



## **SERVICE AGREEMENT**

### **PARTIES**

This Agreement is effective this \_\_\_\_ day of \_\_\_\_\_, 2018 by and between the Innerstaff East, LLC that is signatory to this Agreement as set forth on the signature page herein (hereafter referred to as "Innerstaff") and \_\_\_\_\_ (hereafter referred to as "Client"), whose respective addresses are set forth on the signature page of this Agreement.

### **I. UNDERSTANDING**

The purpose of this Agreement is to set forth the understanding of the parties with regard to the obligations and responsibilities of the parties in this professional employer organization contractual relationship. In this contractual relationship, it is the intention of the parties that they not be in a joint employment relationship. The parties shall at all times act consistent with the intent that a professional employer organization relationship and not a joint employment relationship is to exist between the parties. In this professional employer organization relationship the duties and responsibilities of the parties are set forth herein between Client and Innerstaff. It is the intent of the parties that any wording contained in this Agreement which is mandated by law to be included herein or which is included because of the nature of the professional employer organization relationship shall in no manner be indicative of liability or joint employer status. Additionally, this Agreement is not intended to in any way limit Client's ability to run its own business and to exercise direction and control over its own employees. The retention or reservation of any right or authority by Innerstaff does not require its exercise by Innerstaff and in no manner abridges Client's rights and responsibilities with regard to Client's ability to run its own business.

### **II. TERM OF AGREEMENT**

This contractual relationship between Innerstaff and Client is intended to be long term and on-going rather than temporary in nature and not a series of limited-term assignments or a project-specific agreement. The initial term of this Agreement shall be for one (1) year (the "Initial Term"). Following the completion of the Initial Term, this Agreement shall automatically renew and remain in full force and effect for additional terms of one year, and shall remain in effect until either party gives written notice to the

other party by delivering notice of termination as specified in Section XI, below, at least thirty (30) days prior to the expiration of the Initial Term or any extension of the Initial Term. In addition, Innerstaff may at any time immediately terminate this Agreement in the event of breach by Client of any of the terms of this Agreement or upon the occurrence of any of the events set forth in Section IX below. Termination or expiration of this Agreement shall not affect the continuation of any outstanding obligation or liability incurred by either party during the term of this Agreement.

### **III. UTILIZED INDIVIDUALS**

- A. Innerstaff agrees to utilize in a non-joint employment relationship, to the extent required by applicable state law, certain of Client's employees (hereafter referred to as "utilized individuals") who will be on the payroll of Innerstaff to perform job functions identified by workers' compensation code classifications. Client warrants that the list of workers' compensation classifications as set forth on Exhibit A is accurate and complete and that utilized individuals performing these job functions do so at the locations specified in this Agreement as Client's addresses or at such other locations as are set forth on Exhibit A. Because of possible application of professional employer organization statutory, regulatory, and contractual requirements, Client understands and agrees that prior written approval from the applicable workers' compensation carrier must be obtained prior to the addition of any workers' compensation classification or location.
- B. As the holder of the workers' compensation policy, Innerstaff (or the applicable workers' compensation carrier) retains the right to change the classification codes, where necessary, to comply with the guidelines set forth by the National Council on Compensation Insurance (NCCI) or applicable state regulatory agency. Additionally, as Innerstaff is the holder of the workers' compensation policy that encompasses utilized individuals, Innerstaff or its workers' compensation carrier may provide guidance regarding injury prevention and safety issues. Such guidance is not provided as an employer or joint employer, but instead is provided in furtherance of Innerstaff's goal to minimize injuries that will impact Innerstaff's experience rating regarding its workers' compensation policy. The parties recognize that Innerstaff's experience rating impacts all of Innerstaff's clients, not just Client, and accordingly, minimizing injuries benefits all Innerstaff clients, but in no way affects any client's ability to run its own business and control its own worksite(s) and its own employees. Client expressly waives any claim against any Innerstaff Indemnified Party (as defined below) based on any safety, risk or hazard issue at Client's worksite(s).
- C. Client expressly agrees and understands that no individual shall be covered by Innerstaff's workers' compensation insurance (if Innerstaff is supplying such insurance), or any other benefit, or issued a payroll disbursement, unless the

