

**EMPLOYEE ABSENCE  
ADMINISTRATIVE SERVICES AGREEMENT**

**PARTIES:**

**METROPOLITAN LIFE INSURANCE COMPANY**

**And**

**COUNTY OF SAN BERNARDINO**

## TABLE OF CONTENTS

	<u>Page</u>
<b>SECTION 1: DEFINITIONS</b>	
A. General Definitions .....	2
B. Specific Definitions .....	2
<b>SECTION 2: SERVICES AND RESPONSIBILITIES</b>	
A. Administration of Leave Requests .....	3
B. Specific MetLife Services .....	3
C. MetLife Reporting Services .....	4
D. Regularly Available Additional Services .....	4
E. Customer Responsibilities .....	4
F. Mutual Responsibilities.....	6
<b>SECTION 3: SERVICE FEES</b>	
A. Service Fees.....	7
B. Monthly Service Fee.....	7
C. Additional Fees.....	7
D. Service Fee Adjustments .....	7
E. Suspension of Services.....	8
F. Performance Guarantees .....	8
<b>SECTION 4: CONFIDENTIAL INFORMATION; AND USE OF NAMES, SERVICE MARKS AND TRADEMARKS; AND EXAMINATIONS</b>	
A. Confidential Information.....	9
B. Identification of Confidential Information .....	9
C. Non-Disclosure of Confidential Information .....	9
D. Limitation of Non-Disclosure Obligation .....	9
E. Individually Identifiable Employee Information .....	9
F. Unauthorized Disclosure of Confidential Information.....	9
G. No Use of Other Party's Name, Service Marks, or Trademarks.....	9
H. Customer's Approval of Material Used by MetLife.....	9
I. MetLife's Approval of Material Used By Customer .....	10
J. Examinations .....	10
<b>SECTION 5: VALIDATION OF METLIFE'S LEAVE DECISION</b>	
A. Customer to Furnish Advance Written Notice of an Adverse Employment Action.....	11
B. MetLife Notice to Customer.....	11
<b>SECTION 6: LEAVE LITIGATION</b>	
A. Definition of Leave Litigation .....	12
B. Definition of Incorrect Leave Decision.....	12
C. Customer Liability With Respect To The Absence Policy and Leave Decisions.....	12
D. Limited MetLife Liability With Respect To Leave Decisions .....	12
E. Duties of MetLife and Customer in Leave Litigation .....	12
<b>SECTION 7: INDEMNIFICATION</b>	
A. Definitions.....	14
B. Indemnification.....	14
C. Discretion to Resolve Non-Party Claims.....	14
D. No Rights Afforded to Third Parties .....	14
<b>SECTION 8: TERM/TERMINATION OF THIS AGREEMENT</b>	
A. Continuity of Agreement.....	15
B. Termination of the Agreement.....	15
C. Processing of Run-Out Leave Requests.....	15

**SECTION 9: GENERAL PROVISIONS**

A. Entire Contract..... 16  
B. Modification to Agreement..... 16  
C. Agreement Counterparts ..... 16  
D. Independent Contractor Status ..... 16  
E. Notices ..... 16  
F. Choice of Law ..... 16  
G. Headings..... 16  
H. Waivers ..... 16  
I. Survival ..... 16  
J. Severability ..... 16

**ADMINISTRATIVE SERVICES AGREEMENT EXECUTION PAGE ..... 17**

**APPENDICES:**

**APPENDIX A: SERVICE FEES..... 2**  
**APPENDIX B: ABSENCE POLICY ..... 3**  
**APPENDIX C: EXAMINER’S CONFIDENTIALITY AGREEMENT ..... 4**  
**APPENDIX D: PERFORMANCE GUARANTEE AGREEMENT ..... 6**

**EMPLOYEE ABSENCE  
ADMINISTRATIVE SERVICES AGREEMENT**

This Agreement is effective July 18, 2020 and is entered into by and among:

**Metropolitan Life Insurance Company (“MetLife”)**  
200 Park Avenue  
New York, New York 10166-0188

And

**County of San Bernardino**  
157 West Fifth Street, 1<sup>st</sup> Floor  
San Bernardino, California 92515

**RECITALS**

County of San Bernardino has established and maintains an employee absence policy and has asked MetLife to render certain services necessary in the administration of such employee absence policy.

MetLife is willing to provide the services described in this Agreement.

**Therefore, it is agreed as follows:**

## **SECTION 1: DEFINITIONS**

**A. General Definitions:** In this Agreement, the terms listed below shall have the following meanings:

1. **“Agreement”** means this Administrative Services Agreement and all Appendices attached to this Administrative Services Agreement, which are hereby incorporated into this Agreement.
2. **“Absence Policy”** means the employee absence policy established and maintained by County of San Bernardino which addresses absences under the federal Family and Medical Leave Act of 1993 (“FMLA”) and state leave laws similar to the FMLA (collectively hereinafter referred to as “FML”).
3. **“Contract Period”** means the period beginning in July of a calendar year and ending in the next following July. The **“First”** Contract Period will begin on July 18, 2020 and will end on July 30, 2021. The **“Second”** Contract Period will begin on July 31, 2021 and will end on July 29, 2022. The **“Third”** Contract Period will begin on July 30, 2022 and will end on July 28, 2023. Customer has the option to extend this agreement for additional fourth and fifth Contract Periods beginning in July 2023 pursuant to APPENDIX A: SERVICE FEES. A **“Subsequent”** Contract Period means any Contract Period following the Fifth Contract Period. In no event will a Contract Period include any period of time beyond the date of termination of this Agreement.
4. **“Customer”** means County of San Bernardino, its directors, trustees, officers, employees, agents or committees to whom authority to act on its behalf with respect to this Agreement has been delegated (not including MetLife or MetLife subcontractors, if any).
5. **“Leave Request”** means a request for work absence submitted to MetLife in the manner prescribed by the Customer and in accordance with the Absence Policy.
6. **“MetLife”** means Metropolitan Life Insurance Company, its directors, officers, employees, agents, committees, subsidiaries, and/or subcontractors to whom Metropolitan Life Insurance Company has granted authority to act on its behalf in connection with this Agreement.
7. **“Employee”** means an employee of the Customer who is covered under the Absence Policy.
8. **“Party(ies)”** means (a) signatory(ies) to this Agreement.

**B. Specific Definitions:** Certain terms having application only to specific provisions of this Agreement are defined in those specific provisions.

## **SECTION 2: SERVICES AND RESPONSIBILITIES**

- A. Administration of Leave Requests:** Customer and MetLife agree that MetLife will administer Leave Requests on behalf of the Customer. MetLife will administer Leave Requests in accordance with the Absence Policy and ensure that such administration is in compliance with applicable law and regulations. MetLife's administration will be based upon records provided by the Customer, upon which MetLife is entitled to rely, and pre-determined defaults/assumptions identified during implementation. Customer agrees that Customer retains all final authority and responsibility for decisions with respect to Leave Requests.
- B. Specific MetLife Services:** In addition to its other obligations under this Agreement, MetLife will provide the services set forth below, when applicable.

