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# MEMORANDUM

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Date: August 6, 2013

To: The Honorable Chairman and Members  
Pima County Board of Supervisors

From: C.H. Huckelberry  
County Administrator 

Re: **ADP HR/Benefits Solution License and Service Agreement**

As was requested at the Board of Supervisors meeting today, please find attached the ADP HR/Benefits Solution License and Service Agreement and Amendment No. 1 thereto.

Please contact me if you would like additional information regarding this Agreement.

CHH/mjk

Attachments

c: Allyn Bulzomi, Director, Human Resources

CONTRACT	
NO. <u>12-43-A-140872-0508</u>	
AMENDMENT NO. _____	
This contract shall apply on all invoices generated and documents related to this contract.	

**ADP HR/BENEFITS SOLUTION  
LICENSE AND SERVICE AGREEMENT**

This License and Service Agreement, dated May 13, 2008, 2008 is between Pima County with offices at **150 West Congress Street, Tucson, Arizona 85701** ("Client") and ADP, Inc., with its principal offices at One ADP Boulevard, Roseland, New Jersey 07068 ("ADP").

**1. LICENSE TERMS**

- A. License Grant. ADP grants to Client a non-exclusive, non-transferable license to use the HR/Benefits Solution application (together with the Database and Documentation, the ("Application"), including the computer programs contained therein, the database contained therein (the "Database"), and any related documentation supplied to Client (the "Documentation"). The Application is licensed not sold. Client receives no rights to the Application or intellectual property of ADP or its licensors, except as expressly stated herein.
- B. Restrictions on Usage. Client will use the Application only for its own internal business usage, in connection with ADP's Web Hosting Services (as defined below) and only so long as Client is receiving ADP's HR/Benefits Solution. Client will not provide service bureau or other data processing services that make use of the Application or any part thereof without the express written consent of ADP.
- C. HR And Benefits Administrator Users. On behalf of the Client, the authorized HR and Benefits Administrator of Client ("Administrator") will be able to access and input certain information relating to the benefits offered by the Client and the Client's employees/plan participants and their benefit options and elections as well as view and update certain personal and company information regarding company employees. The information which the Administrator may input may be used and relied upon by the Client's employees/plan participants that participate in the services provided under the Application. The Application permits employees/plan participants of the Client to make various benefits elections through the Application and to view and update certain personal and company information, in each case through the use of the Application. It is the Client's responsibility to submit instructions and information relating to the Application and to verify the accuracy and completeness of all such instructions and information submitted by Client, its Administrator, employees and plan participants.
- D. Employee Access. Client may provide access to the self-administration module of the Application to those of its employees and plan participants it deems necessary to perform Client's benefits administration. Client may provide access to the employee self-service module of the Application to any of its employees and plan participants, such use will be subject to the on-line employee self-service terms. Client shall be responsible for ensuring that its employees and plan participants that access the Application comply with all the terms of this Agreement. ADP may discontinue or suspend access to the Application by any employee or plan participant of Client if ADP has reason to believe that such employee or plan participant has violated such terms or is otherwise using the Application in an inappropriate manner.
- E. No Transfer, Modification, etc. Client will not assign, loan, sublicense or otherwise transfer the Application or any part thereof, or alter, modify or adapt (or cause to be altered, modified or adapted) the Application or any part thereof. Client will not (i) write or modify interfaces or reports or (ii) modify the Database, except as expressly authorized by ADP. **CLIENT WILL NOT RECOMPILE, DISASSEMBLE, REVERSE ENGINEER, OR MAKE OR DISTRIBUTE ANY OTHER FORM OF, OR ANY DERIVATIVE WORK FROM, THE APPLICATION.**
- F. Compliance with Laws. Client will not access or use the Application in any way that violates any applicable international, federal, state or local laws and/or regulations.
- G. Enhancements. ADP will make available improvements, enhancements, modifications and/or updates to the Application, as required, to Client at no additional cost (i.e., in addition to the monthly fees paid by Client) if and as they are made available generally by ADP at no additional cost to ADP's Clients licensing the same products as Client.

## 2. SETUP AND OTHER SERVICES

- A. Client shall promptly deliver to ADP the Client Content as defined in Section 6 below required by ADP to perform initial setup services for the Application. Such information and materials shall be in an electronic file format specified by ADP.
- B. After completion of initial setup services, ADP will make any subsequent changes to the configuration of the Client Content at Client's request, in the Application at ADP's then current benefits maintenance fees.
- C. Upon completion of any setup services or services referenced in Section 2B. above, Client shall review the Client Content included in the HR/Benefits Application by ADP. ADP shall have no liability to Client for any errors or inaccuracies in Client Content included in the Application by ADP that has been reviewed by Client.

