

## **NEW TERMS OF USE**

Effective Date: October 2, 2017

[Download and/or print this Terms of Use \(“Terms”\)](#)

### **Introduction**

Please read these Terms carefully before using our websites and any online services, software or apps provided by WageWorks, Inc. (“**WageWorks**”, “**we**”, or “**us**”, or “**our**”) that post a link to these Terms (the “**Online Services**”) or otherwise participating in our benefit administration services for your employer/plan sponsor (“**Administrative Services**”). Collectively, Online Services and Administrative Services are “**Services**”. By visiting or otherwise using the Services in any manner, you agree to the then posted Terms and any applicable Additional Terms (defined below), to be bound by them, and that you acknowledge you have read and understood them. You also acknowledge, agree and consent to our data practices as described in our [Privacy Policy](#).

These Terms affect your legal rights, responsibilities and obligations and govern your use of the Services. They are legally binding, limit WageWorks’ liability to you and require you to indemnify us and to settle certain disputes through individual arbitration. **If you do not wish to be bound by these Terms and any Additional Terms, do not use the Services and uninstall Service downloads and applications.**

### **Additional Terms**

In some instances, additional or different terms, posted on the Services, apply to your use of certain parts of the Services (individually and collectively “**Additional Terms**”). In addition, our service agreements with employer/plan sponsors for program services and in some cases with individual program participants, whether executed online or offline, shall be treated as Additional Terms for the Services as applied to the Services used in connection with those program services. To the extent there is a conflict between these Terms and any Additional Terms, the Additional Terms will control unless they expressly state otherwise.

### **Updates to these Terms and Additional Terms**

We may prospectively change these Terms and Additional Terms by posting new or changed Services terms as more fully explained [in Section 12](#).

### **Quick Links**

**We have summarized some (but not all) of the main topics of these Terms below. The complete provisions, and not the headings or summaries govern.**

- **Grants and Limitations of Rights**
  - We only grant you a limited revocable license to use the Services subject to rules and limitations. [More in Section 1](#)

- You grant us a broad license to the content you submit, subject to our Privacy Policy. You retain ownership of and responsibility for your content. We have the right to manage our Services to keep its content appropriate. [More in Section 2](#)
- Your use of our Services is subject to various restrictions designed to protect the Services and users. [More in Section 3](#)

- **Limitations on Your Remedies**

As permitted by applicable law,

- We disclaim most warranties and provide the Services “As Is”. [More in Section 10](#)
- Our liability is greatly limited. [More in Section 11](#)
- Your equitable or injunctive relief rights are limited. [More in Section 9.C](#)

- **Dispute Resolution**

- As permitted by applicable law, you agree to arbitrate disputes and waive jury trial and class actions. [More in Section 9](#)

- **Availability of Services**

- We may change or discontinue our Services, or your right to access it, in whole or in part at any time, without advance notice or liability. [More in Section 3.C](#) Our Services are intended for access from and use in the U.S.A. [More in Section 13.C](#)

## 1. OWNERSHIP AND YOUR RIGHTS TO USE THE SERVICES AND CONTENT.

**A. Ownership.** The Services and all of its content (“**Content**”), including all copyrights, patents, trademarks, service marks, trade names and all other intellectual property rights therein (“**Intellectual Property**”), are owned or controlled by WageWorks, our licensors, and certain other third parties. All right, title, and interest in and to the Content and Intellectual Property available via the Services is the property of WageWorks, our licensors or certain other third parties, and is protected by U.S. and international copyright, trademark, trade dress, patent and/or other intellectual property and unfair competition rights and laws to the fullest extent possible. WageWorks owns the copyright in the selection, compilation, assembly, arrangement, and enhancement of the Content on the Services.

### **B. Your Rights to Use the Services and Content.**

(i) Your right to use the Services and Content is subject to your strict compliance with these Terms and applicable Additional Terms. Your right to access and use the Services and the Intellectual Property shall automatically terminate upon any violations. These rights are non-exclusive, limited, and revocable by us at any time in our sole discretion without advance notice or liability. As your right to access and use the Services and the Content is personal to you, you may not assign nor transfer your right; any attempt to do so is void. You may, for your personal, non-commercial, lawful use only (collectively, the following are the “**WageWorks Licensed Elements**”):

(1) Display, view, use, and play the Content on a computer, mobile or other internet enabled or permitted device (“**Device**”) and/or print one copy of the Content (excluding source and object code in raw form or otherwise) as it is displayed to you;

(2) Stream the Content using any of the widgets and/or other digital streaming internet video players, if any, provided on the Online Services;

(3) Subject to any applicable Additional Terms, if the Online Services includes a “Send to Friend,” “Contact Employer,” social media sharing or similar tool that allows you to initiate and send to one or more of your contacts a communication that includes a message or other content, or to post our Content to third-party services or your own site or online service, and the tool is operational, use the tool to do so; provided, however, that you do not do so in any manner that violates applicable law or third-party rights or reflects negatively on us, and only send to recipients you have permission to contact;

(4) If the Online Services includes a “Download” link next to a piece of Content (including, without limitation, an image, an icon, a wallpaper, a music track, a video, or an RSS feed), you may only download a single copy of such Content to a single Device;

(5) Download, install and use one copy of any software, including apps, that we make available on or through the Online Services (“**Software**”) on your Device in machine-executable object code form only and make one additional copy for back-up purposes; provided, however, that you understand and agree that (i) by allowing you to download the Software, WageWorks does not transfer title to the Software to you (i.e., you own the medium on which the Software is recorded, but the Software's owner (which may be WageWorks and/or its third-party Software licensor) will retain full and complete title to such Software); (ii) you may not copy, modify, adapt, translate into any language, distribute, or create derivative works based on the Software, except as expressly authorized in these Terms or applicable Additional Terms, without the prior written consent of WageWorks; (iii) you may not assign, rent, lease, or lend the Software to any person or entity and any attempt by you to sublicense, transfer, or assign the Software will be void and of no effect; and (iv) you may not decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Software by any means whatsoever, except to the extent the foregoing restriction is prohibited by applicable law;

(6) If made available to you, obtain a registered personal account (and/or related username and password) on the Online Services and interact with the Online Services in connection therewith;

(7) Link to the Online Services from a website or other online service, so long as: (a) the links only incorporate text, and do not use any WageWorks names, logos, or images, (b) the links and the content on your website do not suggest any affiliation with WageWorks or cause any other confusion, and (c) the links and the content on your website do not portray WageWorks or its products or services in a false, misleading, derogatory, or otherwise offensive manner, and do not contain content that is unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party or are otherwise objectionable to WageWorks. WageWorks reserves the right to suspend or prohibit linking to the Online Services for any reason, in its sole discretion, without advance notice or any liability of any kind to you or any third-party; and

(8) Use any other functionality expressly provided by WageWorks on or through the Online Services for use by users, subject to these Terms (including, without limitation, functionality to create and/or post User-Generated Content (as defined below)) and any applicable Additional Terms.

### C. Additional Terms for Benefit Programs.

If you are eligible and/or enroll for a particular benefit, as offered to you by your employer/plan sponsor, then each benefit program will be subject to Additional Terms. Your employer/plan sponsor determines your eligibility for each benefit. Not all employer/plan sponsors offer all of the benefits listed below. You can click on the links below to see basic Additional Terms for different benefit programs, which may be supplemented by further terms and conditions:

- [Public Transportation & Vanpool](#)
- [Parking](#)
- [Health Care Account \(Flexible Spending Account or Health Reimbursement Arrangement\)](#)
- [Health Savings Account](#)
- [Dependent Care Account](#)
- [Any Other Program, Product or Service](#)
- [Debit Cards](#)
- [COBRA](#)

You acknowledge that (1) the WageWorks services are not banking services, (2) WageWorks service accounts are not insured by any government agency of any nation, and (3) the Services and other WageWorks services, except for debit card offerings, are not subject to banking regulations. Any time deadlines indicated in these Terms or any applicable Additional Terms are listed, they are the minimum for using these Services and applicable benefit programs or other WageWorks services. Your employer/plan sponsor and/or third party program provider(s) or administrator(s) may set different deadlines and requirements. Use of most WageWorks services may produce tax savings to you when contribution amounts are deducted from your wages on a pre-tax basis (up to the Federally permitted limit for the benefit selected) and are not subject to federal taxes, most state income taxes, Social Security (FICA), and Medicare, but you should consult your tax advisor and we make no guarantee or representations regarding tax savings. Your actual savings will depend on your personal situation. There is no guarantee you will save money by using the WageWorks services. Pre-tax payroll deductions reduce your taxable income and may affect other compensation-based benefits such as life, disability and Social Security. You should consult your tax advisor if you have any questions regarding your personal situation. There are no tax savings for use of WageWorks COBRA administration, gym reimbursement programs or some other WageWorks services.

**D. Rights of Others.** In using the Services, you must respect the intellectual property and rights of others and WageWorks. Your unauthorized use of Content may violate the rights of others and applicable laws, and may result in your civil and criminal liability. If you believe that your work has been infringed via the Services, see [Section 5](#) below.

**E. Reservation of all Rights Not Granted as to Content and Service.** These Terms and any applicable Additional Terms include only narrow, limited grants of rights to use and access the Services and Content. No right or license may be construed, under any legal theory, by implication, estoppel, industry custom, or otherwise. ALL RIGHTS NOT EXPRESSLY GRANTED TO YOU ARE RESERVED BY WAGeworks AND ITS LICENSORS AND OTHER THIRD PARTIES. *Any unauthorized use of any Content or the Services for any purpose is prohibited.*

**F. Third-Party Services.** We are not responsible for third parties or their content, platform, apps or sites (“**Third-Party Services**”). For instance, portions of the Online Services may be integrated into or linked to third-party sites, platforms and apps that we do not control. Similarly, we may make third-party content or services, which we also may not control, available to you on or via our Online Services. This may include the ability to use third-party tools, and to access third-party sites and services using their plug-ins, made available on or via our Online Services. Use caution when dealing with third parties and consult their terms of use and privacy policies. We take no responsibility for third-party services. If you are accessing or using the Online Services through Apple, Android, or any other platform, these are Third-Party Services. If you access our apps via Apple, see [Exhibit 3](#) for Additional Terms and conditions that are applicable to you and are incorporated into the Terms by this reference.