### **Absence Policy Administration**

- a. Integration of Absence Policy administration and active Short-Term Disability claims including; concurrent administration of Absence Policy and Short-Term Disability claims, conversion of concurrent administration to standalone administration, and conversion of standalone administration to concurrent administration, as appropriate.
- b. Standard telephonic or web intake, via a customer specific leave intake script, of a Leave Request using the Customer's demographic feed which contains the required eligibility data elements. Notice of a Leave Request may be provided to MetLife by the Employee, the Employee's authorized representative, the Customer, or the Customer's authorized representative.
- c. Review of leave documentation provided by the Employee and/or the Customer to support leave administration.
- d. Collection of other available information needed in order to complete initial and ongoing absence decision, including the Customer's authorization to perform second and/or third opinions for FML, if necessary.
- e. Mailing of standard notice communications (i.e. eligibility notice, rights and responsibilities notice, designation notice) which advise of an Employee's eligibility for leave, request the submission of appropriate paperwork, including certifications, designate the time off as qualifying leave and detail specific expectations and obligations of the Employee or key Employee. MetLife will provide the standard notice communications in English unless applicable law requires that these communications be provided in Spanish.
- f. Determination of eligibility based upon information provided by the Customer in the demographic feed. If it is determined that the Employee is not eligible or does not otherwise qualify for leave; provision of notification to the Customer of the determination, and provision of notification of the determination to the Employee in writing, and instruction to the Employee to contact the Customer to determine job status or other leave options.
- g. Provision of written notification to the Employee of any Leave Request that is granted or denied and notice to the Employee of any specific expectations and obligations with respect to the leave and provide a copy to the supervisor/manager in accordance with the agreed upon method.
- h. Provision of written notification to Employee of any Leave Request extension or closure and provision of written notice to Employee of any specific requirements, expectations and obligations with respect to the leave extension or closure and provision of such information to the supervisor/ manager in accordance with an agreed upon method.
- i. Tracking of absence or leave time incurred on continuous, reduced-schedule, or intermittent bases, with information provided by Customer or Employee, as necessary.

- j. Maintenance of the following documentation in connection with the Absence Policy: notice of leave furnished by the Employee directly to MetLife, notice of leave furnished by the Customer to MetLife, medical or other certifications or re-certifications and any documentation received or generated by MetLife relating to a dispute initiated by the Employee.
  - k. Provision of responses to Employee and Customer questions concerning rights and responsibilities to aid the employee's leave planning and the Customer response to Leave Requests.
  - l. A standard toll-free phone number to respond to Customer or employee questions concerning the Absence Policy.
  - m. A web site, access to which will be generally available twenty-four (24) hours a day, seven (7) days a week for Customer, Employees or authorized representatives, which provides the status of Leave Requests and other leave details.
- C. MetLife Reporting Services:** MetLife will furnish to Customer the following reports:
- 1. **Reports Furnished at No Additional Charge:** MetLife will furnish to Customer a list of available standard reports upon request. Customer shall receive standard reports at agreed upon intervals at no additional charge.
  - 2. **Reports Furnished at an Additional Charge:** If Customer requests any additional reports which MetLife is capable of producing at a cost Customer is willing to pay, MetLife will furnish them to Customer for an Additional Fee, which will be payable in the manner set forth in **Section 3: Service Fees, Paragraph C**. MetLife will advise Customer in advance of the charge for each such report, or the rate by which the charge is determined.
- D. Regularly Available Additional Services:** The Monthly Service Fee set forth in **Section 3: Service Fees** does not include charges for the following services. If MetLife provides any of these services at the request of Customer, Customer will pay MetLife Additional Fees pursuant to **Section 3: Service Fees, Paragraph C**. On request, MetLife will advise Customer of the charge for any of these services or the rate by which the charge is determined.
- 1. **Non-Standard Forms:** Printing and supply of non-standard or specially designed Leave Request forms and/or administrative forms specifically prepared for use in connection with the administration of the Absence Policy. Customer understands and agrees that use of non-standard forms may result in increased administrative costs if they do not present necessary information in a manner consistent with MetLife's administrative systems, and that Customer will be required to pay such additional costs, if any. Customer will consult with MetLife in advance of ordering or using such non-standard or specially designed forms.
  - 2. **Medical Opinions:** Medical examinations of Employees in connection with obtaining a second or third opinion on a Leave Request, by health care professionals not employed by MetLife.
  - 3. **Participation in Absence Policy Adjustments:** Participation by MetLife representatives as requested by Customer in adjustments to the Absence Policy due to merger, spin-offs, and extensions.
  - 4. **Other Additional Services:** Any other Additional Services agreed upon by the Parties.
- E. Customer Responsibilities:** Customer shall have the following responsibilities in addition to its other obligations and responsibilities under this Agreement:
- 1. **Final Authority for Absence Policy:** Except as otherwise provided in this Agreement, Customer retains all final authority and responsibility for the Absence Policy and its operation and for compliance with any and all applicable laws and regulations relating thereto.

- 2. Specific Customer Decisions and Actions Relating to MetLife's Services:** Customer will perform the duties, obligations and actions set forth below:
- a. The Customer shall post all notices required by federal and/or state law and will provide its employees copies of its Absence Policy.
  - b. The Customer will advise MetLife when an Employee is literate in Spanish instead of English.
  - c. The Customer will maintain any necessary payroll and benefits records.
  - d. The Customer will provide MetLife with employee eligibility information. The Customer will update such data on a mutually agreed upon frequency.
  - e. The Customer will provide MetLife with any information necessary to administer the Leave Request determination and MetLife may administer the Leave Request based upon such information. Customer may direct Employees to contact MetLife to provide some or all of such information in accordance with the Absence Policy, but Customer retains the responsibility to contact MetLife if the Employee does not do so.
  - f. Customer will support the approval process for selected leaves as defined and agreed to by both parties during the implementation and client set-up.
  - g. The Customer will provide MetLife with any holiday schedules in effect as of the effective date of this Agreement. The Customer will update this information prior to any subsequent holiday schedules becoming effective and prior to any changes made by the Customer to a holiday schedule.
  - h. Customer will provide written notice as soon as reasonably possible of any period during which Customer's operations will cease for a period of one week or more.
  - i. The Customer will provide MetLife with any information necessary to administer intermittent leave or reduced schedule leave. Customer may direct Employees to contact MetLife to provide some or all of such information in accordance with the Absence Policy, but Customer retains the responsibility to contact MetLife if the Employee does not do so.
  - j. The Customer will maintain group health coverage and any other Employee benefits and collect any applicable fees in accordance with the Absence Policy. Any efforts to recoup such fees and the reinstatement of Employee benefits after leave will be the sole responsibility of the Customer.
  - k. The Customer will advise MetLife if it wishes MetLife to deny or delay a Leave Request due to a failure by an Employee to provide timely notice of the need for leave, if permitted under applicable law and/or the Absence Policy.
  - l. If the Customer chooses to exercise the key employee provision under the FMLA, the Customer shall determine who is a key Employee under the FMLA on the regular demographic feed, provide key Employees with all required notices, other than those referred to under **paragraph B above**, and make and communicate all reinstatement decisions relating to key Employees.
  - m. If the Customer requires a fitness-for-duty certificate upon return to work, the Customer will review all fitness-for-duty certificates and make all fitness-for-duty and reinstatement determinations.
  - n. If the Customer allows an Employee to take leave prior to the Employee satisfying the eligibility requirements of the Absence Policy, the Customer shall advise MetLife once the Employee becomes eligible under the Absence Policy.