individual has properly completed Form I-9 as required by law, and prior to entering into a PEO relationship with Innerstaff, completed Innerstaff's utilized individual paper work and W-4 withholding form. The obligation to obtain a properly completed I-9 Form is assigned to Client for all current and future utilized individuals. Utilized individuals who have properly completed an I-9 form for Client or for another professional employer organization which had a contractual relationship with Client at that time, prior to Client's entering into this Agreement, shall not be obligated to complete a new I-9 form upon their entering into a professional employer organization relationship with Innerstaff. The utilized individual paper work and W-4 withholding form must be delivered to Innerstaff before the individual commences a PEO relationship with Innerstaff. Innerstaff shall not be considered to be in a PEO relationship with regard to any individual until the utilized individual paper work and withholding forms (and Form I-9 as required by law) are received by Innerstaff for that individual and Client is notified that the individual has been accepted by Innerstaff as a utilized individual. Client represents and warrants that all of its current employees have properly completed I-9 forms.

- D. Utilized individuals are defined in this Agreement as "individuals performing services for Client for whom Innerstaff processes payroll and Client submits timely, accurate and complete payment and information, while this Agreement is in effect."
- E. Client is solely responsible for all matters, including, without limitation, worker injuries and wages that occur while an employee is not acting in the capacity of a utilized individual.
- F. If Client has not notified Innerstaff that it has terminated the employment of a specific utilized individual or has not notified Innerstaff that the utilized individual is on a leave of absence or on an approved PTO, vacation or sick leave, and yet payroll is not reported for such utilized individual for TWO (2) consecutive payroll periods, the utilized individual shall temporarily be removed from the active payroll of Innerstaff. The utilized individual will be notified by Innerstaff that the utilized individual is not covered by Innerstaff's workers' compensation policy for any future workplace injury unless or until the utilized individual is reinstated to active status at Innerstaff. The individual will be informed that this action by Innerstaff and the notification to the individual in no way affects the individual's status as an employee of Client. Should this individual return to work for Client at some point in the future, said individual will be required to complete a return to work form for Innerstaff prior to workers' compensation insurance once again being applicable to this individual. Innerstaff's workers' compensation policy shall not be applicable to this individual until Client is notified by Innerstaff that the individual is covered by Innerstaff's workers' compensation policy.

#### **IV. INNERSTAFF'S RESPONSIBILITIES PURSUANT TO THIS AGREEMENT**

- A. Innerstaff assumes such responsibility for the payment of wages and payment of any other financial obligation to utilized individuals as is required by applicable law (and, where allowed by law, this assumption is only to the extent that Client has funded such Innerstaff wage payment and financial obligations with Innerstaff), which shall be paid by Innerstaff from its own account. To the extent allowed by applicable law, in the event Client does not pay Innerstaff for all services rendered, Innerstaff may pay utilized individuals at the minimum wage rate or minimum salary provided for in the Fair Labor Standards Act and pursuant to applicable state law. This provision in no way affects the obligation of Client to pay Innerstaff for all services rendered and in no way affects the obligations of Client pursuant to local, state and federal law, including but not limited to the requirement to timely pay all utilized individuals their regular rate of pay through Innerstaff (or directly, if otherwise required by law). Additionally, where allowed by law, in this Agreement, the term "wages" does not include any obligation on the part of Innerstaff to assume or become a party to any agreement, contract, plan, policy, or obligation which may exist between Client and any utilized individual, or to assume or become a party to any other agreement to provide any compensation or benefit, in any form, and does not include any obligation between Client and any utilized individual for payments beyond or in addition to the utilized individual's salary, draw, or regular rate of pay, unless Innerstaff specifically adopts such obligations by way of a written agreement entered into with the utilized individual and signed by an officer of Innerstaff. It is the intent of the parties that Innerstaff will assume no contractual obligation which may exist between Client and any utilized individual. The parties agree that as of the Effective Date of this Agreement, Innerstaff has not assumed or become a party to any of the aforementioned additional obligations of Client as set forth in this Section and Innerstaff has neither assumed nor become a party to any contractual obligation which may exist between Client and any utilized individual. In this regard, to the extent allowed by law, Innerstaff does not assume responsibility for payment of bonuses, commissions, severance pay, deferred compensation, profit sharing, vacation, sick, or other paid time off pay, compensation, benefit, or for any other payment not required by law, in any form, where payment for such items has not been received by Innerstaff from Client.
- B. To the extent required by law (and, where allowed by law, to the extent that Client has funded such Innerstaff financial obligations) Innerstaff assumes responsibility for the payment of benefits for utilized individuals provided by Innerstaff as well as for payment, withholding, collecting, reporting, and remittance of payroll and unemployment taxes from payroll on utilized individuals, regarding payroll reported to and paid by Innerstaff.