## **2. CONTENT YOU SUBMIT.**

### **A. User-Generated Content.**

(i) **General.** WageWorks may now, or in the future, offer users of the Online Services the opportunity to create, build, post, upload, display, publish, distribute, transmit, broadcast, or otherwise make available on or submit through the Online Services, or on or in response to our pages or posts on any third-party platforms or in connection with any of our promotions by any media or manner, or otherwise submit to us (*e.g.*, on our Facebook or other social media pages, in response to our tweets, through a sweepstakes or contest, or by otherwise sending it to us) (collectively, “**submit**”) messages, text, illustrations, files, images, graphics, photos, comments, responses, sounds, music, videos, information, content, ratings, reviews, data, questions, suggestions, personally identifiable information, or other information or materials and the ideas contained therein (collectively, but excluding WageWorks Licensed Elements included therein, “**User-Generated Content**” or “**UGC**”). You may submit UGC through your profile, forums, blogs, message boards, social networking environments, content creation and posting tools, benefits information submission features, contact us tools, email, and other communications functionality. Except to the extent of the rights and license you grant in these Terms and, subject to any applicable Additional Terms, you retain whatever legally cognizable right, title, and interest that you have in your UGC.

(ii) **Non-Confidentiality of Your Public User-Generated Content.** Except as otherwise described in the Services’ posted [Privacy Policy](#), or any applicable Additional Terms, such as regarding your submission of benefits information through non-public parts of the Services (*e.g.*, receipt reimbursement submission features, benefits account profiles, etc.), you agree that (a) your UGC will be treated as non-confidential and non-proprietary by us – regardless of whether you mark them “confidential,” “proprietary,” or the like – and will not be returned, and (b) to the maximum extent not prohibited by applicable law, WageWorks does not assume any obligation of any kind to you or any third-party with respect to your UGC. Upon request, you will provide documentation necessary to authenticate rights to such content and verify your compliance with these Terms or any applicable Additional Terms. You acknowledge that the Internet and mobile communications may be insecure and subject to breaches of security; accordingly, you acknowledge and agree that your UGC is submitted at your own risk.

In your communications with WageWorks, please keep in mind that we do not seek any unsolicited ideas or materials for products or services, or even suggested improvements to products or services, including, without limitation, ideas, concepts, inventions, or designs for websites, apps, software, products, services, or otherwise (collectively, “**Unsolicited Ideas and Materials**”). Any Unsolicited Ideas and Materials you submit are deemed UGC and licensed to us as set forth below. In addition, WageWorks retains all of the rights held by members of the general public with regard to your Unsolicited Ideas and Materials. WageWorks’ receipt of your Unsolicited Ideas and Materials is not an admission by WageWorks of their novelty, priority, or originality,

and it does not impair WageWorks' right to contest existing or future intellectual property rights relating to your Unsolicited Ideas and Materials.

**(iii) License to WageWorks of Your UGC.** Except as otherwise described in any applicable Additional Terms, which specifically govern the submission of your UGC, or in our [Privacy Policy](#), you hereby grant WageWorks, the non-exclusive, unrestricted, unconditional, unlimited, worldwide, irrevocable, perpetual, and cost-free right and license to use, copy, record, distribute, reproduce, disclose, sell, re-sell, sublicense (through multiple levels), display, publicly perform, transmit, publish, broadcast, translate, make derivative works of, and otherwise use and exploit in any manner whatsoever, all or any portion of your UGC (and derivative works thereof), for any purpose whatsoever in all formats, on or through any means or medium now known or hereafter developed, and with any technology or devices now known or hereafter developed, and to advertise, market, and promote the same. Without limitation, the granted rights include the right to: (a) configure, host, index, cache, archive, store, digitize, compress, optimize, modify, reformat, edit, adapt, publish in searchable format, and remove such UGC and combine same with other materials, and (b) use any ideas, concepts, know-how, or techniques contained in any UGC for any purposes whatsoever, including developing, producing, and marketing products and/or services. You understand that in exercising such rights, metadata, notices and content may be removed or altered, including copyright management information, and you consent thereto and represent and warrant you have all necessary authority to do so. In order to further effect the rights and license that you grant to WageWorks to your UGC, you also, as permitted by applicable law, and our [Privacy Policy](#), hereby grant to WageWorks, the unconditional, perpetual, irrevocable right to use and exploit your name, persona, and likeness in connection with any UGC, without any obligation or remuneration to you. Except as prohibited by law, you hereby waive any moral rights (including attribution and integrity) that you may have in any UGC, even if it is altered or changed in a manner not agreeable to you. To the extent not waivable, you irrevocably agree not to exercise such rights (if any) in a manner that interferes with any exercise of the granted rights. You understand that you will not receive any fees, sums, consideration, or remuneration for any of the rights granted in this Section 2.A(iii).

**(iv) WageWorks' Exclusive Right to Manage Our Service.** WageWorks may, but will not have any obligation to, review, monitor, display, post, store, maintain, accept, or otherwise make use of, any of your UGC, and WageWorks may, in its sole discretion, reject, delete, move, re-format, remove or refuse to post or otherwise make use of UGC without notice or any liability to you or any third-party in connection with our operation of UGC venues in an appropriate manner. Without limitation, we may do so to address content that comes to our attention that we believe is offensive, obscene, lewd, lascivious, filthy, violent, harassing, threatening, abusive, illegal or otherwise objectionable or inappropriate, or to enforce the rights of third parties or these Terms or any applicable Additional Terms. Such UGC submitted by you or others need not be maintained on the Online Services by us for any period of time, and you will not have the right, once submitted, to access, archive, maintain, change, remove, or otherwise use such UGC on the Online Services or elsewhere, except that California minors have certain rights to have certain content about them that they have themselves posted on the Online Services prospectively removed from public display as provided for in [Section 13.J](#) below and in the [Privacy Policy](#).

**(v) Representations and Warranties Related to Your UGC.** Each time you submit any UGC, you represent and warrant that you are at least the age of majority in the jurisdiction in which you reside and are the parent or legal guardian, or have all proper consents from the parent or legal guardian, of any minor who is depicted in or contributed to any UGC you submit, and that, as to that UGC, (a) you are the sole author and owner of the intellectual property and other rights to the UGC, or you have a lawful right to submit the UGC and grant WageWorks the rights to it that you are granting by these Terms and any applicable Additional Terms, all without any WageWorks obligation to obtain consent of any third-party and without creating any obligation or liability of WageWorks; (b) the UGC is accurate; (c) the UGC does not and, as to WageWorks' permitted uses and exploitation set forth in these Terms, will not infringe any intellectual property or other right of any

third-party; and (d) the UGC will not violate these Terms or any applicable Additional Terms, or cause injury or harm to any person.

**B. Appropriate Content and Alerting Us of Violations.** We expect UGC to be appropriate for a general audience, but do not undertake to monitor it, and you consent to potentially encountering content you find offensive or inappropriate. If you discover any content that violates these Terms or any applicable Additional Terms, then you may report it by contacting us by email to [access-security@wageworks.com](mailto:access-security@wageworks.com). For alleged infringements of intellectual property rights, see [Section 5](#).

### 3. SERVICE AND CONTENT USE RESTRICTIONS.

**A. Service Use Restrictions.** Use of the Services is limited to users of thirteen (13) years of age and older and to minors above such age that have the legal capacity to contract. You agree that you will not: (i) use the Services for any political or commercial purpose (including, without limitation, for purposes of advertising, soliciting funds, collecting our pricing, and/or selling products or services); (ii) use any meta tags or any other “hidden text” utilizing any of our Intellectual Property; (iii) engage in any activities through or in connection with the Services that seek to attempt to or do harm any individuals or entities or are unlawful, offensive, obscene, lewd, lascivious, filthy, violent, threatening, harassing, or abusive, or that violate any right of any third-party, or are otherwise objectionable to WageWorks; (iv) decompile, disassemble, reverse engineer, or attempt to reconstruct, identify, or discover any source code, underlying ideas, underlying user interface techniques, or algorithms of the Services by any means whatsoever or modify any Services source or object code or any Software or other products, services, or processes accessible through any portion of the Services; (v) engage in any activity that interferes with a user’s access to the Services or the proper operation of the Services, or otherwise causes harm to the Services, WageWorks, or other users of the Services; (vi) interfere with or circumvent any security feature (including any digital rights management mechanism, device or other Content protection or access control measure) of the Services or any feature that restricts or enforces limitations on use of or access to the Services, the Content, or the UGC; (vii) harvest or otherwise collect or store any information (including personally identifiable information about other users of the Services, including email addresses, without the express consent of such users); (viii) attempt to gain unauthorized access to the Services, other computer systems or networks connected to the Services, through password mining or any other means; or (ix) otherwise violate these Terms or any applicable Additional Terms.

**B. Content Use Restrictions.** You also agree that, in using the Services, you: (i) will not monitor, gather, copy, or distribute the Content (except as may be a result of standard search engine activity or use of a standard browser, and excluding your own UGC) on the Services by using any robot, rover, “bot”, spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (ii) will not frame or utilize framing techniques to enclose any such content (including any images, text, or page layout); (iii) will keep intact all Trademark, copyright, and other Intellectual Property and other notices contained in such content; (iv) will not use such content in a manner that suggests an unauthorized association with any of our or our licensors’ products, services, or brands; (v) will not make any modifications to such content (other than to the extent of your specifically permitted use of the WageWorks Licensed Elements, if applicable); (vi) will not copy, modify, reproduce, archive, sell, lease, rent, exchange, create derivative works from, publish by hard copy or electronic means, publicly perform, display, disseminate, distribute, broadcast, retransmit, circulate or transfer to any third-party or on any third-party application or website, or otherwise use or exploit such content in any way for any purpose except as specifically permitted by these Terms or any applicable Additional Terms or with the prior written consent of an officer of WageWorks or, in the case of content from a licensor, the owner of the content; and (vii) will not insert any code or product to manipulate such content in any way that adversely affects any user experience, the Services, or any WageWorks service.