3. **Furnish Employee Information:** Prior to the effective date of this Agreement, Customer will provide MetLife with information necessary for MetLife to determine an Employee's eligibility under the Absence Policy. Customer is responsible for providing MetLife with any changes to Employee information that impacts Employee eligibility determinations under the Absence Policy.
4. **Customer to Furnish Copy of Absence Policy(s) to MetLife:** Prior to the effective date of this Agreement, Customer will furnish to MetLife a copy of the Absence Policy in effect as of the effective date of this Agreement, which will be annexed hereto as the **Appendix B: Absence Policy**. Customer will furnish MetLife with written evidence of any changes or modifications to the Absence Policy.
5. **Advise Employees of MetLife's Role:** Prior to the date MetLife begins providing services under this Agreement, Customer will give Employees written notice describing MetLife's function with respect to Leave Requests and explaining the manner in which such Leave Requests should be submitted to MetLife.
6. **Furnish Information to Enable MetLife to Perform its Duties:** Customer will promptly provide MetLife with information about Employee Leave Requests necessary for MetLife to perform its duties under this Agreement.

**F. Mutual Responsibilities:**

1. **Cooperation:** The Parties will provide each other with statistical and other information, in such forms and at such intervals as are mutually acceptable, which may reasonably be needed by a Party to perform services in connection with this Agreement.
2. **Liability Coverage:** Each Party, during the term of this Agreement and for a reasonable period of time following termination of this Agreement, will maintain prudent levels of liability protection either through third party liability coverage or self-insurance or a combination thereof with respect to its performance of services in connection with this Agreement; and each will provide the other, upon reasonable request, with evidence of such coverage and will provide reasonable advance notice to the other of any material change in the liability protection.
3. **Furnish Information of Employee Material Complaints:** Each Party will promptly advise the other Party of any material complaints of which it becomes aware that were lodged by an Employee regarding the services provided by MetLife.

### **SECTION 3: SERVICE FEES**

**A. Service Fees:** The “**Service Fees**” are the amounts payable by Customer to MetLife for the services rendered and any supplies provided to Customer by MetLife pursuant to this Agreement. The Service Fees include the Monthly Service Fee, Additional Fees, and Service Fee Adjustments.

**B. Monthly Service Fee:**

1. The “**Monthly Service Fee**” will be determined in the manner set forth in **Appendix A: Service Fees**.
2. Notwithstanding **paragraph B.3.** below, during any Contract Period the Monthly Service Fee may be adjusted, as deemed appropriate by MetLife, with Customer’s consent, each time there is:
  - a. a material change in the Absence Policy or that MetLife reasonably anticipates that there may be; or
  - b. a material change in the services that are requested from those identified at time of quote; or
  - c. a cancellation of, non-issuance of or financial arrangement change in any of the Group Disability coverage’s; or
  - d. a change in applicable law that requires a material change in administration of the services under this Agreement.
3. For each Contract Period other than the First Contract Period, and the first four Subsequent Contract Periods, MetLife, with Customer’s consent, reserves the right to establish the applicable rates for the calculation of the Monthly Service Fee for that Subsequent Contract Period and,
  - a. If MetLife provides notice to Customer of such applicable rates at least one-hundred eighty (180) days before the first day of a Subsequent Contract Period, these rates will be effective as of the first day of the Contract Period unless MetLife expressly agrees, in writing, to a different effective date, or
  - b. If MetLife provides notice to Customer of such applicable rates less than one-hundred eighty (180) days prior to the first day of a Subsequent Contract Period, these rates will be effective as of the thirtieth (30<sup>th</sup>) day following mailing by MetLife of notice of such rates to Customer unless MetLife expressly agrees, in writing, to a different effective date.
4. Payments of the Monthly Service Fees are due to MetLife on a bi-weekly basis as of the first day of each bi-weekly pay period.

**C. Additional Fees:** An “Additional Fee” is an amount payable by Customer for “Additional Services” provided by MetLife pursuant to **Section 2: Services and Responsibilities, Paragraphs C and D**. MetLife will consult with Customer at their request to determine if Additional Services can or should be performed by MetLife. If MetLife is willing and able to perform such services, it will advise Customer of the charge for such services or the rate by which the charge is determined. If MetLife sends Customer written notice of the proposed charge for any Additional Service requested, Customer will be deemed to have accepted the charge quoted by MetLife for the service(s) if it has not objected to the proposed charge or withdrawn the request for such additional service(s) within fifteen (15) business days after the date of such notice. Additional Fees will be determined in the manner set forth in **Appendix A: Service Fees**.

**D. Service Fee Adjustments:**

1. At the conclusion of each Contract Period the amount of the Service Fee may be adjusted to take into account any variations between the factors used to determine the Monthly Service Fee at the time it was due and payable and actual experience determined by the books and records of Customer.

2. If it is determined that Customer is entitled to a refund of the amounts paid during the prior year, the amount due Customer shall be credited to the subsequent Monthly Service Fees due. However, if this Agreement has been terminated, the amount due Customer shall be applied to any amounts due and payable to MetLife, and any excess shall be returned to Customer within thirty (30) days after the amount has been determined.
  3. If MetLife determines that MetLife is entitled to an additional payment, Customer shall pay such amount within thirty (30) days after Customer receives written notice of the amount due on account of such adjustment.
- E. Suspension of Services:** In the event any payment is not received within thirty (30) days of its due date, MetLife may, in its sole discretion, suspend any further services under this Agreement. Such suspension of service(s) shall become effective five (5) business days after Customer has received written notice of MetLife's intention to suspend services, unless Customer has remitted all outstanding unpaid amounts before that date. Any such suspension in service(s) shall not in any way be considered as a failure by MetLife to meet any or all Performance Guarantees, as described in **Appendix D: Performance Guarantees**, and the determination of whether MetLife has met any or all Performance Guarantees shall not take into consideration any delays or omissions by MetLife arising from the suspension of service(s) under these circumstances.
- F. Performance Guarantees:** The Parties agree to the Performance Guarantees described in the **Appendix D: Performance Guarantees**.