## 3. STANDALONE POLICY

Pursuant to the terms of this Agreement ADP is making its HR/Benefits Solution available to Client on a "standalone" basis, that is, Client will be utilizing the Application in connection with non-ADP payroll services. In order to receive HR/Benefits Solutions standalone, the Client acknowledges and agrees that:

- A. Client is solely responsible for the reporting system within the Application, including developing or modifying report templates, running reports, reformatting extracted data, and importing data into external systems.
- B. During implementation, an ADP implementation specialist will assist Client with setting up Client's corporate structure, plan design, plan rates, and business rules generally associated with benefits and HR administration but will not create report templates for client.
- C. The Application is intended to be used as a source database for employee information that is to be passed to payroll and other applications. With the Application, ADP provides a one-way interface from the Application to certain ADP payroll services such as PC Payroll and Pay eXpert. Nothing in this Agreement obligates ADP, nor does ADP intend, to develop interfaces for non-ADP payroll applications. Client may however extract data from HR/Benefits Solution and pass it to non-ADP payroll and other applications using the following steps:
  1. Client completes the following training provided by ADP: Parts 1 and 2 of the "Reporting for the Application" course.
  2. Client creates report template to extract data needed for the external application.
  3. Client runs report template to extract data; downloads data in Excel format.
  4. Client manipulates exported data as needed for importing into external application. Alternatively, clients may engage a third party to develop a program to reformat the extracted data to make it easily importable into the external application.
- D. The terms of this Section 3 shall not apply to the extent Client uses the Application in connection with ADP payroll services.

## 4. WEB HOSTING SERVICES

ADP will be responsible for providing the following web hosting services ("Web Hosting Services") for the Application:

- A. Provide the hosting environment(s), including hardware and software, required to host the Application (the "System") and the operation and required maintenance of such System. Client acknowledges that the System may be used to provide similar services to other clients and that Client acquires no rights therein.
- B. ADP shall deploy the Application licensed by the Client at Uniform Resource Locators (URLs) to

- be selected, registered and owned by ADP (the "Site").
- C. In the event that ADP discovers and/or Client reports to ADP through its support line that a System for the Application is experiencing an outage or that the Application is experiencing operational issues, ADP will work diligently to resolve such issues as soon as possible, giving priority to outages and significant operational issues.
  - D. ADP will use commercially reasonable efforts to make the Application available, twenty-four (24) hours a day, seven (7) days a week less "Excusable Downtime". Excusable Downtime is defined as time that the Application is not available to Client for one of the following reasons in whole or in part: (i) scheduled network, hardware or service maintenance and/or upgrades provided that ADP provides notice of such maintenance and/or upgrade; provided further that such maintenance or upgrades do not exceed thirty-six (36) hours in a single month and do not occur Monday through Friday, between the hours of 6:00am and 9:00pm Eastern Standard Time; (ii) the acts or omissions of Client or Client's employees, agents, contractors or vendors or any one gaining access to the Application by means of Client's password or equipment; (iii) a failure of the Internet and/or the public switched telephone network, unless such failure is caused by an act or omission of ADP; (iv) the occurrence of any event that is beyond ADP's reasonable control, provided that ADP acts diligently to remedy any such occurrence; or (v) the suspension of access one or more Client's employees as provided by Section 1.D. (collectively, "Excusable Downtime"), unless such failure is caused by an act or omission of ADP. ADP guarantees that the Application will be available to Client at least 99% during each month ("Uptime Commitment"), excluding Excusable Downtime; provided that Client satisfies the minimum hardware and communication requires recommend by ADP.
  - E. The Application is intended to permit the transmission of data from within or between the United States and Canada. The Application 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.

**5. CARRIER CONNECTION SERVICES**

If Client elects the ADP carrier connection service, ADP, or its authorized agent(s), will electronically transmit employee data, including employee benefits enrollment data, to Client's carriers or other third parties authorized by Client, and Client authorizes ADP and its authorized agent(s), to provide such transmission on Client's behalf. In addition: (i) Commencement of the carrier connection service is subject to completion by Client of setup of the configuration of the Client Content and the format of such transmission to the designated carriers. The terms for setup services and subsequent setup services set forth in Sections 2.A. and 2.B. above will apply to setup for the carrier connection service. (ii) ADP's ability to transmit Client's employee benefits enrollment data is subject to the provision by the designated carriers of a current functional interface between the Application and the designated carriers' systems. ADP will not be obligated to transmit Client's data to the designated carriers if at any time Client's designated carriers fail to provide the proper interface as described above. If Client requires the development of any special interfaces in order to transmit such data to the designated carriers, all work performed by ADP to create such interfaces will be at ADP's then current fees for such services. (iii) Client is responsible for promptly reviewing all records of carrier transmissions and other reports prepared by ADP for validity and accuracy according to Client's records, and Client will notify ADP of any discrepancies promptly after receipt thereof. In the event of an error or omission in the carrier connection services caused by ADP, ADP will correct such error or omission, provided that Client promptly advises ADP of such error or omission.

**6. CLIENT CONTENT**

"Client Content" shall mean (i) payroll, benefits, human resources and similar information provided by Client or its employees or plan participants, 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 Application, whether included therein by ADP on behalf of Client as part of its setup services or directly by Client, its Administrator or any of its employees or plan participants. The following provisions shall apply with respect to Client Content:

This is an Official Copy of the State of New York. It is a true and correct copy of the original document on file with the State of New York.