**C. Availability of Service and Content.** WageWorks, in its sole discretion without advance notice or liability, may immediately suspend or terminate the availability of the Services and/or Content (and any elements and features of them), in whole or in part, for any reason, in WageWorks' sole discretion, and without advance notice or liability.

#### **4. CREATING AN ACCOUNT.**

**A.** If you register with us or create an account, you are solely responsible and liable for the security and confidentiality of your access credentials such as user name and password (collectively "**Access ID**") and for restricting access to your Device and for all activity under your account, and you agree to contact us by email at [access-security@wageworks.com](mailto:access-security@wageworks.com) IMMEDIATELY if you have any reason to believe that another person has obtained or has the means to obtain your Access ID has accessed or used your account or profile without authorization, or you suspect any other breach of security, but you will remain responsible for any unauthorized use thereafter. You agree that you will not reveal your Access ID to any other person, or take actions that could cause your Access ID to be revealed to any person, whether intentional or not (*e.g.*, writing down your Access ID in a document easily seen by others, using an unsecured electronic mailing to transmit your Access ID, providing your Access ID to your administrative assistant to check your account balance). Do not reveal your Access ID to any person who contacts you (*e.g.*, who calls you or sends you an electronic mail) even if that person claims to be from WageWorks. Our customer service agents may request your Access ID to verify your identity, but only on a telephone call that you have placed to us. If we believe that someone else other than you is accessing or modifying your account information or calling us claiming to be you, we have the right to take action in our sole discretion to protect your account, including deactivating your account and/or notifying you.

**B.** Accounts may only be set up by you or your authorized representative who is of the age of majority. We do not review accounts for authenticity, and are not responsible for any unauthorized accounts that may appear on the Online Services. For any dispute as to account creation or authenticity, we shall have the sole right, but are not obligated, to resolve such dispute as we determine appropriate, without notice. Usernames and passwords must be personal and unique and not violate the rights of any person or entity, and must not be offensive. We may reject the use of any password, username, or other Access ID for any reason in our sole discretion. You will not sell, transfer, or assign your account or any account rights.

**C.** You are solely responsible for your registration information and for updating and maintaining it. Without limitation, you agree to the following:

- **Profile.** You agree to provide true, accurate and complete information in your profile and to maintain and promptly update it as applicable. You agree not to impersonate any person or use a name that you are not authorized to use. If any information you provide is untrue, inaccurate, not current, or incomplete, without limiting other remedies, we have the right to terminate your use of the Services and any other WageWorks services and to recover from you any costs or losses incurred as a direct or indirect result of the inaccurate or incomplete information. You authorize WageWorks to make any inquiries it considers necessary to validate your profile information.
- **Mailing address.** If your employer/plan sponsor selects the option to have you manage your own address updates, then you have the sole responsibility for providing us with a correct and operational mailing address. Many notifications that we normally provide will be made to this address and may not be available by email. We will not be liable for any undelivered benefits or mail, or any costs you incur to maintain a mailing address. You

must promptly notify us (in accordance with the monthly order/election deadline for the benefit selected) of any change in your mailing address. If you do not have a U.S. mailing address and wish to provide us with the mailing address of another person who will forward any mail communications to you, you may do so at your own risk and authorize us to send to such address. If you provide us with a mailing address, then you consent to the delivery of related information via regular USPS (i.e., unregistered, uncertified, no return receipt).

If your employer/plan sponsor selects the option to manage address updates on your behalf, then your employer/plan sponsor has the sole responsibility for providing us with a correct and operational mailing address and you hold us harmless for any employer/plan sponsor failures or errors. If upon employment termination you maintain a Health Savings Account (HSA); you will be required to manage address updates on your own address, then have the sole responsibility for providing us with a correct and operational mailing address. Many notifications that we normally provide will be made to this address and may not be available by email. We will not be liable for any undelivered benefits or mail, or any costs you incur to maintain a mailing address. Your employer/plan sponsor must promptly notify us (in accordance with the monthly order/election deadline for the benefit selected) of any change in your mailing address. If you do not have a U.S. mailing address and wish to provide your employer/plan sponsor with the mailing address of another person who will forward any mail communications to you, you may do so at your own risk and authorize us to send to such address. If you provide your employer/plan sponsor with a mailing address, then you consent to the delivery of related information via regular USPS (i.e., unregistered, uncertified, no return receipt).

- **Email address.** You have the sole responsibility for providing us with a correct and operational email address. Many notifications that we normally provide will be made to this email address and may not be available by mail. We will not be liable for any undelivered email communications or any costs you incur for maintaining Internet access and an electronic mail account. You must promptly notify us of any change in your email address. If you do not have an email address and wish to provide us with the email address of another person who will forward any email communications to you, you may do so at your own risk and authorize us to send to such address. If you provide us with an email address, then you consent to the transmission of related information via unsecured electronic mail.
- **Phone number.** If you provide us a phone number, you consent to our calling or texting you at such number regarding the Services and any other WageWorks services you receive or request information regarding. You consent to such calls or texts via use of an autodialer and/or prerecorded message, subject to your opt-out options described in [Section 8.C](#). Message and data rates may apply and not all devices and carriers may be supported. Text and call notifications may be subject to additional terms and consent when you provide your number, which will be Additional Terms.

## 5. PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT.

If you are a copyright owner who would like to send us a notice pursuant to the Digital Millennium Copyright Act (“DMCA”) to identify content or material posted on the Online Services that is infringing that you would like removed from our Online Services, or if you are a user whose work has been removed in response to such a notice of infringement and would like to file a DMCA counter-notice, you may submit such notice to us by following the instructions in [Exhibit 2](#).

## 6. NOTICES, QUESTIONS AND CUSTOMER SERVICE.

You agree that we may give you notices or otherwise respond to you by mail or to your email (if we have it on file) or in any other manner reasonably elected by us. All legal notices to us must be sent to: 1100 Park Place, #400, San Mateo, CA 94403, (Attn: Legal Department/Notices). If you have a question regarding the Services, you may contact WageWorks Customer Service – for prompt and accurate service please utilize the number associated with the notice or correspondence and or contact your employer/plan administrator for the appropriate number. You acknowledge that we have no obligation to provide you with customer support of any kind and that customer service personnel cannot change or waive Terms or applicable Additional Terms.

## 7. SPECIFICATIONS; PRICING; FEES; TYPOGRAPHICAL ERRORS.

We strive to accurately describe our services offered via the Services; however, we do not warrant that such Content on the Services is complete, accurate, reliable, current, or error-free. As permitted by applicable law, WageWorks shall have the right to refuse or cancel any elections in its sole discretion. Your status as a participant is subject to our acceptance, which we may reject or cancel subject to refund to you or your employer. If we charged your credit or other account prior to rejection or cancellation, we will reissue credit to your account or to your employer if the law doesn't allow the credit to come to you. Additional Terms may apply.

If your employer/plan sponsor so directs, you will be solely and personally responsible for payment to WageWorks of any fees associated with WageWorks' administration of your account. You acknowledge and agree that fees will be charged for any month that an account exists. An account is considered to exist once you enroll. WageWorks will continue to assess administrative fees to the account unless (i) the coverage end date has been reached, (ii) the account has a zero balance, and (iii) there is no claim or card activity associated with the account. In addition, WageWorks reserves the right to assess additional fees directly to you for any services you request that are outside the scope of services agreed to with your employer/plan sponsor, (such as for stopping payment on and reissuing a reimbursement or direct payment check).

## 8. CONNECTIVITY AND COMMUNICATIONS.

### A. Two-Factor Authentication (2FA).

For enhanced security within our Spending Account products, WageWorks may offer two-factor authentication (“2FA”) to confirm an accountholder's identity before access to certain aspects of some WageWorks services are granted. 2FA requires that you enter (a) your user name and password and (b) a one-time use personal identification number (PIN) in order to login into your account. You may elect to have the one-time use PIN sent to either your designated email address or mobile phone number (message and data rates may apply). Thereafter, you may also opt to have our system “remember” your Device and you will only be required to enter your user name and password for each subsequent login from that authorized Device, or you may decline to have the system remember your Device and you will be required to enter your user name, password and a new one-time use PIN each time you login. If you elect to use such feature, you are solely responsible for restricting your Device to authorized users and understand and accept the risks of using the remember feature.

If your employer/plan sponsor has elected 2FA, you may be required to complete the 2FA process to access your account. If your employer/plan sponsor has made 2FA optional at *your election* and you *decline* to utilize this security feature, you will be responsible for any resulting unauthorized access to your account. If your employer/plan sponsor has declined 2FA, this option will not be available to you. WageWorks COBRA and Direct Bill access requires a user name and password.

WAGEWORKS EXPRESSLY DISCLAIMS RESPONSIBILITY FOR UNAUTHORIZED ACCESS TO YOUR ACCOUNT THAT COULD HAVE BEEN PREVENTED BY USE OF 2FA IF THIS SECURITY FEATURE WAS DECLINED BY YOU OR YOUR EMPLOYER/PLAN SPONSOR.

#### **B. Devices and Connectivity.**

We do not warrant that the Software provided by WageWorks to utilize the Services or any other software used in connection with the Services will be compatible with other third-party software nor do we warrant that operation of the Services and the associated software will not damage or disrupt other software or hardware. You are responsible for obtaining and maintaining all Devices and other equipment and software, and the security thereof, and all internet service provider, mobile service, and other services needed for your access to and use of the Services and you will be responsible for all charges related to them. You further agree to look solely to the entity that manufactured and/or sold you the Device for any issues related to the Device and its compatibility with the Services and/or the Software. You are responsible for use of your Device in compliance with all applicable third party (e.g., manufacturer and carrier) obligations and restrictions shall not use the Services and/or the Software in a manner inconsistent therewith.

