriate sites and locations as well as to Client's computer systems.

**17.5.4** Client shall ensure that each copy of an ADP Platform will be labelled with the same indications as the original copy, and specifically that it will indicate that it is protected by copyright and comprises confidential information, and that Client keeps a record of the number of copies and the location where they are stored.

**17.5.5** Any copy of an ADP Platform will only be made available by ADP to Client in object code. Client may not reverse engineer, decompile, disassemble, translate, or adapt an ADP Platform or part thereof, nor shall Client attempt to create the source code from the object code of an ADP Platform or part thereof save to the extent that any such actions are permitted by law and provided that prior to undertaking such measures, Client shall afford ADP the opportunity, in return for reasonable compensation, to provide an interface in order to create compatibility with such other software or systems.

**17.5.6** Client shall have no right to grant sub-licenses or to assign the benefit or burden of this Agreement in whole or in part or to allow an ADP Platform or part thereof to become the subject of any charge, lien or encumbrance.

**17.5.7** An ADP Platform that can be downloaded from the website of ADP is subject to the terms and conditions displayed or referred to during downloading. ADP Platforms that contain shrink-wrapped terms and conditions or other terms and conditions are subject to such terms and conditions. In both cases the terms and conditions set forth in this Agreement take precedence in case of conflicts.

## **Section 18 THIRD PARTY SOFTWARE.**

**18.1** Pre-packaged third-party software delivered by ADP, whether or not linked to the ADP Platform, will only be made available under the third party license terms and conditions, and is only being maintained and supported by ADP if expressly agreed in writing or if the software is mentioned on the cover page.

**18.2** Third-party software delivered by ADP shall only be used by Client integrated with the other software made available by ADP.

**18.3** Client shall hold ADP harmless for any claims on the basis of patent rights or copyright or delivery or other conditions of suppliers of software to the Client where such software needs to be integrated with the ADP Platform.

## **Section 19 ELECTRONIC MESSAGE HANDLING.**

**19.1** If it has been agreed that ADP shall distribute electronic messages to third parties then the following provisions shall apply:

**19.1.1** ADP monitors the timely and correct distribution of the messages and exerts itself to the maximum possible extent to deliver the messages to the third party in due time.

**19.1.2** Client shall be responsible for the correct content of the message. ADP will not be responsible for the

acceptance of the message by the third party with respect to content.

## **Implementation services**

**Section 20** Prior to the payroll processing ADP shall perform implementation services. Implementation services can relate to the preparation of the facilities for the storage of the client and personal data of the Client and the latter's Registered Employees, the installation of the necessary supporting systems such as the Client File for production and administration, the configuration of the computer system of ADP, and to the extent necessary take care of training for the Client's staff. This work shall be done on the basis of specification agreed with Client, and on the basis of information supplied by Client.

**Section 21** The results of the implementation services shall be regarded as accepted by Client when Client has accepted the implementation report or when 8 days have passed since an implementation report was submitted to Client and ADP did not receive a written notice from Client setting forth in detail the possible Defects. In any case, the first use by Client of the ADP Platform or the first processing of the payroll administration constitutes acceptance of the results of the implementation services.

**Section 22** Training of Users can be an element of implementation services. This training shall be taken care of by ADP and can be followed at different times. Training shall be followed by User within 1 year after the date of the execution of the Agreement, after which the right to training expires.