- A. Client shall be solely responsible for updating and maintaining the completeness and accuracy of all Client Content.
- B. Client shall be responsible for obtaining all required rights and licenses to use and display all Client Content in connection with the Application. To the extent necessary for formatting purposes, 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 the Application or perform any of the services covered under this Agreement.
- C. Client, its Administrator and its employees and plan participants shall not include or provide to ADP for inclusion in the Application 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 the Application 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.
- D. Client acknowledges that, in making the Application available, ADP is not acting as an investment advisor, broker-dealer, insurance agent or intermediary or a financial or benefit planner. ADP is not providing any benefits or information related thereto. ADP is not providing any benefits or any information related thereto; Client is responsible for making available all benefits and information related thereto referenced or included on this Application.
- E. ADP will take reasonable precautions to prevent the loss of or alteration to Client Content in the Application, 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 Application for the reconstruction of lost or altered data (e.g. maintaining printouts of Client Content input into the Application).
- F. Client agrees to take any and all actions necessary to maintain the privacy of usernames and passwords for the Application.
- G. In the event that Client requests that ADP provide any Client Content or employee or plan participant information to any third party or to any non-U.S. Client location, Client represents that it has acquired any consents or provided any notices required to transfer such content or information and that such transfer does not violate any applicable international, federal, state or local laws and/or regulations.
- H. The Site(s) may contain links to other Internet sites. Links to and from a Site to other third party sites do not constitute an endorsement by ADP or any of its subsidiaries or affiliates of such third party sites or the acceptance of responsibility for the content on such sites.

## 7. FEES, PAYMENT AND TAXES

- A. Fees. Client shall pay ADP for the use of the Application and any other ADP services (such as Carrier Connection) selected on the Sales Order or Pricing Proposal (or other applicable ADP standard form) 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").
- B. Client shall begin paying the per employee fees for the ADP HR/Benefits Solution application on the earlier of the date that Client first begins to use such application in a production environment OR 90 days from the date of the signature of this Agreement (mm/dd/yyyy). \_\_\_\_\_ (Client Initial Here)
- C. Carrier Connection. Billing for carrier connection implementation and processing services shall commence upon approval of a test file by the carrier. Client shall pay ADP for any additional modules of the Application and/or services added by Client after the date hereof at ADP's then prevailing prices for such modules and services. Billing for such additional modules or services shall commence upon the earlier of Client's use of such additional modules or services or ADP's completion of the implementation work to be performed by ADP in connection with such additional modules or services.
- D. Price Increases. 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. These prices do not include monthly communication charges or communication installation charges (e.g., internet service provider charges), which will be paid by Client.

- E. **Payment.** Client will pay all invoices in full within twenty-five (25) days of invoice date. If Client fails to pay any amount due hereunder, whether by acceleration or otherwise, Client, on written demand, shall pay interest at the rate of 1.5% per month (or the maximum allowed by law if less) on such past due amount from the due date thereof until the payment date. Client shall reimburse ADP for any expenses incurred, including interest and reasonable attorney fees, in collecting amounts due ADP hereunder.
- F. **Taxes.** There shall be added to all payments hereunder amounts equal to any applicable taxes levied or based on this Agreement, exclusive of taxes based on ADP's net income.

#### 8. DISCLAIMER OF WARRANTIES

EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, ADP AND ITS LICENSORS MAKE NO WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR BY OPERATION OF LAW, STATUTORY OR OTHERWISE, WITH RESPECT TO THE APPLICATION OR CARRIER CONNECTION SERVICE, INCLUDING WITHOUT LIMITATION, ANY IMPLIED WARRANTIES OF MERCHANTABILITY, SATISFACTORY QUALITY, FITNESS FOR A PARTICULAR PURPOSE AND/OR NON-INFRINGEMENT. NEITHER ADP NOR ITS LICENSORS WARRANTS THAT THE OPERATION OF THE APPLICATION OR CARRIER CONNECTION SERVICE SHALL BE UNINTERRUPTED, FREE OF VIRUSES, WORMS, TROJAN HORSES OR ANY OTHER MALICIOUS CODE, ERROR FREE OR THAT IT WILL FUNCTION OR OPERATE IN CONJUNCTION WITH ANY OTHER PRODUCT. ADP AND ITS LICENSORS FURTHER DISCLAIM ANY WARRANTY THAT THE RESULTS OBTAINED THROUGH THE USE OF THE APPLICATION OR CARRIER CONNECTION SERVICE WILL MEET CLIENT'S NEEDS.

#### 9. INTELLECTUAL PROPERTY

- A. **Ownership and Proprietary Rights.** The Application is the licensed and/or owned property of and embody the proprietary trade secret technology of ADP and/or its licensor(s) and is protected by copyright laws, international copyright treaties, as well as other intellectual property laws, that among other things, prohibit the unauthorized use and copying of the Application. Client receives no rights to the Application or any intellectual property of ADP or its licensors, except as expressly stated herein.
- B. **ADP Infringement Indemnity.** ADP will defend Client in any suit or cause of action alleging that the Application, as provided by ADP and used in accordance with the terms of this Agreement, infringes upon any United States patent, copyright, trade secret, or other proprietary right of a third party. ADP will pay damages assessed, including reasonable attorneys' fees, against 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, at ADP's expense, as reasonably requested by ADP, and (iii) Client takes all reasonable steps to mitigate any potential damages. The foregoing infringement indemnity will not apply and ADP will not be liable for any damages assessed in any suit or cause of action resulting from a Client Infringement Event (as defined below). If the Application is held or believed to infringe on any third-party's intellectual property rights, ADP may, in its sole discretion, (a) modify the Application to be non-infringing, (b) obtain for Client a license to continue using the Application, or (c) if neither (a) nor (b) are practical, terminate this Agreement as to the infringing ADP service and return to Client any unearned fees paid by Client to ADP in advance. This Section 9.B. states ADP's entire liability and Client's exclusive remedies for infringement of intellectual property rights of any kind relating to the Application.
- C. **Client Infringement Indemnity.** Client will defend ADP against, and pay damages assessed in, any suit or cause of action alleging that the Application infringes upon any United States patent, copyright, trade secret, or other proprietary right of a third party, only to the extent that any such suit or cause of action results from a Client Infringement Event, provided that, (i) ADP promptly notifies Client in writing of such suit or cause of action, (ii) ADP assists Client, at Client's expense, as reasonably requested by Client, and (iii) takes all reasonable steps to mitigate any potential damages that may result; provided however, in no case, shall ADP be required to provide any