- C. The responsibility to obtain workers' compensation coverage for utilized individuals from a carrier properly licensed to do business in the State where the utilized individuals are located and which is in compliance with all applicable requirements of being a carrier shall be the responsibility of Innerstaff, unless otherwise required by law. It is the intent of the parties that no volunteer, independent contractor, or anyone else who is not a utilized individual of Innerstaff, be covered by any workers' compensation policy issued to Innerstaff. Should Client perform work in a state that allows or requires Client to maintain its own workers' compensation policy and should Innerstaff, in writing, agree to allow Client to maintain its own workers' compensation policy, Innerstaff shall, at Innerstaff's option, be named as an additional insured or a labor contractor (or listed on the alternate employer endorsement) and shall be a certificate holder on such policy or policies. To the extent allowed by law, Innerstaff shall have no responsibility to cover any utilized individual with a workers' compensation policy issued in the name of Innerstaff, and Innerstaff shall have no liability for any accident or injury which occurs to any utilized individual or non-utilized individual or to anyone else, in such situations where Client retains its own workers' compensation policy for utilized individuals. It is the intent of the parties that no utilized individual be covered by any workers' compensation policy issued to Innerstaff in situations in which the parties have agreed that Client shall maintain its own workers' compensation policy for utilized individuals. In situations where Client maintains its own workers' compensation policy covering utilized individuals, Client shall periodically, at the reasonable request of Innerstaff, provide documentation to Innerstaff sufficient to establish that Client has paid all workers' compensation premiums.
- D. Client and Innerstaff shall adhere to such drug free workplace program, if any, as may be implemented pursuant to the applicable workers' compensation policy.
- E. Innerstaff shall notify, in writing, all utilized individuals of the relationship between Innerstaff and Client as well as the inception, termination, and/or expiration of this Agreement and explain the general nature of the professional employer organization relationship by and among Client, utilized individuals, and Innerstaff. Client and Innerstaff agree that should any utilized individual raise an issue of discrimination, harassment, retaliation, or any other employment related issue, it shall be Client's responsibility to handle, investigate and resolve such issue(s). Should any investigation of such issue(s) occur and should the utilized individual and Client desire Innerstaff to be involved in such investigation of the issue(s), if Innerstaff, in its sole discretion, agrees to be involved in the investigation, Innerstaff's role shall be strictly limited. Innerstaff shall not be a decision-maker/joint employer, and Innerstaff's role shall be limited to conducting such investigation deemed appropriate by Innerstaff and attempting to facilitate a resolution of the issue(s) which is mutually agreeable to the utilized individual

and to Client. The responsibility to defend, resolve and/or end any such inappropriate conduct which may be occurring rests solely with Client.