**SECTION 4: CONFIDENTIAL INFORMATION; AND USE  
OF NAMES, SERVICE MARKS AND TRADEMARKS; AND EXAMINATIONS**

- A. Confidential Information: "Confidential Information"** means statistical and other information which is identified by a Party as commercially valuable, confidential, proprietary or trade secret. Customer and MetLife acknowledge that in discharging their obligations under this Agreement they may disclose or make available to each other Confidential Information.
- B. Identification of Confidential Information:** Customer and MetLife each agree to make every reasonable effort under the circumstances to identify to each other Confidential Information at the time of its disclosure and to protect and preserve fully the confidential, proprietary and trade secret nature of each other's Confidential Information.
- C. Non-Disclosure of Confidential Information:** Customer and MetLife each agree not to disclose the other's Confidential Information to any other person, firm, or entity without obtaining the other's prior written consent.
- D. Limitation on Non-Disclosure Obligation:** Customer and MetLife each agree that the obligations regarding Confidential Information shall not apply to any information which was previously disclosed by the other without restriction or which has become generally available to the public through authorized disclosure.
- E. Individually Identifiable Employee Information:**
1. Names, addresses, phone numbers, social security numbers, dates of birth, and other personal information relating to Employees is deemed Confidential Information. However, MetLife may use non-individually identifiable information obtained from this Confidential Information for the purpose of data compilation, statistical analyses and other studies.
  2. Medical information related to Employees, and any persons for whom an Employee seeks leave in order to care for is deemed Confidential Information ("**Confidential Medical Information**"), and will be disclosed only as required or permitted by applicable law. MetLife may use non-individually identifiable information obtained from Confidential Medical Information for the purposes of data compilation, statistical analysis and other studies, and Customer recognizes that such compilations, analyses and studies are the exclusive property of MetLife and may be used in any way by MetLife
- F. Unauthorized Disclosure of Confidential Information:** Customer and MetLife agree that unauthorized disclosure of Confidential Information is a material breach of the Agreement resulting in irreparable harm to the Party whose Confidential Information has been improperly disclosed for which the payment of money damages is inadequate, such damages being difficult to ascertain in any event. Customer and MetLife agree, therefore, that the injured Party may, at its sole option:
1. obtain immediate injunctive relief in any court of competent jurisdiction enjoining any further such breach(es) and the Parties consent to the entry of judgment for injunctive relief, and/or
  2. immediately terminate this Agreement by giving the other Party written notice.
- G. No Use of Other Party's Name, Service Marks, or Trademarks:** Each Party agrees that, without the other Party's written consent signed by an officer of the Party, it will not use that other Party's company name, service marks, trademarks, or other legally protected property rights.
- H. Customer's Approval of Material Used by MetLife:** All communications developed by MetLife specifically for Customer and any formal advertising or promotional pieces which specifically refer to the Customer must receive Customer's approval prior to release, which approval will not be withheld unreasonably.

**I. MetLife's Approval of Material Used by Customer:** All communications developed by Customer which refer to MetLife must receive MetLife's approval prior to release, which approval will not be withheld unreasonably.

**J. Examinations:**

- 1. Examination of MetLife:** One time during each Contract Period, MetLife will make available for examination (which is deemed to include examination, review and/or audit during MetLife's normal business hours) its files, books and records pertaining to the processing of Leave Requests.
- 2. Charges for Examination of MetLife:** If more than one (1) examination during any Contract Period is requested, Customer agrees that it will be obligated to pay an additional charge to MetLife for each examination which will be calculated by MetLife based upon its then current standard charges.
- 3. Confidentiality Agreement:** No third party may conduct an examination pursuant to this "Examinations" provision without first executing an Examiner's Confidentiality Agreement in the form set forth in **Appendix C: Examiner's Confidentiality Agreement**.

## **SECTION 5: VALIDATION OF METLIFE'S LEAVE DECISION**

- A. Customer to Furnish Advance Written Notice of an Adverse Employment Action:** Customer agrees that it shall provide MetLife within **Four (4)** business days, or as soon as is reasonably possible, prior written notice in the event Customer intends to take an adverse employment action against an Employee as a result of or in reliance upon a Leave Decision as defined in **Section 6: Leave Litigation, Paragraph A**. The written notice must be sent to [FMLAQ&A@metlife.com](mailto:FMLAQ&A@metlife.com).
- B. MetLife Notice to Customer:** In the event MetLife receives such written notice as set forth in **Section 5: Validation of MetLife's Leave Decision, Paragraph A** MetLife shall have **Four (4)** business days following receipt of the written notice to verify in writing to the Customer the accuracy of its Leave Decision as defined in **Section 6: Leave Litigation, Paragraph A**. Customer agrees that it will not take any adverse employment action against the Employee whose Leave Decision is being reviewed by MetLife until MetLife has verified to the Customer, in writing, the accuracy of such Leave Decision. Such Leave Decision shall be deemed to be verified by MetLife for purposes of this **Section 5: Validation of MetLife's Leave Decision, Paragraph B** in the event that MetLife does not provide such written verification to Customer within the time frame specified herein.

## **SECTION 6: LEAVE LITIGATION**

- A. Definition of Leave Litigation:** For the purposes of this **Section 6: Leave Litigation**, “**Leave Litigation**” means a demand asserted or litigation, proceedings, or arbitration, commenced by an Employee, or anyone who has standing to assert a demand or commence a litigation, proceeding or arbitration (“**Leave Claimants**”), with respect to a decision made by MetLife to approve or deny such Employee’s Leave Request (“**Leave Decision**”). Leave Litigation shall not include demands asserted or litigation, proceedings or arbitration, commenced by Leave Claimants with respect to Customer’s Absence Policy.
- B. Definition of Incorrect Leave Decision:** “**Incorrect Leave Decision**” means a failure by MetLife to exercise prudent, reasonable care as determined by a court of law or as otherwise agreed to by the Parties with respect to a Leave Decision, but in no event shall it include actions taken by MetLife on the basis of a colorable, non-frivolous position regarding the meaning or interpretation of any law or regulation, or actions taken by MetLife at the written instruction of Customer.
- C. Customer Liability With Respect To The Absence Policy And Leave Decisions:** Except as expressly provided in **Section 6: Leave Litigation, Paragraph D**, the Customer is solely liable for the consequences of the Absence Policy and Leave Decisions, including, without limitation, any settlements, awards or judgments from Leave Litigation and for any legal fees and court costs incurred by Customer or recovered by a Leave Claimant in connection therewith.
- D. Limited MetLife Liability With Respect To Leave Decisions:** In the event that Customer pays to a Leave Claimant damages (including attorneys’ fees and costs) as a result of a settlement or judgment in a Leave Litigation (“**Leave Litigation Recovery**”) and this payment is due to an adverse employment action taken by Customer solely because of a Leave Decision where MetLife’s denial constituted an Incorrect Leave Decision, and provided that the notification and verification requirements set forth in **Section 5: Validation of MetLife’s Leave Decision, Paragraphs A and B** are satisfied, MetLife shall reimburse Customer only for those amounts actually paid by Customer to a Leave Claimant for a Leave Litigation Recovery, provided however, that in the event of a settlement of a Leave Litigation, Customer obtains MetLife’s prior written agreement to the financial terms of the settlement, which agreement shall not be unreasonably withheld.

Notwithstanding the number of Leave Litigation Recoveries paid by the Customer to Leave Claimants in any single calendar year, MetLife’s maximum liability for amounts actually paid by Customer to Leave Claimants as the result of Incorrect Leave Decisions, shall in no event exceed the sum of **One Million Dollars (\$1,000,000)** per claim, not to exceed an aggregate amount of **Two Million Dollars (\$2,000,000)** in any such single calendar year.