By using the Online Services, you agree that WageWorks may change, alter, or modify the settings or configurations on your Device in order to allow for or optimize your use of the Online Services (e.g., save content, access data, enable services, etc.). For instance, subject to any permission settings you choose, our app may access and read accounts, data and/or content on your Device, add content to your Device, and change settings of your Device, for reasons such as allowing you to submit receipts for reimbursement and send other documents to us, enabling phone call, push notification and/or SMS text notices; saving app images, sound files and writing usage logs to the Device; sending messages you initiate; sending and receiving data needed for app operations; and to provide you notice when you are not connected to a network. You consent to these activities by installing the app or otherwise using the Online Services. Your Device settings may enable you to disable, change or limit some of these activities, and you can disable the app by uninstalling the app. When using the Online Services, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with the Online Services.

You must be connected to the Internet for the entire time you are using the Online Services, the cost and provision of which is your responsibility. The quality of the display of the Content may vary from device to device, and may be affected by a variety of factors, such as your Device, your location, the bandwidth available through and/or speed of your Internet connection. WageWorks makes no representations or warranties about the quality of your Service experience on your Device or the ability of any Device to access or display the Content. In order to stream or download Content, your equipment must meet certain system requirements, including but not limited to having high-speed Internet access

Any issues related to the Services and/or the Software, including any system requirements, are covered and limited by this Agreement. Please refer to the Disclaimer of Representations and Warranties and Limitations of Our Liability provisions set forth in these Terms.

#### **C. Communications Options.**

If you or your employer/plan sponsor provides us with an address, phone number, and/or e-mail, you consent to receive communications from us at such address or phone as set forth in [Section 4.C](#) or any applicable Additional Terms, subject to the following communications options:

- i. Text Messages:** You may be given opportunities to subscribe to various text marketing or other text messaging programs and by doing so, you consent to receive ongoing text alerts (including by auto-dialers) from us related to our various businesses and affiliates, which may include information about employers/plan sponsors, except

that if the scope of your consent for a particular subscription is limited that subscription will be so limited. Such consent is not required to purchase any product or service. For each subscription, text “HELP” for help and text “STOP” to terminate (i.e., opt-out) that subscription. Subsequent or different subscriptions will be unaffected by an opt-out. You consent to receive a text confirming any opt-out as well as non-marketing administrative or transactional messages. For subscriptions to recurring text messages, you may receive up to the number of text messages per month specified in your consent, or to which you later consent. Alerts auto-renew unless otherwise specified when you consented. You understand that we will send mobile text messages using automated technology. If you subscribe to text messages you represent that you are eighteen (18) years of age or older, or have obtained parental consent. Standard message, data and other fees may be charged by your carrier, and carriers may deduct charges from pre-paid amounts or data allowances, for which you are responsible. Contact your carrier for details. Not all phones and/or carriers are supported.

- ii. **Email Messages:** You may cancel or modify our email marketing communications you may receive from us by following the instructions contained within our promotional emails. This will not affect subsequent subscriptions and if your opt-out is limited to certain types of emails the opt-out will be so limited. Please note that we reserve the right to send you certain communications relating to your account or use of our Services, such as administrative and service announcements and these transactional account messages may be unaffected if you choose to opt-out from receiving our marketing communications.

## 9. ARBITRATION AND DISPUTE TERMS.

This Section is deemed to be a “written agreement to arbitrate” pursuant to the Federal Arbitration Act. You and WageWorks agree that we intend that this Section satisfies the “writing” requirement of the Federal Arbitration Act. This Section can only be amended by mutual agreement.

**A. First – Try to Resolve Disputes and Excluded Disputes.** If any controversy, allegation, or claim arises out of or relates to the Services, including without limitation, the Content, your UGC, these Terms, or any Additional Terms, our privacy practices related to the Services, and offers made on and transactions and communications conducted through the Services (collectively, “**Dispute**”), or to any of WageWorks’ actual or alleged intellectual property rights (an “**Excluded Dispute**”), then you and we agree to send a written notice to the other providing a reasonable description of the Dispute or Excluded Dispute, along with a proposed resolution of it. Our notice to you will be sent to you based on the most recent contact information that you provide us. But if no such information exists or if such information is not current, then we have no obligation under this Section 9.A. Your notice to us must be sent to: WageWorks, Inc., 1100 Park Place, #400, San Mateo, CA 94403, (Attn: Legal Department/Notices). Subject to Section 9.C, for a period of sixty (60) days from the date of receipt of notice from the other party, WageWorks and you will engage in a dialogue in order to attempt to resolve the Dispute or Excluded Dispute, though nothing will require either you or WageWorks to resolve the Dispute or Excluded Dispute on terms with respect to which you and WageWorks, in each of our sole discretion, are not comfortable.

- b. **Binding Arbitration.** If we cannot resolve a Dispute as set forth in Section 9.A (or agree to arbitration in writing with respect to an Excluded Dispute) within sixty (60) days of receipt of the notice, then, subject to Section 9.C and as permitted by applicable law, ANY AND ALL DISPUTES ARISING BETWEEN YOU AND WAGeworks (WHETHER BASED IN CONTRACT, STATUTE, REGULATION, ORDINANCE, TORT – INCLUDING, BUT NOT LIMITED TO FRAUD, ANY OTHER INTENTIONAL TORT, OR NEGLIGENCE – COMMON LAW, CONSTITUTIONAL PROVISION, RESPONDEAT SUPERIOR, AGENCY OR ANY OTHER LEGAL OR EQUITABLE THEORY), WHETHER ARISING BEFORE OR AFTER THE EFFECTIVE DATE OF THESE TERMS, MUST BE RESOLVED BY FINAL AND BINDING ARBITRATION.

THIS INCLUDES ANY AND ALL DISPUTES BASED ON ANY PRODUCT, SERVICE OR ADVERTISING CONNECTED TO THE PROVISION OR USE OF THE SERVICES. The Federal Arbitration Act, not state law, shall govern the ability of all disputes to be arbitrated between WageWorks and you regarding these Terms (and any Additional Terms) and the Services. WageWorks and you agree, however, that California or federal law shall apply to and govern, as appropriate, any and all claims or causes of action, remedies, and damages arising between you and WageWorks, whether arising or stated in contract, statute, common law, or any other legal theory, without regard to California's choice of law principles that might apply other laws.

Disputes will be resolved solely by binding arbitration in accordance with the then-current commercial Arbitration Rules of the American Arbitration Association (“AAA”). If a party properly submits the Dispute to the AAA for formal arbitration and the AAA is unwilling to arbitrate the Dispute then either party can elect to have the arbitration administered by the Judicial Arbitration and Mediation Services Inc. (“JAMS”) using JAMS’ streamlined Arbitration Rules and Procedures, or by any other arbitration administration service that you and an officer or legal representative of WageWorks consent to in writing. If an in-person arbitration hearing is required, then it will be conducted in the “metropolitan statistical area” (as defined by the U.S. Census Bureau) where you are a resident at the time the Dispute is submitted to arbitration. You and we will pay the administrative and arbitrator’s fees and other costs in accordance with the applicable arbitration rules; but if applicable arbitration rules or laws require WageWorks to pay a greater portion or all of such fees and costs in order for this Section 9 to be enforceable, then WageWorks will have the right to elect to pay the fees and costs and proceed to arbitration. The arbitrator will apply applicable law and the provisions of these Terms and any Additional Terms, will be bound by these Terms and any Additional Terms, will determine any Dispute according to the applicable law and facts based upon the record and no other basis, and will issue a reasoned award only in favor of the individual party seeking relief and only to the extent to provide relief warranted by that party’s individual claim. All issues are for the arbitrator to decide. This arbitration provision shall survive termination of these Terms or the Services.

- c. **Injunctive Relief.** The foregoing provisions of this Section 9 will not apply to any legal action taken by WageWorks or you to seek an injunction or other equitable relief in connection with, any potential loss, cost, or damage (or any potential loss, cost, or damage) relating to the Services, any Content, your breach of these Terms of applicable Additional Terms and/or WageWorks’ intellectual property rights (including such WageWorks may claim that may be in dispute), WageWorks’ operations, and/or WageWorks’ products or services; provided however, your rights are subject to the following:

AS PERMITTED BY APPLICABLE LAW, IF YOU CLAIM THAT YOU HAVE INCURRED ANY LOSS, DAMAGES, OR INJURIES IN CONNECTION WITH YOUR USE OF THE SERVICES, THEN THE LOSSES, DAMAGES, AND INJURIES WILL NOT BE DEEMED IRREPARABLE OR SUFFICIENT TO ENTITLE YOU TO AN INJUNCTION OR TO OTHER EQUITABLE RELIEF THAT MAY INTERFERE WITH OR PREVENT THE DEVELOPMENT OR EXPLOITATION OF ANY WEBSITE, APPLICATION, CONTENT, UGC, BENEFIT PROGRAMS, SERVICES, OR INTELLECTUAL PROPERTY OFFERED, OWNED, LICENSED, USED OR CONTROLLED BY WAGeworks (INCLUDING YOUR LICENSED UGC) OR A LICENSOR OF WAGeworks. HOWEVER, THIS SECTION 9.C SHALL NOT LIMIT YOUR ABILITY TO SEEK OTHER EQUITABLE RELIEF, SUBJECT TO THESE TERMS AND ANY APPLICABLE ADDITIONAL TERMS.