- other party.
- G. Severability. If any of the provisions of this Agreement shall be invalid or unenforceable, such invalidity or unenforceability shall not invalidate or render unenforceable the entire Agreement, but rather the entire Agreement shall be construed as if not containing the particular invalid or unenforceable provision or provisions, and the rights and obligations of Client and ADP shall be construed and enforced accordingly.
  - H. Relationship of the Parties. 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.
  - I. Governing Law. This Agreement is governed by the laws of the State of New York without giving effect to its conflict of law provisions.
  - J. Regulatory Notice. No state or federal agency monitors or assumes any responsibility for the financial solvency of third-party tax filers.
  - K. Use of Agents. ADP may designate any agent or subcontractor, without notice to, or the consent of, Client, to perform such tasks and functions to complete any services covered under this Agreement. However, nothing in the preceding sentence shall relieve ADP from responsibility for performance of its duties under the terms of this Agreement.

ADP, Inc.

CLIENT

ADP Sales Associate

Reaster

Client Authorization

L.A. Widujiris

Name:

Robert Easter

(type or print)

Name:

L. G. Widujiris

(type or print)

Title:

Controller

(type or print)

Date:

5/20/08

Title:

Procurement Director

(type or print)

Date: 5/14/08

Approved as to Content:

g. hatcher

Name:

Gwendolyn J. Hatcher

Pima County Human Resources

Date: 05.13.08

APPROVED AS TO FORM

[Signature]  
County Attorney

Form of Client Primary Contact Designation Addendum

This Addendum, made as of the 13<sup>th</sup> day of May, 2008 by and between ADP, INC. ("ADP") with its principal office at One ADP Boulevard, Roseland, New Jersey 07068 and **Pima County, a body politic and corporate of the State of Arizona**, having a principal place of business at 150 West Congress Street, Tucson, Arizona 85701 ("Client"), contains changes, modifications, revisions and additions to the Major Accounts Agreement of even date herewith between ADP and Client (the "Agreement").

1. Client designates **PacifiCare Life Assurance Company** (the "Carrier") as its primary contact to ADP with respect to the services performed by ADP for Client under the Agreement (the "Services"). Client consents to the disclosure to the Carrier by ADP of all Client information necessary for the proper provision of the Services. Additionally, ADP shall not be liable to Client for following the Carrier's instructions. All Services provided by ADP under this Agreement shall comply with the terms of the HIPPA Business Associate Amendment set forth in Exhibit A of this Addendum.

2. The terms set forth in Articles 1. and 3. of this Addendum shall remain in effect until ADP is notified in writing by either Client or the Carrier of the termination of the arrangement between Client and the Carrier. For purposes of clarification, the termination provisions set forth in Section 12.A. of the Agreement are not modified by this Article 2.

3. **Billing/Fees for Services:** For any ADP Services ordered under the Agreement, ADP shall bill the Carrier directly for such ADP Services. However, if the Carrier fails to pay ADP the fees it owes to ADP in respect of Services to Client, Client shall be responsible to pay such amount to ADP, promptly following written notice from ADP. The fees for the ADP HR/Benefits Solution Services provided by ADP under the Agreement shall be as set forth in the Statement of Service, Exhibit B. In the event that Articles 1. and 3. of this Addendum are terminated in accordance with Article 2 above, Client will only be obligated to pay ADP the fees for the services rendered up to the effective date of termination of the billing arrangement with the Carrier, only to the extent that those charges have not been paid by Carrier. Thereafter, ADP shall bill the Client directly for the ADP Services unless Client terminates Service in accordance with the terms of the Agreement, or Client notifies ADP in writing that it has designated another Carrier as its primary contact to ADP. In the event a subsequent Carrier is designated by Client, Articles 1. and 3. of this Addendum shall be modified accordingly..

4. **Compliance With Laws, Section 1.F.:** The following sentence is added to the end of the Section. "ADP shall be responsible for compliance with all laws or governmental regulations affecting its business generally and governing its and its employees' provision of the ADP Products and/or Services, including but not limited to applicable provisions of HIPAA".

5. **Client Content, Section 6.**  
Section 6.E. is modified by adding the word "commercially" before the word "reasonable" in the first line.

Section 6.H. is modified by deleting the first sentence and replacing with the following: "No links shall be added to the Site(s) unless requested or built by Client." Additionally, the word "Such" is added to the beginning of the second sentence.