- E. Duties of MetLife and Customer in Leave Litigation:**
- 1. Retention of Counsel and Liability for Recovery:** In any Leave Litigation that includes allegations, claims or prayers for relief with respect to a Leave Decision, Customer shall select and retain counsel and will assume liability for payment of any legal fees, costs and disbursements in connection with the defense of such Leave Litigation, provided, however, that MetLife reserves the right to retain its own counsel in connection with the defense of such Leave Litigation and, if MetLife so elects, MetLife shall assume liability for payment of its legal fees, costs and disbursements. If there is a Leave Litigation Recovery and provided that all the requirements set forth in **Section 6: Leave Litigation, Paragraph D** are satisfied, MetLife shall reimburse Customer for amounts actually paid to such Leave Claimant as a result of an Incorrect Leave Decision subject to the limitations of **Section 6: Leave Litigation, Paragraph D**.
  - 2. Notice of Leave Litigation and Requests for Information:** Each Party shall provide the other Party with written notice of Leave Litigation as soon as practicable but in no event more than fifteen (15) days after it receives notice of Leave Litigation, and shall during and after the Leave Litigation respond within a reasonable time to the other Party’s reasonable requests for information regarding such Leave Litigation.

3. **Cooperation:** Each Party shall provide the other Party reasonable cooperation in defense of Leave Litigation, including providing relevant documentation to the extent permissible by applicable law, reasonably necessary for the defense of Leave Litigation no later than twenty (20) days after a written request for the documentation is received by the other Party. Each Party agrees not to oppose, frustrate, or refuse to cooperate in any attempt by the other to intervene in any Leave Litigation for the purpose of defending the interest of such intervening Party, provided that the intervening Party shall be responsible for the cost of such intervention and defense of its interests.
4. **Limitation of MetLife's Liability:** MetLife's obligation to reimburse Customer for an Improper Action shall be limited as set forth in **Section 6: Leave Litigation, Paragraph D**.
5. **No Obligation By MetLife To Reimburse Customer:** Notwithstanding any provision in this Agreement to the contrary, MetLife shall have no obligation to reimburse Customer if: (a) Customer fails to provide MetLife with prior written notice of an adverse employment action as set forth in **Section 5: Validation of MetLife's Leave Decision, Paragraph A** or takes an adverse employment action prior to the expiration of the time period set forth in **Section 5: Validation of MetLife's Leave Decision, Paragraph B**; (b) MetLife provides written notification within the time period set forth in **Section 5: Validation of MetLife's Leave Decision, Paragraph B** indicating that the Leave Decision was incorrect; (c) Customer or Employee failed to provide MetLife with timely or accurate information relevant to the Leave Decision at issue; (d) the Leave Litigation Recovery is the result of the Customer's failure to perform its duties under this Agreement in a timely or accurate manner; (e) MetLife's Leave Decision is based upon Customer's Absence Policy and such Absence Policy is inconsistent with the FMLA or similar state leave laws or regulations or violates any other provision of federal or state law; (f) the historical data or lack of historical data regarding the Employee's prior leaves provided by Customer to MetLife causes or contributes to the Incorrect Decision at issue; (g) Customer settles a Leave Litigation without obtaining MetLife's prior written agreement; or (h) Customer opposes, frustrates or refuses to cooperate with MetLife's attempt to intervene in Leave Litigation.

## **SECTION 7: INDEMNIFICATION**

**A. Definitions:** For the purposes of this Section:

1. **"Damages"** means settlements, awards, and judgments (not including punitive damages or those attorney fees, court costs and expenses described in **Section 6: Leave Litigation** of this Agreement) and reasonable legal fees, court costs and expenses incurred by Customer or MetLife to resolve a **"Non-Party Claim."**
2. **"Non-Party Claim"** means a demand asserted or litigation, proceedings, or arbitration commenced by a person or entity other than Customer or MetLife to obtain a settlement, award, or judgment against Customer or MetLife arising from an act or omission by Customer or MetLife in connection with this Agreement. However, a Non-Party Claim does not include any portion of a demand asserted or litigation, proceeding, or arbitration commenced which has been defined under this Agreement as Leave Litigation. The rights and obligations of the Parties with respect to Leave Litigation are fully described in **Section 6: Leave Litigation** of this Agreement.

**B. Indemnification :** If either Customer or MetLife incurs Damages arising from the other's breach of this Agreement, breach of fiduciary duty, or negligent, intentionally tortious, fraudulent or criminal act or omission in connection with this Agreement, the Party incurring such Damages shall be the "Indemnified Party" referred to in this Section and shall be indemnified against such Damages by MetLife (if the Indemnified Party is Customer) or by Customer (if the Indemnified Party is MetLife) at such time as it has been determined that:

1. The Indemnified Party first received notice (oral or written) of the Non-Party Claim no later than one year after this Agreement terminated; and
2. The Indemnified Party provided written notice of the Non-Party Claim to the Indemnifying Party as soon as practicable, but in no event more than 120 days, after first receiving notice of the Non-Party Claim; and
3. The Damages did not arise from the acts or omissions of the Indemnified Party in connection with this Agreement or from an act or omission undertaken by the Indemnifying Party at the express direction of the Indemnified Party.

If any portion of the Damages arose from the acts or omissions of the Indemnified Party, the obligation of the Indemnifying Party shall be reduced to the proportionate share of the Damages which is attributable to its acts or omissions.

**C. Discretion to Resolve Non-Party Claims:** The Indemnified Party will have discretion to resolve a Non-Party Claim in a reasonable manner and amount under the circumstances. However, failure to act reasonably in resolving a Non-Party Claim will relieve the Indemnifying Party of its obligations to indemnify only if and to the extent it has been prejudiced by this failure.

**D. No Rights Afforded to Third Parties:** Nothing in **Section 7: Indemnification** of the Agreement is intended, nor shall it be interpreted, to give any third party, including but not limited to Employees, any right, claim, or cause of action against Customer or MetLife.

## **SECTION 8: TERM/TERMINATION OF THIS AGREEMENT**

**A. Continuity of Agreement:** This Agreement shall continue in effect unless terminated in accordance with **Section 8: Term/Termination of this Agreement**.

**B. Termination of the Agreement:**

**Date of Termination:** Notwithstanding any other term or condition of this Agreement, this Agreement will terminate on the earliest of:

1. the one-hundred eightieth (180<sup>th</sup>) day following receipt of written notice by Customer or MetLife from the other of the other's intention to terminate the Agreement, or
2. five (5) business days after Customer has received written notice of MetLife's intention to terminate this Agreement because the Service Fee or other service fee or charge due by Customer to MetLife under this Agreement has not been paid when due, unless Customer has remitted all outstanding unpaid amounts before that date. MetLife's failure to treat this Agreement as terminated in accordance with this paragraph shall not be deemed to be a waiver of MetLife's right to terminate this Agreement in accordance with this paragraph at a subsequent time; or
3. immediately, as provided for in **Section 4: Confidential Information; And Use of Names, Service Marks and Trademarks; and Examinations, Paragraph F.2.** of this Agreement; or
4. any other date determined by written agreement among the Parties.

**C. Processing of Run-Out Leave Requests:** Upon termination of this Agreement in its entirety for any reason, MetLife will not process run-out Leave Requests unless otherwise mutually agreed upon in writing by the Parties. An Additional Fee shall apply for any run-out Claim processing services.