- d. **No Class Action Matters and Jury Waiver.** Disputes will be arbitrated only on an individual basis and will not be joined or consolidated with any other arbitration or other proceedings that involve any claim or controversy of any other party. YOU AND

WAGeworks AGREE THAT EACH MAY BRING CLAIMS AGAINST THE OTHER ONLY IN YOUR OR ITS INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. There shall be no right or authority for any Dispute, or Excluded Dispute, to be determined on a class action basis or on any basis involving Disputes, or Excluded Disputes, brought to a purported representative capacity on behalf of the general public, or other persons or entities similarly situated. But if, for any reason, any court with competent jurisdiction holds that this restriction is unconscionable or unenforceable, then our agreement in Section 9.B to arbitrate will not apply and the Dispute must be brought exclusively in court pursuant to Section 9.E. As permitted by applicable law, the parties each waive any right to trial by jury.

- e. **Federal and State Courts.** Except to the extent that arbitration is required in Section 9.B, and except as to the enforcement of any arbitration decision or award, to the extent permitted by applicable law, any action or proceeding relating to any Dispute or Excluded Dispute may only be instituted in state court in San Mateo, CA or federal court in San Jose or San Francisco, CA. Accordingly, you and WageWorks consent to the exclusive personal jurisdiction and venue of such courts for such matters. The court will apply the laws of California without regard to conflict of law provisions that might apply other laws.
- f. **Small Claims Matters Are Excluded From Arbitration Requirement.** Notwithstanding the foregoing, either of us may bring a qualifying claim of Disputes (but not Excluded Disputes) in small claims court, subject to Sections 9.D and 9.E.

The provisions of this Section shall supersede any inconsistent provisions of any prior agreement between the parties. This Section 9 shall remain in full force and effect notwithstanding any termination of your use of the Services or these Terms.

## **10. DISCLAIMER OF REPRESENTATIONS AND WARRANTIES.**

**A.** AS PERMITTED BY APPLICABLE LAW, YOUR ACCESS TO AND USE OF THE SERVICES IS AT YOUR SOLE RISK AND THE SERVICES IS PROVIDED ON AN “AS IS”, “AS AVAILABLE”, AND “WITH ALL FAULTS” BASIS. To the fullest extent permissible by applicable law, WageWorks and their direct and indirect subsidiaries, affiliates, and each of their respective employees, directors, members, managers, shareholders, agents, vendors, licensors, licensees, contractors, customers, successors, and assigns (collectively, “**WageWorks Parties**”) hereby disclaim and make no representations, warranties, endorsements, or promises, express or implied, in connection with, or otherwise directly or indirectly related to, without limitation, the Services, Content, WageWorks Licensed Elements, UGC or other WageWorks services, except as set forth in subsection C, below.

**B. EXCEPT FOR ANY SPECIFIC WARRANTIES PROVIDED HEREIN, OR IN APPLICABLE ADDITIONAL TERMS, OR AS OTHERWISE REQUIRED BY APPLICABLE LAW, WAGeworks PARTIES HEREBY FURTHER DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OR MISAPPROPRIATION OF INTELLECTUAL PROPERTY RIGHTS OF THIRD PARTIES, TITLE, CUSTOM, TRADE, QUIET ENJOYMENT, SYSTEM INTEGRATION AND FREEDOM FROM COMPUTER VIRUS.**

**C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) WAGeworks PARTIES’ LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY**

**WAGeworks PARTIES TO THE EXTENT NOT WAIVABLE OR WHICH CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (II) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST WAGeworks PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

**11. LIMITATIONS OF OUR LIABILITY.**

**A. AS PERMITTED BY APPLICABLE LAW, UNDER NO CIRCUMSTANCES WILL ANY WAGeworks PARTIES BE RESPONSIBLE OR LIABLE FOR ANY LOSS OR DAMAGES OF ANY KIND**, including personal injury or death or for any direct, indirect, economic, exemplary, special, punitive, incidental, or consequential losses or damages of any kind, including without limitation loss of profits, in connection with, or otherwise directly or indirectly related to, without limitation, the Services, Content, WageWorks Licensed Elements, UGC or other WageWorks products or services.

**AS PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL WAGeworks PARTIES' TOTAL LIABILITY TO YOU, FOR ALL POSSIBLE DAMAGES, LOSSES, AND CAUSES OF ACTION IN CONNECTION WITH YOUR ACCESS TO AND USE OF THE SERVICES AND YOUR RIGHTS UNDER THESE TERMS, EXCEED AN AMOUNT GREATER THAN AN AMOUNT YOU COMPENSATE WAGeworks FOR SERVICES RENDERED BY WAGeworks IN CONNECTION WITH THE MATTERS THAT UNDERLIE THE CLAIM(S) (IF ANY) OR ONE HUNDRED DOLLARS (\$100), WHICHEVER IS LESS.**

**B.** The foregoing limitations of liability will apply even if any of the events or circumstances were foreseeable and even if WageWorks Parties were advised of or should have known of the possibility of such losses or damages, regardless of whether you bring an action based in contract, negligence, strict liability, or tort (including whether caused, in whole or in part, by negligence, acts of god, telecommunications failure, or destruction of the Services).

**C. NOTWITHSTANDING THE FOREGOING, THIS SECTION DOES NOT EXPAND OR LIMIT (I) WAGeworks PARTIES' LIABILITY FOR PERSONAL INJURY TO YOU CAUSED BY WAGeworks PARTIES TO THE EXTENT NOT WAIVABLE OR WHICH CANNOT BE LIMITED UNDER APPLICABLE LAW; OR (II) ANY CAUSE OF ACTION YOU MAY HAVE AGAINST WAGeworks PARTIES THAT IS NOT WAIVABLE OR CANNOT BE LIMITED UNDER APPLICABLE LAW.**

**12. UPDATES TO TERMS.**

It is your responsibility to review the posted Terms and any applicable Additional Terms each time you use the Services (at least prior to each transaction or submission). The current version of this Agreement can be viewed at any time under the Help tab on the website (after you enter your username and password). EACH TIME YOU SIGN IN TO OR OTHERWISE USE THE SERVICES YOU ARE ENTERING INTO A NEW AGREEMENT WITH US ON THE THEN APPLICABLE TERMS AND CONDITIONS AND YOU AGREE THAT WE MAY NOTIFY YOU OF NEW TERMS BY POSTING THEM ON THE SERVICES (OR IN ANY OTHER REASONABLE MANNER OF NOTICE WHICH WE ELECT), AND THAT YOUR USE OF THE SERVICES AFTER SUCH NOTICE CONSTITUTES YOUR GOING FORWARD AGREEMENT TO THE NEW TERMS FOR YOUR NEW USE AND TRANSACTIONS. Any new Terms or Additional Terms will be effective as to new use and transactions as of the time that we post them, or such later date as may be specified in them or in other notice to you. In the event any notice to you of new, revised, or additional terms is determined by a tribunal to be insufficient, the prior agreement shall continue until sufficient notice to establish a new agreement occurs. You can reject any new, revised or additional terms by discontinuing use of the Services.

### 13. GENERAL PROVISIONS.

**A. WageWorks' Consent or Approval.** As to any provision in these Terms or any applicable Additional Terms that grants WageWorks a right of consent or approval, or permits WageWorks to exercise a right in its "sole discretion," WageWorks may exercise that right in its sole and absolute discretion. No WageWorks consent or approval may be deemed to have been granted by WageWorks without being in writing and signed by an officer of WageWorks.

**B. Indemnity.** As permitted by applicable law, you agree to, and you hereby, defend (if requested by WageWorks), indemnify, and hold WageWorks Parties harmless from and against any and all claims, damages, losses, costs, investigations, liabilities, judgments, fines, penalties, settlements, interest, and expenses (including attorneys' fees) that directly or indirectly arise from or are related to any claim, suit, action, demand, or proceeding made or brought against any WageWorks Party, or on account of the investigation, defense, or settlement thereof, arising out of or in connection with: (i) your UGC; (ii) your use of the Services and your activities in connection with the Services; (iii) your breach or alleged breach of these Terms or any applicable Additional Terms; (iv) your violation or alleged violation of any laws, rules, regulations, codes, statutes, ordinances, or orders of any governmental or quasi-governmental authorities in connection with your use of the Services or your activities in connection with the Services; (v) information or material transmitted through your Device, even if not submitted by you, that infringes, violates, or misappropriates any copyright, trademark, trade secret, trade dress, patent, publicity, privacy, or other right of any person or entity; (vi) any misrepresentation made by you; and (vii) WageWorks Parties' use of the information that you submit to us (including your UGC) subject to our [Privacy Policy](#) (all of the foregoing, "**Claims and Losses**"). You will cooperate as fully required by WageWorks Parties, in the defense of any Claim and Losses. Notwithstanding the foregoing, WageWorks Parties retain the exclusive right to settle, compromise, and pay any and all Claims and Losses. WageWorks Parties reserve the right to assume the exclusive defense and control of any Claims and Losses. You will not settle any Claims and Losses without, in each instance, the prior written consent of an officer of a WageWorks Party. This section is not intended to limit any causes of action against us that you may have but are not waivable under applicable law.

**C. Operation of Service; Availability of Products and Services; International Issues.** WageWorks controls and operates the Services from the U.S.A., and makes no representation that the Services are appropriate or available for use beyond the U.S.A. If you use the Services from other locations, you are doing so on your own initiative and responsible for compliance with applicable local laws regarding your online conduct and acceptable content, if and to the extent local laws apply.

**D. Export Controls.** You are responsible for complying with all applicable trade regulations and laws both foreign and domestic. Except as authorized by U.S. law, you agree and warrant not to export or re-export the software to any country, or to any person, entity, or end-user subject to U.S. export controls or sanctions.

**E. Severability; Interpretation.** If any provision of these Terms, or any applicable Additional Terms, is for any reason deemed invalid, unlawful, void, or unenforceable by a court or arbitrator of competent jurisdiction, then that provision will be deemed severable from these Terms or the applicable Additional Terms, and the invalidity of the provision will not affect the validity or enforceability of the remainder of these Terms or the applicable Additional Terms. To the extent permitted by applicable law, you agree to waive and will waive, any applicable statutory and common law that may permit a contract to be construed against its drafter.