6. Section 7.A. Fees. The section is deleted in its entirety and replaced with the following:

Fees. Client, unless Client has designated a Carrier pursuant to Articles 1. and 3. preceding, then Carrier, shall pay ADP for the use of the Application and any other ADP services (such as Carrier Connection) as set forth on the Statement of Service (Exhibit B) (or other applicable ADP standard form), or if at the rates set forth thereon for the first twenty four (24) months after the date this Agreement is accepted by Client (assuming no changes in requirements, specifications, volumes or quantities) (the "Initial Period"). After the expiration of the above period, Client and ADP shall meet and confer regarding any requested increases. If agreement cannot be reached within thirty days of the written request by ADP for increases, either party may terminate the Agreement and this Addendum upon ninety (90) days written notice.

7. Section 12.A., Termination, is modified by adding the following to the end of the Section:

This Agreement may be terminated for conflict of interest pursuant to ARS § 38-511, upon ninety (90) days written notice.

8. Governing Law, Section 13.I. The governing law is changed from New York to Arizona.

9. A new Section 13.L. is added as follows:

Warranty of Authority. The persons executing this Agreement on behalf of the Client and ADP represent and warrant that they are duly authorized by all necessary and appropriate corporate or other required action to enter into this Agreement.

10. A new Section 13.M. is added as follows:

Any notice required or permitted to be given under this Contract shall be in writing and shall be served by personal delivery or by certified mail upon the other party as follows:

Client:  
Gwyn Hatcher, Human Resources Director  
150 W. Congress, 4<sup>th</sup> Floor  
Tucson, AZ 85701

ADP:  
Robert Simmons, VP  
3295 River Exchange Drive,  
Ste 500  
Norcross, GA 30092

11. A new Section 13.N. is added as follows:  
The parties understand that this Agreement is nonexclusive and that Client reserves the right to obtain like services from other sources for any reason.

12. A new Section 13.O. Insurance is added as follows:  
ADP shall obtain and maintain at its own expense, during the entire term of this Agreement, Commercial General Liability in the amount of \$1,000,000.00 combined single limit Bodily Injury and Property Damage.

13. A new Section 13.P. is added as follows:

ADP and CLIENT understand that as a part of the performance of duties outlined in this Agreement, ADP may have a requirement to retain electronic information related to CLIENT or its' employees. ADP agrees that the electronic information retained regarding CLIENT is proprietary and confidential and shall not be distributed to any other party, or related corporate entity, for any purpose whatsoever without the express written consent of CLIENT. CLIENT may obtain a file of such electronic information by providing a written request to ADP with at least fourteen (14) business days notice, for a Full Data Extract, an optional service provided to format all or partial employee and CLIENT data. The fees associated for Full Data Extract are set forth in Exhibit B (Statement of Service). Upon written confirmation by CLIENT of successful receipt of the exported information by CLIENT or its' designee, ADP shall immediately remove and destroy any copies of such data from ADP'S systems – including Disaster Recovery sites.

All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms and conditions of this Addendum and the terms and conditions of the Agreement, this Addendum shall prevail. The terms defined in the Agreement and used in this Addendum shall have the same respective meanings as set forth in the Agreement, unless clearly otherwise defined in this Addendum.

IN WITNESS WHEREOF, this Addendum to the Agreement is hereby executed by an authorized representative of each party hereto as of the date first above written.

ADP, INC.

By: REaster  
Name: Controller  
Title: Robert Easter

\_\_\_\_\_  
(CLIENT)

By: L. G. Whidagiris  
Name: L. G. Whidagiris  
Title: Procurement Director

Approved as to Content: [Signature]  
Name: Gwendolyn J. Hatcher  
Pima County Human Resources

This is an Official Copy of the Pima County  
Agreement between ADP and Pima County

## EXHIBIT A

### ADP, INC. HIPAA BUSINESS ASSOCIATE AMENDMENT

This Business Associate Amendment ("Amendment"), dated May 13, 2008 between ADP, Inc. ("ADP" or "Business Associate") and PacifiCare Life Assurance Company ("Company" or "Covered Entity"), designated by Pima County ("Client") as the Client's primary contact to ADP with respect to the benefit services provided by ADP to Client under the ADP HR/Benefits Solution License and Service Agreement (the "Agreement"), modifies, amends and supplements the terms and conditions contained in the Agreement.

WHEREAS, Pursuant to the federal Health Insurance Portability and Accountability Act, Public Law 104-191 ("HIPAA"), on August 14, 2002 the U.S. Department of Health and Human Services issued final regulations entitled "Standards for Privacy of Individually Identifiable Health Information" (the "Privacy Rule");

WHEREAS, the Privacy Rule requires Covered Entities to have Business Associates with whom the Covered Entities may share Protected Health Information (as such term is defined in the Privacy Rule) agree to certain provisions related to the use and disclosure of such Protected Health Information (the "Business Associate Contract Provisions"); and

WHEREAS, Company and ADP desire to enter into this Amendment in order to make the Business Associate Contract Provisions part of the Agreement.

Now therefore, the Agreement is hereby amended and modified as follows:

1. **Definitions.** Terms used, but not otherwise defined, in this Amendment shall have the same meaning as those terms in the Privacy Rule.