## **SECTION 9: GENERAL PROVISIONS**

- A. Entire Contract:** This Agreement constitutes the entire contract between the Parties and is intended to supersede any and all prior written or verbal agreements, proposals or representations by and among the Parties related to the subject matter herein.
- B. Modification to Agreement:** Unless otherwise expressly provided in this Agreement, changes to this Agreement may be made only with agreement of all Parties evidenced in a writing signed by authorized representatives of each Party.
- C. Agreement Counterparts:** This Agreement may be executed in any number of counterparts each of which shall be deemed an original, and these counterparts will constitute but one and the same instrument.
- D. Independent Contractor Status:** The Parties agree that in performing services under this Agreement, MetLife will act in the capacity of an independent contractor.
- E. Notices:** Unless and until the Parties give written notice otherwise, all notices required under this Agreement shall be in writing and shall be addressed as follows:

**Metropolitan Life Insurance Company**  
6400 S. Fiddlers Green Circle, Suite 220  
Greenwood Village, CO 80111

**Attention:**  
**Taryn Wright, Assistant Vice-President I, National Accounts**

**County of San Bernardino**  
157 West Fifth Street, 1<sup>st</sup> Floor  
San Bernardino, CA 92415  
**Attention:**  
Joey Wong, Benefits Manager

- F. Choice of Law:** This Agreement and the obligations of the Parties shall be governed by and construed in accordance with the law of the State of New York.
- G. Headings:** Headings in this Agreement shall not be used to interpret or construe its provisions.
- H. Waivers:** The waiver by any Party of any breach of any provision of this Agreement by another Party shall not be construed as a waiver of any subsequent breach of the same or any other provision of this Agreement. The failure to exercise any right under this Agreement shall not operate as a waiver of any such right.
- I. Survival:** Unless otherwise specifically provided in this Agreement, the obligations of the Parties shall survive termination of this Agreement when necessary to effect the intent of the Parties as herein expressed.
- J. Severability:** In the event that any one (1) or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision of this Agreement.

**ADMINISTRATIVE SERVICES AGREEMENT EXECUTION PAGE**

**IN WITNESS WHEREOF**, the Parties hereto have caused this Agreement to be executed by their duly authorized officers.

**Metropolitan Life Insurance Company**  
6400 S. Fiddlers Green Circle, Suite 220  
Greenwood Village, CO 80111

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Taryn Wright, Assistant Vice-President I, National  
Accounts

**County of San Bernardino**  
157 West Fifth Street, 1<sup>st</sup> Floor  
San Bernardino, CA 92415

Date: \_\_\_\_\_

By: \_\_\_\_\_  
Curt Hagman, Chairman, Board of Supervisors

# **APPENDICES**

**APPENDIX A: SERVICE FEES**

**Monthly Service Fees:**

**First Contract Period: July 18, 2020 to July 30, 2021**

<b><u>Description</u></b>	<b><u>Monthly Fee Per Employee</u></b>
<u>Employee Absence Management Administrative Services</u>	\$2.45

**Second Contract Period: July 31, 2021 to July 29, 2022**

<b><u>Description</u></b>	<b><u>Monthly Fee Per Employee</u></b>
<u>Employee Absence Management Administrative Services</u>	\$2.45

**Third Contract Period: July 30, 2022 to July 28, 2023**

<b><u>Description</u></b>	<b><u>Monthly Fee Per Employee</u></b>
<u>Employee Absence Management Administrative Services</u>	\$2.45

The above Monthly Service Fees will not be increased by more than five percent (5%) for the Contract Period which begins on July 29, 2023 and will be in effect for the 24 month period beginning on July 29, 2023.

**APPENDIX B: ABSENCE POLICY**

The Absence Policy that is subject to this Agreement is set forth in the attached document identified as follows:

**None provided by Customer**

## APPENDIX C: EXAMINER'S CONFIDENTIALITY AGREEMENT

**NONDISCLOSURE AND CONFIDENTIALITY AGREEMENT ("Agreement") entered into by and between \_\_\_\_\_ ("Examiner") and Metropolitan Life Insurance**

**Company ("MetLife"). These parties acknowledge and agree as follows:**

- 1. ASA:** County of San Bernardino ("**Employer**") and MetLife entered into an Administrative Services Agreement ("**ASA**") under which all services relate to Employer's absence policy. Pursuant to the ASA, Employer has retained Examiner to perform an examination, audit, or other evaluation of the files, books, and/or records of MetLife pertaining to the processing of leave requests ("**Examination**").
- 2. Consideration:** Employer has requested that solely for purposes of the Examination, MetLife disclose to Examiner certain documents, statistical information and other information which is commercially valuable, confidential, proprietary, and trade secret ("**Confidential Information**"). MetLife has agreed to such disclosure subject to the terms of this Agreement. There is mutual consideration for this Agreement.
- 3. Examination Date:** The examination shall take place on the date mutually agreed upon by the parties.
- 4. Confidential Information:** All documents and information of MetLife, its agents, subsidiaries, and affiliates, disclosed to Examiner in connection with the Examination, including all copies thereof, constitutes Confidential Information disclosed by MetLife to Examiner on a confidential basis under this Agreement, and must be used by Examiner only as permitted by this Agreement. Confidential Information shall not include information: (i) disclosed to Examiner without restriction prior to the Examination, or (ii) generally available to the public prior to the Examination through authorized disclosure.
- 5. Title:** Title to Confidential Information will remain at all times in MetLife and no transfer of any interest therein is granted.
- 6. Use:** Examiner (a) shall not use Confidential Information (deemed to include using, exploiting, duplicating, recreating, modifying, decompiling, disassembling, reverse engineering, translating, creating derivative works, or disclosing Confidential Information to another person or permitting any other person to do so) except for purposes of the Examination; (b) shall limit use of Confidential Information only to its authorized employees (deemed to include employees as well as individuals who are agents or independent contractors of Examiner) who have a need to know for purposes of the Examination; (c) shall not copy Confidential information unless express, prior approval of MetLife to do so has been obtained, and (d) shall, if required by subpoena or other legal process to disclose Confidential Information, give MetLife reasonable prior notice of such disclosure.
- 7. Conflicts of Interest:** Examiner shall not use Confidential Information in any manner to further its own interests other than in performing the Examination.
- 8. Relinquishment:** Examiner shall at the conclusion of the Examination relinquish to MetLife all Confidential Information. If during the course of the Examination it is discovered that this Agreement has been breached by Examiner then all Confidential Information shall be relinquished upon demand by MetLife.
- 9. Legal Privacy Requirements:** Certain Confidential Information is subject to legal privacy requirements, a violation of which will cause irreparable harm to MetLife. Examiner shall comply with all such requirements.
- 10. Persons Bound:** This Agreement binds Examiner, its successors, assigns, agents, employees, subsidiaries, and affiliates and Examiner agrees that each, prior to accessing Confidential Information, will have agreed to the terms of this Agreement. This Agreement binds MetLife, its successors, assigns, agents, subsidiaries, and affiliates and the rights given by this Agreement to MetLife also extend to these persons and entities.