**F. Investigations; Cooperation with Law Enforcement; Termination; Survival.** As permitted by applicable law, WageWorks reserves the right, without limitation, to: (i) investigate any suspected breaches of its Services' security or its information technology or other systems or networks, (ii) investigate any

suspected breaches of these Terms and any applicable Additional Terms, (iii) use any information obtained by it in accordance with its [Privacy Policy](#) in connection with reviewing law enforcement databases or complying with applicable laws and use and/or disclose any information obtained by WageWorks to comply with law enforcement requests or legal requirements in accordance our [Privacy Policy](#), (iv) involve and cooperate with law enforcement authorities in investigating any of the foregoing matters, (v) prosecute violators of these Terms and any applicable Additional Terms, and (vi) discontinue the Services, in whole or in part, or, suspend or terminate your access to it, in whole or in part, including any user accounts or registrations, at any time, without notice, for any reason and without any obligation to you or any third-party. Any suspension or termination will not affect your obligations to WageWorks under these Terms or any applicable Additional Terms. Upon suspension or termination of your access to the Services, or upon notice from WageWorks, all rights granted to you under these Terms or any applicable Additional Terms (as they apply to the Services) will cease immediately, and you agree that you will immediately discontinue use of the Services. The provisions of these Terms and any applicable Additional Terms, which by their nature should survive your suspension or termination will survive, including the rights and licenses you grant to WageWorks in these Terms, as well as the indemnities, releases, disclaimers, and limitations on liability and the provisions regarding jurisdiction, choice of law, no class action, and mandatory arbitration.

**G. Assignment.** WageWorks may assign its rights and obligations under these Terms and any applicable Additional Terms, in whole or in part, to any party at any time without any notice. These Terms and any applicable Additional Terms may not be assigned by you, and you may not delegate your duties under them, without the prior written consent of an officer of WageWorks.

**H. Complete Agreement; No Waiver.** These Terms, and any applicable Additional Terms, reflect our complete agreement regarding the Services and supersede any prior agreements, representations, warranties, assurances or discussion related to the Services. Except as expressly set forth in these Terms or any applicable Additional Terms, (i) no failure or delay by you or WageWorks in exercising any of rights, powers, or remedies under will operate as a waiver of that or any other right, power, or remedy, and (ii) no waiver or modification of any term of these Terms or any applicable Additional Terms will be effective unless in writing and signed by the party against whom the waiver or modification is sought to be enforced.

**I. Electronic Delivery and Communication.** By using this Service, you agree to form a contractual relationship with your employer/plan sponsor and/or WageWorks using electronics means. To the fullest extent permitted by applicable law, this Agreement and any other agreements, notices or other communications regarding your account and/or your use of the Online Services ("**Communications**"), may be provided to you electronically and you agree to receive Communications in an electronic form. Electronic Communications may be posted on the pages within the WageWorks website and/or delivered to your electronic mail address. All Communications in either electronic or paper format will be considered to be in "writing," and to have been received no later than five (5) business days after posting or dissemination, whether or not you have received or retrieved the Communication. We reserve the right but assume no obligation to provide Communications in paper format. Your consent to receive Communications electronically is valid until you revoke your consent by terminating this Agreement.

**J. California Consumer Rights and Notices.** California residents can obtain information on our privacy practices, including how we comply with the California Online Privacy Protection Act and the California Shine the Light Act in our [Privacy Policy](#).

Residents of California are entitled to the following specific consumer rights information: you may contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs by mail at: 1625 North Market Blvd., Suite N 112, Sacramento, California, 95834, or by telephone at (916) 445-1254. Hearing-impaired users can reach the Complaint Assistance Unit at TDD (800) 326-2297 or TDD (916) 322-1700. Their website is located at: <http://www.dca.ca.gov>.

Any California residents under the age of eighteen (18) who have registered to use the Services, and who have posted content or information on the Online Services, can request that such information be removed from the Services by contacting us at WageWorks, Inc., 1100 Park Place, #400, San Mateo, CA 94403, (Attn: Legal Counsel/Privacy) making such a request, stating that they personally posted such content or information and detailing where the content or information is posted. We will make reasonable good faith efforts to remove the post from prospective public view or anonymize it so the minor cannot be individually identified. This removal process cannot ensure complete or comprehensive removal. For instance, third parties may have republished the post and archived copies of it may be stored by search engines and others that we do not control.

**K. Contact Us.** If you have any questions about this Terms of Use regarding the Services or any WageWorks services, sites, software, apps, etc., please contact us at [termsfuse@wageworks.com](mailto:termsfuse@wageworks.com) or at WageWorks, Inc., 1100 Park Place #400, San Mateo, CA 94403. (Attn: Legal Counsel/Privacy).

**//End Terms of Use//**

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## Exhibit 1

### Public Transportation & Vanpool

- **Funds.** The Public Transportation and Vanpool benefits program allows you to pay for eligible public transportation and vanpool expenses with pre-tax money. Your employer/plan sponsor does not set aside any amounts in a bank, trust, or any other accounts. All payments shall be paid out of the general assets of the employer/plan sponsor. You have no right to any of your employer/plan sponsor's assets or the assets of WageWorks.
- **Available funds.** Your employer/plan sponsor's pre-tax benefit program (and not this Agreement), and your election, determines the amount of funds available for your use at any given time and the source of those funds.
- **Deadlines.** The deadline for ordering, changing your order, canceling your order and/or changing your mailing address is clearly indicated when you place your order. You are solely responsible for adhering to all applicable deadlines.
- **Undelivered orders.** If you order a tangible transportation pass, you can expect to receive your order by the first day of the benefit month for which the order was placed. If you do not receive your order by the first day of the benefit month, you must contact WageWorks to report the missing order within the first three (3) business days of that month. If your employer/plan sponsor's plan provides for reimbursement of undelivered orders, you will be instructed to purchase your exact order directly from your public transportation or vanpool service and then submit proper documentation to get reimbursed by WageWorks. Reimbursement will be made via the standard method selected by your employer/plan sponsor. WageWorks reserves the right to not issue reimbursements for any pass that does not arrive: (1) due to an errant or incomplete mailing address provided by you or your employer/plan sponsor, (2) because your mail was forwarded, or (3) at an office building mail stop, PO Box or other non-residence. Failure to report an undelivered order in a timely manner may result in your not qualifying to get reimbursed for an undelivered order.
- **Payment to vanpool service providers.** Our sole responsibility is to deliver payment to the vanpool service provider indicated by you. We will deliver such payments electronically when possible, or otherwise via the USPS. You are still legally responsible for the bill. The use is not an "assignment of claims" (i.e., neither your employer/plan sponsor nor WageWorks has any liability towards your vanpool provider).
- **No refund, resale or return.** You agree that you will not sell, barter, exchange or otherwise transfer to any other person for cash or other consideration goods or services obtained through use of the Services. You agree not to return goods and services to your provider for cash or any other consideration other than for direct exchange of damaged or defective goods. You understand that WageWorks will not refund or credit your account, or seek a refund or credit on your behalf. You agree that you will not solicit or accept a refund or credit from any party for payments made from your account unless you return those funds to your account.
- **Penalties for misuse.** In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements regarding the items or services

you have purchased may result in disciplinary action by your employer/plan sponsor including, but not limited to, termination of your use of the Services, termination of participation from the Plan, or termination of employment. The tax authorities may also initiate tax collections against you.

- **Fare Media Pricing.** Transit fare media pricing is established by the transit agency. If the price of the transit fare media (*e.g.*, transit pass or ticket) you order is modified by the transit agency, WageWorks will modify the pricing of such fare media to incorporate the changed pricing. Such price change will be reflected in subsequent payroll deduction requests to your employer/plan sponsor (if applicable).
- **Transit Pass Conversion.** If there are cases where a transit agency eliminates a transit product that you have on order with WageWorks, WageWorks will modify your order to a replacement product that most closely corresponds to the pass that is eliminated.

[Return to Additional Terms for Benefits Programs Index](#)

## **Parking**

- **Funds.** The Parking program allows you to pay for eligible parking with pre-tax money. Your employer/plan sponsor does not set aside any amounts in a bank, trust, or any other accounts. All payments shall be paid out of the general assets of the employer/plan sponsor. You have no right to any of your employer/plan sponsor's assets or the assets of WageWorks.
- **Available funds in Order Model Programs.** Your employer/plan sponsor's pre-tax benefit program (and not this Agreement), and your election, determines the amount of funds available for your use at any given time and the source of those funds.
- **Available funds in Account Model programs.** The value loaded onto a WageWorks Account, less previous usages and charges, determines the amount of funds available for your use at any given time. If your account balance is not sufficient to cover the cost of your order prior to the ordering deadline, you will be notified, and your order will be modified or cancelled if sufficient funds are not available at the order deadline.
- **Charges for Unused Accounts in Account Model programs.** Account balances will be subject to a charge of \$1.50/month after 12 months of non-use. The charge will be deducted automatically from the remaining balance. We will de-activate any account if the remaining balance is fully depleted. "Use" for this purpose means a purchase from your account.
- **Deadlines.** The deadline for enrolling, ordering, changing your order and/or enrollment, and/or canceling your order and/or enrollment, is clearly indicated when you using the Service. You are solely responsible for adhering to all applicable deadlines.
- **Payment to parking service providers.** Our sole responsibility is to deliver payment to the parking service provider if so indicated by you, by the first of the applicable benefit month indicated by you per the requested payment schedule. We will deliver such payments electronically when possible, or otherwise via the USPS. You are still legally responsible for the bill. The use is not an "assignment of claims" (*i.e.*, neither your employer/plan sponsor nor WageWorks has any liability towards your parking provider).