2. **Obligations and Activities of ADP**

(a) ADP agrees to not use or further disclose Protected Health Information ("PHI") other than as permitted or required by the Agreement or as Required By Law.

(b) ADP agrees to use appropriate safeguards to prevent use or disclosure of the PHI other than as provided for by the Agreement and this Amendment. Effective as of the compliance date of the HIPAA Security Standards at 45 CFR Part 160, Part 162, and Part 164, ADP agrees to implement administrative, physical, and technical safeguards that reasonably and appropriately protect the confidentiality, integrity, and availability of the electronic PHI that it creates, receives, maintains, or transmits on behalf of Client.

(c) ADP agrees to mitigate, to the extent commercially practicable, any harmful effect that is known to ADP of a use or disclosure of PHI by ADP in violation of the requirements of the Agreement or this Amendment.

(d) ADP agrees to report to Company any use or disclosure of the PHI that is not provided for by the Agreement or this Amendment of which it becomes aware. Effective as of the compliance date of the HIPAA Security Standards at 45 CFR Part 160, Part 162, and part 164, ADP agrees to report to Company any Security Incident, as defined in 45 CFR 164.304, of which ADP becomes aware.

(e) ADP agrees to ensure that any agent, including a subcontractor, to whom it provides PHI received from, or created or received by ADP on behalf of Client agrees to the same restrictions and conditions that apply through this Amendment to ADP with respect to such information.

(f) ADP agrees to provide access, at the request of Company and in a time and manner not materially disruptive of ADP's operations or business, to PHI in a Designated Record Set to Company or an Individual in order to meet the requirements under 45 CFR 164.524.

PacifiCare Life Assurance Company  
1000 North Central Expressway, Suite 1000, San Jose, CA 95128  
Tel: 408.291.1000 Fax: 408.291.1001

(g) ADP agrees to make any amendment(s) to PHI in a Designated Record Set that the Company or an Individual directs or agrees to pursuant to 45 CFR 164.526, at the request of Company, and in a time and manner not materially disruptive of ADP's operations or business.

(h) ADP agrees to make internal practices, books, and records, including policies and procedures and PHI, relating to the use and disclosure of PHI received from, or created or received by ADP on behalf of Client available to the Secretary, in a time and manner designated by the Company or the Secretary and not materially disruptive of ADP's operations or business, for the purposes of the Secretary determining Company's compliance with the Privacy Rule. The ADP business unit providing the Services shall reasonably cooperate with Company and Secretary in responding to the Secretary's requests. All information provided by ADP pursuant to this provision shall remain subject to restrictions on use and disclosure of confidential information as set forth in the Agreement.

(i) ADP agrees to document such disclosures of PHI and information related to such disclosures as would be required for Company to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528, and to reasonably cooperate with Company in responding to such requests.

(j) ADP agrees to provide to Company or, at Company's direction, to an Individual, in time and manner designated by Company, and not materially disruptive of ADP's operations or business, information collected in accordance with Section 2(i) of this Amendment, to permit Company to respond to a request by an Individual for an accounting of disclosures of PHI in accordance with 45 CFR 164.528. All information provided by ADP pursuant to this provision shall remain subject to restrictions on use and disclosure of confidential information as set forth in the Agreement.

(k) If, in the performance of its obligations set forth in Sections 2(f) through 2(j), inclusive, ADP expends time and materials in addition to the Services to be provided by ADP pursuant to the Agreement, ADP shall provide Client with an estimate of the fees for such time and materials. Upon the mutual agreement by Client and ADP as to the fees to be charged by ADP for such time and materials, ADP shall invoice Client on a time and materials basis at the agreed-upon rate(s), and Client shall pay ADP all such fees in accordance with the payment terms of the Agreement.

### **3. Permitted Uses and Disclosures by ADP**

Except as otherwise limited in this Amendment, ADP may use or disclose PHI to perform functions, activities, or services for, or on behalf of, Client and/or Company as specified in the Agreement, provided that such use or disclosure does not violate the Privacy Rule or the minimum necessary rule, as described in the Privacy Rule.

### **4. Specific Use and Disclosure Provisions**

(a) Except as otherwise limited in this Amendment, ADP may use PHI for the proper management and administration of ADP or to carry out the legal responsibilities of ADP.

(b) Except as otherwise limited in this Amendment, ADP may disclose PHI for the proper management and administration of ADP, provided that disclosures are Required by Law, or ADP obtains reasonable assurances from the person to whom the information is disclosed that it will remain confidential and used or further disclosed only as Required by Law or for the purpose for which it was disclosed to the person, and the person notifies ADP of any instances of which it is aware in which the confidentiality of the information has been breached.

(c) Except as otherwise limited in this Amendment, ADP may use PHI to provide Data Aggregation services to Client and/or Company as permitted by 42 CFR 164.504(e)(2)(i)(B).

### **5. Obligations of Company**

(a) Company shall provide ADP with any limitations in its notice of privacy practices of Company in accordance with 45 CFR 164.520, to the extent that such limitation may affect ADP's use or disclosure of PHI.

(b) Company shall provide ADP with any changes in, or revocation of, permission by Individual to use or disclose PHI, to the extent that such changes may affect ADP's use or disclosure of PHI.

