Terms of Service

Metropolitan Software, Inc.
Version 2.2; Revised: 2/1/2025

This Software License Agreement ("Agreement") governs use and maintenance services of the Attendance Counts software ("Software") provided by Metropolitan Software, Inc. ("MetSoft") to the client ("Client"). MetSoft grants Client a non-exclusive, non-transferable license to use the Software. The Software is licensed not sold.

Covered Services

MetSoft will provide the following services under this agreement

- Unlimited help desk support including technical support by telephone during normal business hours (Mon-Fri 9am to 5pm EST, excluding holidays).
- Correction of software defects in the form of "maintenance releases" which will be scheduled by MetSoft as needed throughout the term of the Agreement.
- Changes to Customer's Attendance Counts configuration to reflect changes in Customer's Timekeeping configuration or minor changes in Client's attendance policy (such as new earnings codes, pay classes, etc.)

Uncovered Services

- Changes to the Attendance Counts configuration in order to accommodate major "scope" changes in Customer's attendance policy that occur after the Attendance Counts Go Live Date. (For example, a new rule to drop points based on perfect attendance.)
- Feature requests, product enhancements, custom reports, custom imports or exports, or other requested changes to the Software.

Client's Responsibilities

- Monitoring ongoing operation of Attendance Counts and related applications. MetSoft is not responsible for data loss or cost of recovery due to Client's failure to detect and report operational stoppages, even if they are due to defects in the Attendance Counts application. Logging in to Attendance Counts at least once per week and reporting any import failures to MetSoft is the best way to ensure against data loss.

- Informing MetSoft of relevant changes to Timekeeping software configuration, such as changes to payrules, pay codes, and comment codes.

Term, Termination, and Renewal

This Agreement shall commence on the date of sign-up through the ADP Marketplace program. There is a minimum twelve-month subscription commitment, beginning on Client's Go-Live Date" with Attendance Counts, where Go Live Date is the date on which Attendance Counts has been configured and is available for use by Client. After this initial term, this contract will remain in force until either party gives thirty days' written notice of non-renewal. Any termination of this Agreement will render the Client unlicensed for use of the Software.

Terms and conditions, including subscription rates, are subject to change upon thirty days' notice to Client.

Payment Terms

Client agrees to pay implementation and subscription fees through the ADP Marketplace program.

Termination for Cause

Either party may terminate this Agreement upon written notice to the other if: (i) a material violation of this Agreement by the other party is not remedied within thirty (30) days after notice of violation; or (ii) any representation or warranty made by the other party shall prove to have been false or fraudulent in any material respect as of the date the same was made; or (iii) the other party admits in writing its inability to pay its debts generally as they become due, or executes an assignment for the benefit of creditors or similar document; or (iv) a receiver, trustee in bankruptcy or similar officer is appointed for the other party's property.

By accepting these terms, Client commits itself to accepting delivery of the completed Attendance Counts solution. In the event Client is unwilling or unable to provide MetSoft the information it needs to complete the initial implementation and deliver the completed solution, or Client refuses to accept delivery of the completed solution, Client is still liable for the full quoted implementation cost.

Limited Warranty

The Software, is provided "as is" and no warranty of any kind, including but not limited to merchantability or fitness to a particular purpose, is made by or authorized to be made on behalf of MetSoft. The Client assumes the entire risk of the results of performance of the software or of the failure of the software to perform.

Limitation of Liability

To the maximum extent permitted by applicable law, in no event will MetSoft be liable for any special, indirect, incidental or consequential damages whatsoever (including without limitation, loss of business profits), arising out of the use or inability to use the Software, whether claimed under this license or otherwise even if MetSoft has been advised of the possibility of such damages.

Governing Law, Consent to Jurisdiction, Venue and Service

This Agreement shall be governed by and construed under the laws of the state of New Jersey. Client consents and agrees that all legal proceedings relating to the subject matter of this Agreement shall be maintained in courts sitting within the state of New Jersey. Client further consents and agrees that jurisdiction and venue for such proceedings shall lie exclusively with such courts. Service of process in any such proceeding may be made by certified mail, return receipt requested, directed to the respective party at the address at which it is to receive notice as provided herein.

Severability, No Waiver

If any provision of this Agreement is held invalid or otherwise unenforceable, the enforceability of the remaining provisions shall not be impaired thereby. The failure by any party to exercise any right provided for herein shall not be deemed a waiver of any right hereunder.

Other Provisions

Client may not sell, assign, transfer, lease, sub-license or otherwise convey any of its rights (or delegate any of its duties) under this Agreement, without the prior written consent of MetSoft.