- **No refund, resale or return.** You agree that you will not sell, barter, exchange or otherwise transfer to any other person for cash or other consideration goods or services obtained through use of the Services. You agree not to return goods and services to your provider for cash or any other consideration other than for direct exchange of damaged or defective goods. You understand that WageWorks will not refund or credit your account, or seek a refund or credit on your behalf. You agree that you will not solicit or accept a refund or credit from any party for payments made from your account unless you return those funds to your account.
- **Penalties for misuse.** In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements regarding the items or services you have purchased may result in disciplinary action by your employer/plan sponsor including, but not limited to, termination of your use of the Services, termination of participation from the Plan, or termination of employment. The tax authorities may also initiate tax collections against you.

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#### **Health Care Account (Flexible Spending Account or Health Reimbursement Arrangement)**

- **Plan document.** Your plan is governed by a plan document. You can request to review the Plan Document or obtain a Summary Plan Description (“SPD”) from your employer/plan sponsor.
- **Funds.** The Health Care Account allows you to pay for eligible health care products and services with tax-free money. Unless noted in your employer/plan sponsor's plan, your employer/plan sponsor does not set aside any amounts in a bank, trust, or any other accounts. All payments shall be paid out of the general assets of the employer/plan sponsor. You have no right to any of your employer/plan sponsor's assets or the assets of WageWorks.
- **Available funds.** Your employer/plan sponsor's plan (and not this Agreement), and your election, determines the amount of funds available for your use at any given time and the source of those funds.
- **Eligible expenses.** The law provides that only those products and services that are eligible for reimbursement according to IRS guidelines may be paid from your Health Care Account. You can view a complete list of eligible expenses for each program on our website (after you enter your username and password). We reserve the right to verify that Health Care Account funds are used to pay for eligible health care purchases and services received by you or any of your eligible dependents during your coverage period by requesting supporting information from you and/or by contacting your providers.
- **No refund, resale or return.** You agree that you will not sell, barter, exchange or otherwise transfer to any other person for cash or other consideration goods or services obtained through use of the Services. You agree not to return goods and services to your provider for cash or any other consideration other than for direct exchange of damaged or defective goods. You understand that WageWorks will not refund or credit your account, or seek a refund or credit on your behalf. You agree that you will not solicit or accept a refund or credit from any party for payments made from your account unless you return those funds to your account.

- **Penalties for misuse.** This program is governed by federal law, which is enforced by the Internal Revenue Service and other tax authorities. In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements regarding the items or services you have purchased may result in disciplinary action by your employer/plan sponsor including, but not limited to, deactivation of your Health Care Card, termination of your use of the Services, termination of participation from the Plan, or termination of employment. The tax authorities may also initiate tax collections against you.
- **Health Care Notice.** THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED AND HOW YOU CAN GET ACCESS TO THIS INFORMATION. PLEASE REVIEW CAREFULLY. In order for WageWorks and any affiliated service providers to process your request for a payment of health care claims (including the use of the Health Care Card), certain personally identifiable information may be passed between and among these entities. By enrolling in and requesting the Services, you are authorizing the disclosures of such information among the entities. For example, your use of the Health Care Card results in the same exchange of data over the card processing network as when you use a personal credit card. We take your health care privacy seriously and do not disclose any individually identifiable health information unless your employer/plan sponsor requests it under legitimate circumstances, or you have given us written consent. We may also contact your service provider to request clarification or additional information to process your claim. Your use of the Services is an explicit consent and authorization for us to obtain such information.

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### **Health Savings Account (HSA)**

The benefit information in this section is only relevant if you are eligible and/or enroll for this HSA benefit through WageWorks, as offered to you by your employer/plan sponsor.

- **Account establishment.** You will need to complete an HSA account application process (online or on paper) to establish your HSA and before any funds can be deposited into your HSA. To open that account, you will need to agree to a custodian/trustee agreement with the custodian bank chosen by your employer/plan sponsor, in order to establish the HSA.
- **Account portability.** Your HSA is fully portable; you can take your funds with you at any time. Similarly, you can continue to maintain your HSA through WageWorks indefinitely. Refer to your custodian/trustee agreement regarding procedures and any fees associated with closing your account or maintaining your account independently. Your account will be suspended or closed if there is negative balance for more than three (3) months. WageWorks will contact you at thirty (30) day, sixty (60) day and ninety (90) day increments via email and/or written communication to request that you contact Customer Service regarding balance due and management of the account.
- **Available funds.** The amount of funds available to make payments and disbursements from your HSA is based on the account balance of your non-invested funds as reported by the Trustee as of the end of the prior business day. You are solely responsible for directing money from your investments to your HSA bank account to make funds available for this purpose. All deposits and withdrawals are to be made out of your HSA.

You can view the fund prospectuses, which contain information on investment objectives, charges, fees, and expenses on our website (after you enter your username and password). Please read and consider the information in the prospectuses carefully before investing. This user agreement is not an offer to sell or a solicitation to buy any securities. Any offer to sell mutual fund shares may only be made by the relevant fund's prospectus. Mutual fund shares are not deposits or obligations or guaranteed or endorsed by any bank, nor are they federally insured or otherwise supported by the FDIC or any other governmental agency, and may lose value. WageWorks is not associated with such funds or the depository institution in any way.

- **Eligible expenses.** The law provides that only those products and services that are eligible may be paid from your HSA on a pre-tax basis. You can view a complete list of eligible expenses for each program on our website (after you enter your username and password). While WageWorks will provide you with information regarding disbursements and payments that appear to be related to eligible expenses, you are responsible for determining the use of your HSA funds and we recommend, per IRS guidelines, that they be used for medically approved expenses (See IRS Publication 502 on Medical and Dental Expenses and IRS Publication 969 on Health Savings Accounts).
- **IRS requirements.** As the owner of an HSA, you are solely responsible for the completion and submission of all required HSA tax forms to the IRS each year. Your account custodian will send you completed IRS Forms 1099-SA and 5498-SA to report your contributions and disbursements for your use in completing the required tax forms.
- **No refund, resale or return.** You agree that you will not sell, barter, exchange or otherwise transfer to any other person for cash or other consideration goods or services obtained through use of the Services. You agree not to return goods and services to your provider for cash or any other consideration other than for direct exchange of damaged or defective goods. You understand that WageWorks will not refund or credit your account, or seek a refund or credit on your behalf. You agree that you will not solicit or accept a refund or credit from any party for payments made from your account unless you return those funds to your account.
- **Penalties for misuse.** This program is governed by federal law, which is enforced by the Internal Revenue Service and other tax authorities. In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements regarding the items or services you have purchased may result in disciplinary action by your employer/plan sponsor including, but not limited to, deactivation of your Health Care Card, termination of your use of the Services, termination of participation from the Plan, or termination of employment. The tax authorities may also initiate tax collections against you.
- **Health Care Notice.** THIS NOTICE DESCRIBES HOW MEDICAL INFORMATION ABOUT YOU MAY BE USED AND DISCLOSED TO WAGeworks. PLEASE REVIEW CAREFULLY. When you use the Health Care Card to access your HSA, certain medical information (such as the drug you purchased or the doctor you visited) will be transmitted to WageWorks, in the same manner that it would had you used a personal credit card. We take your health care privacy seriously and do not disclose any individually identifiable health information unless you have given us written consent. Your use of the Services- is an explicit consent and authorization for us to obtain and hold such information.

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- **Plan document.** Your employer/plan sponsor's plan is governed by a plan document. You can request to review the Plan Document or obtain a Summary Plan Description (“SPD”) from your employer/plan sponsor.
- **Funds.** The Dependent Care Account allows you to pay for eligible dependent care products and services with pre-tax money. Unless noted in your employer/plan sponsor's plan, your employer/plan sponsor does not set aside any amounts in a bank, trust, or any other accounts. All payments shall be paid out of the general assets of the employer/plan sponsor. You have no right to any of your employer/plan sponsor's assets or the assets of WageWorks.
- **Available funds.** Your employer/plan sponsor's pre-tax benefit plan (and not this Agreement), and your election, determines the amount of funds available for your use at any given time and the source of those funds.
- **Eligible expenses.** The law provides that only those dependent care services that are work-related may be paid from your Dependent Care Account. You can view a complete list of eligible expenses for each program on our website (after you enter your username and password). We reserve the right to verify that Dependent Care Account funds were used to pay for eligible dependent care services received by you or any of your eligible dependents during your coverage period by requesting supporting information from you and/or by contacting your providers.
- **No refund, resale or return.** You agree that you will not sell, barter, exchange or otherwise transfer to any other person, for cash or other consideration, the services obtained through use of the Services. You agree not to refuse services and ask for cash refunds or any other services, or for services to be provided at another time. You understand that WageWorks will not refund or credit your account, or seek a refund or credit, or otherwise negotiate with your provider on your behalf. You agree that you will not solicit or accept a refund or credit from any party for payments made from your account (e.g., eBay®) unless you return those funds to your account.
- **Penalties for misuse.** The Services provides you with access to funds set aside by you on a pre-tax basis. These funds belong to your employer/plan sponsor, and are governed by federal law. The Internal Revenue Service and other tax authorities enforce these laws. In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements regarding the items or services you have purchased may result in disciplinary action by your employer/plan sponsor including, but not limited to, termination of your use of the Services, termination of participation from the Plan, or termination of employment. The tax authorities may also initiate tax collections against you.

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**Any Other Program, Product or Service**

- **Program document.** Your employer/plan sponsor's program may or may not be governed by a program document. If such a document exists, WageWorks by contract must follow the document, and cannot change the content or the interpretation of it.
- **Funds.** The program allows you to pay for eligible products and/or services with pre-tax and/or post-tax money per the program information available on this site. Unless noted in your

employer/plan sponsor's program, your employer/plan sponsor does not set aside any amounts in a bank, trust, or any other accounts. All payments shall be paid out of the general assets of the employer/plan sponsor. You have no right to any of your employer/plan sponsor's assets or the assets of WageWorks.