- F. With respect to any group health plan maintained by Innerstaff and set forth on Exhibit B which provides coverage to eligible utilized individuals, Innerstaff assumes responsibility for proper COBRA administration, subject to timely and complete notification by Client of the occurrence of any "qualifying event." For these purposes any group health plan shall be maintained by Innerstaff only if the contract is between Innerstaff and the insurer. As of the Effective Date of this Agreement and only if utilized individuals and Client participate in Innerstaff's group health plan, Innerstaff shall be responsible for current COBRA participants on Client's group health plan who are listed in Exhibit C, attached and incorporated herein by reference. Client warrants that all COBRA participants, at all times, were and remain eligible for coverage in accordance with federal law. Client shall be fully responsible for any group health plan maintained by Client.
- G. Innerstaff shall provide and coordinate the benefit programs, if any, set forth on Exhibit B beginning on the Effective Date specified on Exhibit B. A utilized individual's available coverage and eligibility to participate in a given plan shall be governed by and subject to the terms and conditions of the plans offered by Innerstaff. Innerstaff and its applicable carrier reserve the right to change or substitute benefit plans or to implement cost increases. Innerstaff shall provide at least TWENTY (20) days prior notice of any such change, substitution, or cost increase. Client shall have TWENTY (20) days following its receipt of notice from Innerstaff regarding any such change, substitution, or cost increase to notify Innerstaff, in writing, of its termination of this Agreement. Such termination shall only occur after payment by Client of all sums owed Innerstaff. Innerstaff also reserves the right to cancel a plan due to lack of participation or a change in applicable law. No utilized individual shall be covered by any benefit plan until the utilized individual has prepared the appropriate submission form, submitted it to the carrier, been notified by the carrier of the utilized individual's acceptance into the plan, and paid the premium for the first month.
- [H. As of the date of this Agreement, Innerstaff has secured Employment Practice Liability Insurance ("EPLI") that provides coverage for certain employment related claims involving utilized individuals. Nothing in this Agreement is intended to create rights to insurance in addition to the terms of such insurance policy which is meant to solely be applicable to utilized individuals and to no other employees of Client who may be employed outside the terms of this Agreement. To the extent the provisions of this Agreement conflict with such policy, the provisions of the EPLI shall control. The current terms of the EPLI policy provides coverage which is subject to annual limits (including limits applicable to claims in the aggregate made by all Innerstaff utilized individuals against Innerstaff and all Innerstaff clients) and deductibles, among other terms and conditions contained

in the EPLI policy. In the event that EPLI becomes unavailable on terms acceptable to Innerstaff (in Innerstaff's sole discretion), Client will be notified of the cancellation of such insurance in accordance with the terms of the insurance policy.

1. With regard to any matter covered by the terms of an EPLI policy maintained by Innerstaff, the following shall be applicable:

a. The EPLI shall not cover any claim or cause of action that arose or existed prior to the Effective Date of this Agreement unless otherwise agreed to by the EPLI carrier in writing and neither Innerstaff, nor any insurer, shall be obligated to pay for any defense of such claim or cause of action or otherwise participate financially in the resolution of such claim.

b. The EPLI has a deductible amount that Client must pay in full before the insurance carrier is obligated to make any payment. On claims covered by such EPLI, Client agrees to pay the total deductible amount due pursuant to the EPLI policy (whether the claim is against Client, Innerstaff, or Client and Innerstaff). In addition, Client agrees:

- (i) To act in conformity with the terms of the EPLI and with the terms of this Agreement;
- (ii) To cooperate in the investigation or processing of such claim, including utilization of legal counsel chosen by the EPLI carrier;
- (iii) To settle or compromise such claims upon terms and conditions satisfactory to the carrier;
- (iv) This Agreement must remain in effect and not be terminated by Client (either directly or indirectly), for a one (1) year period following the resolution of any claim under the EPLI where the deductible amount is exceeded.]

I. Notwithstanding anything to the contrary contained herein, no rights or authority required to remain with Innerstaff shall be delegated to Client.