- 11. Damages and Injunctive Relief:** Unauthorized use of Confidential Information by Examiner is a material breach of this Agreement resulting in irreparable harm to MetLife for which the payment of money damages is inadequate, such damages being difficult to ascertain in any event. It is agreed that MetLife, upon adequate proof of unauthorized use, may immediately obtain injunctive relief in any court of competent jurisdiction enjoining any continuing or further breaches and may obtain entry of judgment for injunctive relief. Examiner consents to said injunctive relief and judgment. Nothing in this Agreement shall be construed to limit MetLife's remedies at law or equity in the event of a breach.
- 12. Term of Agreement:** This Agreement shall remain in full force and effect so long as any Confidential Information remains commercially valuable, confidential, proprietary, and/or trade secret, but in no event less than three (3) years from the date of Examination.
- 13. Assignments:** Neither this Agreement nor Examiner's rights or obligations hereunder may be assigned without MetLife's prior written approval.
- 14. General:** (a) This Agreement is the entire understanding between the parties as to the subject matter hereof. (b) No modification to this Agreement shall be binding upon the parties unless evidenced in writing signed by the party against whom enforcement is sought. (c) Headings in this Agreement shall not be used to interpret or construe its provisions. (d) The alleged invalidity of any term shall not affect the validity of any other term. (e) This Agreement may be executed in counterparts.

The parties have caused their authorized representatives to execute this Agreement.

Metropolitan Life Insurance Company

[Insert Examiner's Name]

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

## **APPENDIX C: PERFORMANCE GUARANTEES**

### Definitions

For the purpose of this Performance Guarantee Agreement, the following definitions apply:

**"Book of Business"** shall mean all customers with Employee Absence Management plans.

**"Confidential Information"** means statistical and other information that is identified by a Party as commercially valuable, confidential, proprietary, or trade secret.

**"Contract Period(s)"**, for purposes of this Appendix, means the period beginning on January 1 of a calendar year and ending on December 31 of that same calendar year. The first Contract Period will begin on July 18, 2020 and will end on December 31, 2020. The second Contract Period will begin on the January 1 and will end on the December 31 immediately following the first Contract Period. Later Contract Periods may be agreed to by MetLife and the Customer. If a later Contract Period is agreed upon, it will be a twelve month period beginning on January 1 of the calendar year. In no event will a Contract Period include any period of time beyond the date of termination of the Administrative Services Agreement.

**"Participant(s)"** means a current or former employee of Customer, who is eligible and enrolled for Plan Benefits.

**"Plan Benefits"** means, collectively, all benefits of whatever nature payable to a Participant, under and subject to the terms and conditions of those benefits under the Plan.

**"Service Fees"** are the amounts payable by Customer to MetLife under the terms of the Administrative Services Agreement.

### **Quality Management Program ("QMP"):**

Under this Agreement, the Customer's Employee Absence Management Policy will be administered by a leave processing and customer service team responsible for multiple customers. Therefore, the performance standards of this Appendix will be measured based on Book of Business results.

The measurements will be pursuant to the following provisions:

1. Quarterly, MetLife will perform an audit of randomly selected Leaves with a sample which MetLife deems appropriate of the Employee Absence Management annual receipts to monitor performance standards set forth in this section of the Appendix. The audit process will utilize MetLife's QMP protocols.
2. The results of each periodic audit will be recorded and reported as necessary (at least annually) to the account team and the operations unit by the QMP department.
3. The QMP department will provide a summary to the account team, who will share annually (with quarterly updates) with the Customer.
4. The Parties understand and agree that MetLife may change the Quality Management Program from time to time without advance notice from MetLife to the Customer and/or Plan Administrator. However, such changes will not affect the statistical accuracy of the measurement of MetLife's performance. MetLife will make every reasonable effort to provide the Customer and/or Plan Administrator with reasonable advance notice of any material changes. At any time, MetLife will provide the Customer and/or Plan Administrator, upon request, with an explanation of the methodology then currently used in the QMP. Customer agrees that information furnished to Customer's designated representatives regarding results and/or details about the QMP itself will be treated as Privileged and Confidential Information, subject to the provisions set forth in **Section 5: Confidential Information; Use of Names, Service Marks, and Trademarks; and Examinations** of this Agreement.

5. At Customer's discretion, it may select an internal MetLife auditor or a mutually agreed upon external auditor to verify the QMP results. Such audit will be based on a mutually agreed upon sub-sampling of the QMP results for a quarter. Customer agrees to be responsible for all expenses incurred as a result of conducting such audit. In the event of any disagreement as to the QMP results and that of Customer's audit, Customer agrees to be responsible for any additional expenses incurred by MetLife following the initial QMP audit, if MetLife successfully refutes Customer's audit findings.

**A. Procedural Accuracy:**

1. For the purposes of this Appendix, "**Procedural Accuracy**" is defined as the performance standard used to evaluate Leave processing performance with respect to effective application of leave management tools and initiatives, and accuracy of file documentation. A "**Procedural Error**" is defined as ineffective application of leave management tools and initiatives, and inaccurate file documentation. For each Contract Period, the "**Procedural Accuracy Rate**" will be determined by the following formula:

$$\frac{\text{Procedural Items (weighted) in Sample Correct}}{\text{Procedural Items (weighted) in Sample}}$$

2. MetLife agrees to achieve a ninety-eight percent (98%) Procedural Accuracy Rate for each Contract Period, determined in accordance with the preceding item (1).
3. Subject to the provisions of **Section G** of this **Appendix**, MetLife agrees that if its Procedural Accuracy Rate falls below ninety-eight percent (98%), MetLife will pay Customer a penalty of one and sixty-six one-hundredths of one percent (1.66%) of the total Service Fees for each Contract Period ("**Procedural Accuracy Penalty**").
4. MetLife will determine whether it has met the performance standard set forth in this **Section A** for each Contract Period. Such determination shall be based on a review of the Procedural Accuracy of leaves processed in accordance with the provisions set forth in the QMP section of this Appendix.
5. MetLife will calculate and report to the Customer the Procedural Accuracy Penalty, if any, at the end of the Contract Period.
6. MetLife will remit payment of the Procedural Accuracy Penalty, if any, within ninety (90) days of the date MetLife reports the final amount.

**B. Statistical Coding Accuracy (Data Entry):**

1. For the purposes of this Appendix, "**Statistical Coding Accuracy**" is defined as the performance standard used to evaluate QMP Leave processing performance with respect to leave data line entries. A "**Statistical Error**" is defined as inaccurate entry of data that directly impacts the ability to process a Participant's Leave in accordance with the applicable Plan. For each Contract Period, the "**Statistical Coding Accuracy Rate**" will be determined by the following formula:

$$\frac{\text{Data Entry Items in Sample Correct}}{\text{Data Entry Items in Sample}}$$

2. MetLife agrees to achieve a ninety-seven percent (97%) Statistical Coding Accuracy Rate for each Contract Period, determined in accordance with the preceding item (1).
3. Subject to the provisions of **Section G** of this **Appendix**, MetLife agrees that if its Statistical Coding Accuracy Rate falls below ninety-seven percent (97%), MetLife will pay Customer a penalty of one and sixty-six one-hundredths of one percent (1.66%) of the total Service Fees for each Contract Period ("**Statistical Coding Accuracy Penalty**").
4. MetLife will determine whether it has met the performance standard set forth in this **Section B** for each Contract Period. Such determination shall be based on a review of the Statistical Coding Accuracy of leaves processed in accordance with the provisions set forth in the QMP section of this Appendix.
5. MetLife will calculate and report to the Customer the Statistical Coding Accuracy Penalty, if any, at the end of the Contract Period.