- **Available funds.** Your employer/plan sponsor's program (and not this Agreement), and your election, determines the amount of funds available for your use at any given time and the source of those funds.
- **Eligible expenses.** You can view a complete list of eligible expenses for each program on our website (after you enter your username and password). We reserve the right to verify that program funds were used to pay for eligible services received by you or any of your eligible dependents during your coverage period by requesting supporting information from you and/or by contacting your providers.
- **No refund, resale or return.** You agree that you will not sell, barter, exchange or otherwise transfer to any other person for cash or other consideration goods or services obtained through use of the Services. You agree not to return goods to the merchant for cash or any other consideration other than for direct exchange of damaged or defective goods. You agree not to ask for cash for services that you ordered but did not accept. You understand that WageWorks will not refund or credit your account, or seek a refund or credit, or otherwise negotiate with the merchant or vendor on your behalf. You agree that you will not solicit or accept a refund or credit from any party (*e.g.*, on eBay) for payments made from your account unless you return those funds to your account.
- **Penalties for misuse.** The Services provides you with access to funds set aside by you on a pre-tax basis. These funds belong to your employer/plan sponsor, and are governed by federal law. The Internal Revenue Service and other tax authorities enforce these laws. In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements regarding the items or services you have purchased may result in disciplinary action by your employer/plan sponsor including, but not limited to, termination of your use of the Services, termination of participation from the Plan, or termination of employment. The tax authorities may also initiate tax collections against you.

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#### **Debit cards.**

- Debit cards provided by or facilitated through WageWorks are subject to Additional Terms.

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#### **COBRA and Direct Bill.**

- **Program document.** Your employer/plan sponsor's program may or may not be governed by a program document. If such a document exists, WageWorks by contract must follow the document, and cannot change the content or the interpretation of it.

- **Plan Sponsor and Administrator.** WageWorks is the third-party administration provider for your continued benefits and does not serve as the plan administrator as that term is defined in the Employee Retirement Income Security Act of 1974. Unless otherwise designated in applicable governing document(s), your (previous) employer is the Plan Sponsor and Administrator.
- **Premiums.** Your (previous) employer/plan sponsor remits premiums from you to the insurance carriers for the continued enrollment in the covered health plan(s). WageWorks collects the premium payments made via online or alternate payment methods and sends these premiums back to the employer/plan sponsor as soon as practicably possible.
- **Eligibility for COBRA and/or Direct Bill Coverage.** Determinations of eligibility for benefits are made solely at the discretion of your (previous) employer/plan sponsor in accordance with any applicable federal or state laws or applicable governing document(s).
- **Coverage Details.** You can view your coverage details, including family members, insurance carriers, payment history, and next payment due date(s) via the secure online access.
- **Refunds of Premium Payments.** A refund of premiums paid will only be considered if the request for termination of coverage and refund of monies paid is made in advance of the coverage period.
- **Penalties for misuse.** The Services provides you with access to coverage offered by the Plan Sponsor, based on federal regulations and Plan Document requirements. This offer of coverage is owned by your (previous) employer/plan sponsor, and is governed by federal law. The Internal Revenue Service and other tax authorities enforce these laws. In addition to other legal remedies, your refusal to follow the terms of this Agreement or provision of false or fraudulent statements may result in disciplinary action by your employer/plan sponsor including, but not limited to, termination of your use of the Services, termination of participation from the Plan, or termination of employment (if applicable).

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**Exhibit 2****PROCEDURE FOR ALLEGING COPYRIGHT INFRINGEMENT**

**A. DMCA Notice.** WageWorks asks our users to respect the intellectual property rights of others. It is our policy to respond appropriately to clear notices of alleged copyright infringement, as set forth more fully below. In WageWorks' sole discretion, WageWorks may remove content that may be infringing on another person's intellectual property rights with or without notice to the potential infringer. In accordance with the U.S. Digital Millennium Copyright Act ("DMCA") and other applicable law, WageWorks has adopted a policy of terminating, in appropriate circumstances, users who are deemed to be repeat infringers.

**B.** If we remove or disable access in response to a DMCA Copyright Infringement Notice, we will make a good faith attempt to contact the owner or administrator of the affected content so that they may make a counter-notification. If you own a copyright in a work (or represent such a copyright owner) and believe that your (or such owner's) copyright in that work has been infringed by an improper posting or distribution of it via the Online Services, then you may send us a written notice that includes all of the following:

- (i) a legend or subject line that says: "DMCA Copyright Infringement Notice";
- (ii) a description of the copyrighted work that you claim has been infringed or, if multiple copyrighted works are covered by a single notification, a representative list of such works;
- (iii) a description of where the material that you claim is infringing or is the subject of infringing activity is located that is reasonably sufficient to permit us to locate the material (please include the full URL of the page(s) on the Services on which the material appears);
- (iv) your full name, address, telephone number, and email address;
- (v) a statement by you that you have a good faith belief that use of the material in the manner complained of is not authorized by the copyright owner, its agent, or the law;
- (vi) a statement by you, made under penalty of perjury, that all the information in your notice is accurate, and that you are the copyright owner (or, if you are not the copyright owner, then your statement must indicate that you are authorized to act on the behalf of the owner of an exclusive right that is allegedly infringed); and
- (vii) your electronic or physical signature.

WageWorks will only respond to DMCA Notices that it receives by mail, email, or facsimile at the addresses below:

By Mail: WageWorks, Inc. (Attn: Legal Department/Notices), 1100 Park Place, 4th Floor, San Mateo, California 94403

By Email: [dmca@wageworks.com](mailto:dmca@wageworks.com)

It is often difficult to determine if your copyright has been infringed. WageWorks may elect to not respond to DMCA Notices that do not substantially comply with all of the foregoing requirements, and WageWorks may elect to remove allegedly infringing material that comes to its attention via notices that do not substantially comply with the DMCA.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity is infringing may be subject to liability.

We may send the information that you provide in your notice to the person who provided the allegedly infringing work. That person may elect to send us a DMCA Counter-Notification.

Without limiting WageWorks' other rights, WageWorks may, in appropriate circumstances, terminate a repeat infringer's access to the Online Services and any other website owned or operated by WageWorks.

**C. Counter-Notification.** If access to the Online Services to a work that you submitted to WageWorks is disabled or the work is removed as a result of a DMCA Copyright Infringement Notice, and if you believe that the disabled access or removal is the result of mistake or misidentification, then you may send us a DMCA Counter-Notification to the addresses above. Your DMCA Counter-Notification should contain the following information:

- (i) a legend or subject line that says: "DMCA Counter-Notification";
- (ii) a description of the material that has been removed or to which access has been disabled and the location at which the material appeared before it was removed or access to it was disabled (please include the full URL of the page(s) on the Online Services from which the material was removed or access to it disabled);
- (iii) a statement under penalty of perjury that you have a good faith belief that the material was removed or disabled as a result of mistake or misidentification of the material to be removed or disabled;
- (iv) your full name, address, telephone number, email address, and the username of your Account;
- (v) a statement that you consent to the jurisdiction of the Federal District Court for the judicial district in which your address is located (or, if the address is located outside the U.S.A., to the jurisdiction of the United States District Court for the Central District of California), and that you will accept service of process from the person who provided DMCA notification to us or an agent of such person; and
- (vi) your electronic or physical signature.

Please note that the DMCA provides that any person who knowingly materially misrepresents that material or activity was removed or disabled by mistake or misidentification may be subject to liability.

If we receive a DMCA Counter-Notification, then we may replace the material that we removed (or stop disabling access to it) in not less than ten (10) and not more than fourteen (14) business days following receipt of the DMCA Counter-Notification. However, we will not do this if we first receive notice at the addresses above that the party who sent us the DMCA Copyright Infringement Notice has filed a lawsuit asking a court for an order restraining the person who provided the material from engaging in infringing activity relating to the material on the Services. You should also be aware that we may forward the Counter-Notification to the party who sent us the DMCA Copyright Infringement Notice.

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**Exhibit 3****TERMS APPLICABLE FOR APPLE IOS**

- (i) To the extent that you are accessing the Online Services through an Apple mobile application, you acknowledge that these Terms are entered into between you and WageWorks and, that Apple, Inc. (“Apple”) is not a party to these Terms other than as third-party beneficiary as contemplated below.
- (ii) The license granted to you by WageWorks under the Terms is subject to the permitted Usage Rules set forth in the App Store Terms of Use (see: <http://www.apple.com/legal/itunes/us/terms.html>) and any third-party terms of agreement applicable to the Online Services.
- (iii) You acknowledge that WageWorks, and not Apple, is responsible for providing the Online Services and Content thereof.
- (iv) You acknowledge that Apple has no obligation whatsoever to furnish any maintenance or any support services to you with respect to the Online Services.
- (v) To the maximum extent not prohibited by applicable law, Apple will have no other warranty obligation whatsoever with respect to the Online Services.
- (vi) Notwithstanding anything to the contrary herein, and subject to the terms and conditions of the Terms, you acknowledge that, solely as between Apple and WageWorks, WageWorks, and not Apple is responsible for addressing any claims you may have relating to the Online Services, or your possession and/or use thereof, including, but not limited, to: (i) product liability claims; (ii) any claim that the Online Services fails to conform to any applicable legal or regulatory requirement; and (iii) claims arising under consumer protection or similar legislation.
- (vii) Further, you agree that if the Online Services, or your possession and use of the Online Services, infringes on a third-party’s intellectual property rights, you will not hold Apple responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claims.
- (viii) You acknowledge and agree that Apple, and Apple’s subsidiaries, are third-party beneficiaries of the Terms, and that, upon your acceptance of the terms and conditions of the Terms, Apple will have the right (and will be deemed to have accepted the right) to enforce the Terms against you as a third-party beneficiary thereof.
- (ix) When using the Online Services, you agree to comply with any and all third-party terms that are applicable to any platform, website, technology or service that interacts with the Online Services.
- (x) Your use of real time route guidance on the Online Services (if any) is at your sole risk. Location data may not be accurate.

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