2025 RELEASE UNDER E.O. 14176

(c) Company shall notify ADP in writing of any restriction to the use or disclosure of PHI that Company has agreed to in accordance with 45 CFR 164.522, to the extent that such restriction may affect ADP's use or disclosure of PHI

(d) Company shall not request ADP to use or disclose PHI in any manner that would not be permissible under the Privacy Rule .

## 6. Term and Termination

(a) *Term.* The Term of this Amendment shall be effective as of the date written above, and shall terminate when all of the PHI provided by Company to ADP, or created or received by ADP on behalf of Company and/or Client, is destroyed or returned to Company, or, if it is infeasible to return or destroy PHI, protections are extended to such information, in accordance with the termination provisions in this Section.

(b) *Termination For Cause.* In addition to any termination rights set forth in the Agreement, if ADP fails to perform any material obligation related to its obligations under this Amendment, and (i) if cure is possible, such failure continues for a period of 60 days after ADP's receipt from Client of written notice thereof (specifying in reasonable detail the nature of such failure), or (ii) cure is not possible, Client may by further written notice to ADP terminate the Agreement.

(c) *Termination upon Issuance of Guidance or Change In Law.* If the Secretary provides additional guidance, clarification or interpretation on the Privacy Rule, or there is a change or supplement to the HIPAA statutes or regulations (both referred to as a "HIPAA Change"), such that a party hereto determines that the service relationship between ADP and Company is no longer a Business Associate relationship as defined in HIPAA, such party shall provide written notice to the other party of the HIPAA Change, and upon mutual agreement of the parties that the HIPAA Change renders this Amendment unnecessary, this Amendment shall terminate and be null and void.

(d) *Effect of Termination.*

(1) Except as provided in paragraph (2) of this subsection, upon termination of this Amendment, for any reason, ADP shall return or destroy all PHI received from Company, or created or received by ADP on behalf of Company. This provision shall apply to PHI that is in the possession of subcontractors or agents of ADP. Except as provided in paragraph (2) below, ADP shall retain no copies of the PHI.

(2) In the event that ADP determines that returning or destroying the PHI is infeasible, ADP shall provide to Company notification of the conditions that make return or destruction infeasible. In such event, ADP shall extend the protections of this Amendment to such PHI and limit further uses and disclosures of such PHI to those purposes that make the return or destruction infeasible, for so long as ADP maintains such PHI.

## 7. Miscellaneous

(a) *Client Rights and Remedies Upon Breach By ADP.* In the event ADP fails to perform its obligations hereunder or otherwise breaches this Amendment, Client may exercise all rights and remedies available to it under the Agreement, subject to applicable limitations of liability set forth in the Agreement or such other conditions as may apply to Client rights or remedies.

(b) *Survival.* The respective rights and obligations of ADP under Section 6(d) of this Amendment shall survive the termination of the Agreement.

(c) *Interpretation.* Any ambiguity in this Amendment shall be resolved in favor of a meaning that permits Company to comply with the Privacy Rule.

(d) *Regulatory References.* A reference in this Amendment to a section in the Privacy Rule means the section as in effect or as amended.

All other terms and conditions of the Agreement shall remain in full force and effect. In the event of any conflict between the terms and conditions of this Amendment and the terms and conditions of the Agreement, this Amendment shall prevail. The terms defined in the Agreement and used in this

Amendment shall have the same respective meanings as set forth in the Agreement, unless clearly otherwise defined in this Amendment.

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by its authorized representatives as of the date first above written.

ADP, INC.

By: REaster  
Name: Robert Easter  
Title: Controller

COMPANY

By: [Signature]  
Name: Barbara Jones  
Title: CEO - WESTERN STATES/UNIC

This is an Official Copy of the State of California  
County of Contra Costa, recorded on 10/10/11 with Placer County.

**EXHIBIT B**

This Statement of Service ("SOS") dated May 13, 2008 between Pima County and ADP-Employease, Inc. ("Employease"). All capitalized terms not otherwise defined in this SOS will have the meanings ascribed to them in the Master Agreement.

<b>Date:</b>	May 7, 2008
<b>Employer Group Contact Name:</b>	Kevin Flynn
<b>Employer Group :</b>	Pima County (State of Arizona)
<b>Address:</b>	50 W Congress, 4th Floor
<b>City, State, Zip Code:</b>	Tucson, AZ 85701
<b>Starting Number of Lives</b>	8000

*Recurring Services-based upon Eight Thousand (8000) employee lives*

Service Description	PEPM Rate(\$)
Employease® Benefits Administration For Open Enrollment	2.20
Employease® Archived Records* (if elected)	0.30
Employease® Connect – TBD (Payroll up to 5 company codes)	
Employease® Connect – Dental Vendor	
Employease® Connect – COBRA Vendor	

**TOTAL PEPM RECURRING CHARGES** \$ see above

\*Archived Records may be elected by the Employer Group at any time upon written notice to Employease. At the time of election the Archived Fees will be charged at the rate listed above on a per record per month basis, and will be included as a line item with the total PEPM Recurring Charges on the next monthly invoice.