6. MetLife will remit payment of the Statistical Coding Accuracy Penalty, if any, within ninety (90) days of the date MetLife reports the final amount.

**C. Leave Determination:**

1. For the purposes of this Appendix, “**Leave Determination**” is defined as the performance standard used to measure the period of time which transpires from the date MetLife receives all medical and vocational information necessary to make a leave determination to the date MetLife makes the leave determination. For each Contract Period, the “**Leave Determination Rate**” will be determined by the following formula:

$$\frac{\text{Total \# of days of Leave Determination in Sample}}{\text{Leave Determination Items in Sample}}$$

2. MetLife agrees to make a Leave Determination of ninety-eight percent (98%) of Claims submitted within five (5) business days for each Contract Period, determined in accordance with the preceding item (1).
3. Subject to the provisions of **Section G** of this **Appendix**, MetLife agrees that if its Leave Determination Rate falls below ninety-eight percent (98%) of Claims submitted within five (5) business days, MetLife will pay Customer a penalty of one and sixty-six one-hundredths of one percent (1.66%) of the total Service Fees for each Contract Period (“**Leave Determination Rate Penalty**”).
4. MetLife will determine whether it has met the performance standard set forth in this **Section C** for each Contract Period. Such determination shall be based on a review of the Leave Determination Rate of Claims in accordance with the provisions set forth in the QMP section of this appendix.
5. MetLife will calculate and report to the Customer the Leave Determination Rate Penalty, if any, at the end of the Contract Period.
6. MetLife will remit payment of the Leave Determination Rate Penalty, if any, within ninety (90) days of the date MetLife reports the final amount.

**D. Initial Notification:**

1. For the purposes of this Appendix, “**Initial Notification**” is defined as the performance standard used to measure the period of time which transpires from the date:

MetLife receives all information from the Employee and/or Customer necessary to send the initial notification to the date the initial notification is sent. For each Contract Period, the “**Initial Notification Rate**” will be determined by the following formula:

$$\frac{\text{Total \# of days of Initial Notifications in Sample}}{\text{Initial Notification Items in Sample}}$$

2. MetLife agrees to process the initial notifications of ninety-eight percent (98%) of Claims submitted within two (2) business days for each Contract Period, determined in accordance with the preceding item (1).
3. Subject to the provisions of **Section G** of this **Appendix**, MetLife agrees that if its Initial Notification Rate is less than ninety-eight percent (98%) within two (2) business days MetLife will pay Customer a penalty of one and sixty-six one-hundredths of one percent (1.66%) of the total Service Fees (“**Initial Notification Penalty**”).
4. MetLife will determine whether it has met the performance standard set forth in this **Section D** for each Contract Period. Such determination shall be based on a review of the Initial Notification Rate of Claims in accordance with the provisions set forth in the QMP section of this appendix.
5. MetLife will calculate and report to the Customer the Initial Notification Penalty, if any, at the end of the Contract Period.
6. MetLife will remit payment of the Initial Notification Penalty, if any, within ninety (90) days of the date MetLife reports the final amount.

#### **E. Decisional Accuracy:**

1. For the purposes of this Appendix, “**Decisional Accuracy**” is defined as the performance standard used to evaluate Leave processing performance with respect to correct decision made on meeting Leave criteria. A “**Decisional Error**” is defined as incorrect decision on meeting Leave criteria. For each Contract Period, the “**Decisional Accuracy Rate**” will be determined by the following formula:

$$\frac{\text{Leave Decisions in Sample Correct}}{\text{Leave Decisions in Sample}}$$

2. MetLife agrees to achieve a ninety-seven percent (97%) Decisional Accuracy Rate for each Contract Period, determined in accordance with the preceding item (1).
3. Subject to the provisions of **Section G** of this **Appendix**, MetLife agrees that if its Decisional Accuracy Rate falls below ninety-seven percent (97%), MetLife will pay Customer a penalty of one and sixty-six one-hundredths of one percent (1.66%) of the total Service Fees for each Contract Period (“**Decisional Accuracy Penalty**”).
4. MetLife will determine whether it has met the performance standard set forth in this **Section E** for each Contract Period. Such determination shall be based on a review of the Decisional Accuracy of leaves processed in accordance with the provisions set forth in the QMP section of this Appendix.
5. MetLife will calculate and report to the Customer the Decisional Accuracy Penalty, if any, at the end of the Contract Period.
6. MetLife will remit payment of the Decisional Accuracy Penalty, if any, within ninety (90) days of the date MetLife reports the final amount.

#### **F. Correspondence Accuracy:**

1. For the purposes of this Appendix, “**Correspondence Accuracy**” is defined as the performance standard used to evaluate Leave processing performance with respect to appropriate decisional notification letters being sent out. A “**Correspondence Error**” is defined as incorrect decisional letter sent. For each Contract Period, the “**Correspondence Accuracy Rate**” will be determined by the following formula:

$$\frac{\text{Decisional notification letters in Sample Correct}}{\text{Decisional notification letters in Sample}}$$

2. MetLife agrees to achieve a ninety-seven percent (97%) Correspondence Accuracy Rate for each Contract Period, determined in accordance with the preceding item (1).
3. Subject to the provisions of **Section G** of this **Appendix**, MetLife agrees that if its Correspondence Accuracy Rate falls below ninety-seven percent (97%), MetLife will pay Customer a penalty of one and sixty-six one-hundredths of one percent (1.66%) of the total Service Fees for each Contract Period (“**Correspondence Accuracy Penalty**”).
4. MetLife will determine whether it has met the performance standard set forth in this **Section F** for each Contract Period. Such determination shall be based on a review of the Correspondence Accuracy of leaves processed in accordance with the provisions set forth in the QMP section of this Appendix.
5. MetLife will calculate and report to the Customer the Correspondence Accuracy Penalty, if any, at the end of the Contract Period.
6. MetLife will remit payment of the Correspondence Accuracy Penalty, if any, within ninety (90) days of the date MetLife reports the final amount.

**G. Maximum Aggregate Penalty:**

For each Contract Period, the maximum penalty payable pursuant to **Sections A through F**, in aggregate, by MetLife to Customer as a consequence of failing to meet any or all of the foregoing Performance Guarantees is an amount not to exceed an amount equal to ten percent (10%) of the total Service Fees.

MetLife reserves the right to re-evaluate the service standards, guarantees and penalties set forth in all sections of this appendix if any of the following situations occur:

- A. there is a Plan design change; or
- B. an unusual event, beyond MetLife's control, occurs which generates an increase or decrease in expected incidence.

The penalties set forth in this Performance Guarantee Agreement are Customer's exclusive remedy for MetLife's failure to meet any obligations, duties, tasks, or performance standards set forth in this **Performance Guarantees Appendix**.