*Non-Recurring Services\*\**

Service Description	Rate (\$)
Employease® Benefits Administration Implementation	\$15,000
Employease® Connect Pacificare	Included
Employease® Connect Employer's Dental	\$4000
Employease® Connect –TPA (CompuSys)	\$4,000
Employease® Connect –FSA (ASI)	\$4,000
Employease® Connect –COBRA (Processworks)	\$4,000
Geac Payroll Interface file	\$ 6,000
Optional Full Data Extract*	\$ 1,400

**TOTAL NON-RECURRING SERVICES CHARGES:** \$37,000

This is an Official Copy of the Pima County website maintained by the Pima County.

**\*\*Non-Recurring Services charges are invoiced as follows:**

    Employee® Benefits Administration Implementation upon execution of this SOS.  
    Connection fees upon activation of such connection.

\* Full Data Extract is an optional service provided to format all or partial employee and company data.  
ADP requires 14 days to complete request.

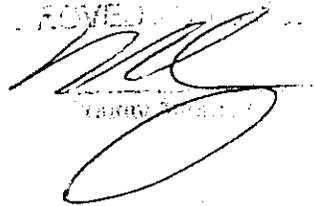
Changes to this SOS must be in writing and may result in additional charges.

**Pima County**

**Employee, Inc.**

BY: L. G. Widugiris  
NAME: L. G. Widugiris  
TITLE: Procurement Director  
DATE: 5/14/08

BY: REaster  
NAME: Robert Easter  
TITLE: Controller  
DATE: May 20, 2008

ROYE  
  
Controller

This is an Official Copy of the Pima County  
County Records Office 700 North Pima County

EXHIBIT C  
STATEMENT OF SERVICE



Date: 9/3/08

Contact Name:	Gayl Hayes	CONTRACT	
Company Name:	PIMA County	NO.	CT-HR-CMS 140872
Customer Address:	150 W. Congress	AMENDMENT NO.	01
City, State, Zip Code:	Tucson, AZ 85701	This invoice documents all charges on all invoices and documents pertaining to this contract.	
*Billing Contact Name:			
*Billing Contact Phone:			
*Billing Email:			

\*Customer must complete this section.

Service Description	Effective Date	Rate
ADP Employeease@ JP Morgan Custom Connection	TBD	\$4,500.00

\*Connections will be billed upon activation

TOTAL CHARGES: \$4,500.00

ADP Employeease Integration Services will develop and implement each of the integration services listed above. Total charges include the implementation and monitoring of the service(s). Development and implementation of certain services are dependent upon the total employee population in HRB. In some cases development is also dependent upon a vendor's ability to accept and process an electronic file.

Maintenance Charges. A professional service fee may be charged for the completion of requests to modify the listed integration service(s) if received 30 days after production notification. Such maintenance requests include changes to a file format requested by the customer or a third party vendor, changes to the configuration of a file, or changes to documented requirements. Professional service fees will be charged at the rate of \$150.00 per hour. All professional service fees will be communicated to the customer prior to the start of such maintenance. If the customer decides that the changes are no longer required, the customer must communicate to Integration Services within 24 hours of the original notification.

Note: PRICING FOR ALL SERVICES EXPIRE IF ACTIVITIES ARE NOT COMPLETED WITHIN 180 DAYS OF THE EFFECTIVE DATE.

I have read, understand and agree to the terms of this Statement of Service. I understand that changes I request to this order must be in writing and may result in a new Effective Date and additional charges. I acknowledge that the pricing quoted herein is proposed and does not become firm unless I sign and date this Statement of Service within thirty (30) days from the date submitted by ADP Employeease, after which prices are subject to change. I acknowledge that ADP Employeease Statement of Service processing does not start until ADP Employeease receives my completed and signed order.

Authorized Customer Signature: L. G. Widugiris  
 Printed Name: L. G. Widugiris  
 Title: Procurement Director  
 Date: 10/8/08

ADP-Employeease, Inc.: Reaster

Name (Printed): Robert Easter  
 Title: Controller  
 Date: Sept 30/08

APPROVED AS TO FORM  
  
 Civil Deputy  
 County Attorney

# AMENDMENT 1

EXHIBIT C  
STATEMENT OF SERVICE



Date: 9/3/08

Contact Name:	Gayl Hayes	<b>CONTRACT</b> <b>NO. CT-HR-CMS 140872</b> <b>AMENDMENT NO 01</b> This document is on all invoices and documents pertaining to this contract.
Company Name:	PIMA County	
Customer Address:	150 W. Congress	
City, State, Zip Code:	Tucson, AZ 85701	
*Billing Contact Name:		
*Billing Contact Phone:		
*Billing Email:		

\*Customer must complete this section.

Service Description	Effective Date	Rate
ADP Employeease@ JP Morgan Custom Connection	TBD	\$4,500.00

\*Connections will be billed upon activation

TOTAL CHARGES: \$4,500.00

ADP Employeease Integration Services will develop and implement each of the integration services listed above. Total charges include the implementation and monitoring of the service(s). Development and implementation of certain services are dependent upon the total employee population in HRB. In some cases development is also dependent upon a vendor's ability to accept and process an electronic file.

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Authorized Customer Signature: L. G. Widugiris  
 Printed Name: L. G. Widugiris  
 Title: Procurement Director  
 Date: 10/8/08

ADP-Employeease, Inc.: Reaster

Name (Printed): Robert Easter

Title: Controller

Date: Sept 30/08

APPROVED AS TO FORM  
[Signature]  
Civil Deputy  
County Attorney