## **V. CLIENT RESPONSIBILITIES**

- A. To the extent allowed by law regarding Client: Client shall be entitled to exercise all rights, and shall be obligated to perform all duties and responsibilities, otherwise applicable to an employer in an employment relationship; Client shall retain sufficient direction and control over the workplace and over the utilized individuals as is necessary to supervise all day-to-day work activities of the utilized individuals. Additionally, Client and not Innerstaff, shall have the right to control the manner, means, and details of the work performed by the utilized individuals. In this regard, authority to change utilized individuals' employment and working conditions, the services provided by utilized individuals, and the ability to determine utilized individuals' rate and method of pay are all the responsibility of Client. Client shall retain such sufficient direction and control over the utilized individuals and over the workplace as is necessary to conduct Client's business, discharge any applicable fiduciary duty that it may have, or comply with any applicable licensure, regulatory, or statutory requirement of Client or any utilized individual.
- B. Also to the extent allowed by law: Client shall be responsible for directing, supervising, training, establishing and maintaining safety at its worksite(s), and controlling the work of the utilized individuals with respect to the business activities of Client, including, but not limited to, controlling the manner, means, and details of the work performed by utilized individuals, setting, changing, and controlling utilized individuals' wages, wage rates, method of pay, hours, employment and working conditions, and terms and conditions of employment; Client shall make any and all strategic, operational, and all other business-related decisions regarding Client's business; Such decisions and related outcomes shall exclusively be the responsibility of Client and Innerstaff shall bear no responsibility or liability for any actions or inactions by Client or by any utilized individual; Additionally, Client shall have sole and exclusive control over the day-to-day job duties of all utilized individuals, including the services to be provided by such utilized individuals and the tools and equipment to be utilized by such utilized individuals, and Innerstaff shall have no responsibilities with regard to the utilized individuals' performance of such day-to-day job duties; Furthermore, Innerstaff shall have no control over the job site at which, or from which, utilized individuals perform their services; Control over the day-to-day job duties of utilized individuals and over the job site at which, or from which, utilized individuals perform their services is solely and exclusively assigned to Client; Client expressly absolves Innerstaff of control over the day-to-day job duties of the utilized individuals and over the job site at which, or from which, utilized individuals perform their services; Client shall be solely responsible for the quality, adequacy, and safety of the goods and services produced or sold in Client's business and Client and not Innerstaff shall be liable for the acts, errors, or omissions of Client and those of any utilized individual. Client shall have sole and exclusive control of all matters within the jurisdiction of the United States

Occupational Safety and Health Administration and any applicable state agency. Responsibilities not assigned to Innerstaff in this Service Agreement, or by applicable law, shall remain with Client.

- C. At the end of each pay period, Client shall obtain and provide to Innerstaff all records of actual time worked by each utilized individual, the status of the utilized individual as either exempt or nonexempt, and verify that this information is accurate and in compliance with the requirements of the Fair Labor Standards Act, other laws administered by the U.S. Department of Labor's Wage and Hour Division, and any applicable local or state law. Client shall accurately report all wages of the utilized individuals to Innerstaff. Client shall be solely responsible for the verification of payroll information, including but not limited to verifying that child labor laws have been complied with and that wages, minimum wage, overtime, prevailing wage rate, piece rate, meal and rest breaks, commissions, and bonuses have been correctly calculated and followed. In addition, Client shall be solely responsible for any and all liability to any utilized individual with regard to all aspects of Client's payroll, whether or not such payroll has been paid through Innerstaff, including but not limited to wages, minimum wage, overtime, prevailing wage rate, piece rate, meal and rest breaks, commissions, and bonus obligations to utilized individuals. Client shall review all payrolls and payroll information provided to Client by Innerstaff to ensure that all data, paychecks and payroll disbursements are accurate and that no incorrect or fraudulent information has been supplied to Innerstaff, whether such information is supplied to Innerstaff by a utilized or a non-utilized individual. Client acknowledges that any failure on its part to timely and accurately review the payroll and the documentation and paychecks and/or payroll disbursements provided by Innerstaff prior to the time that paychecks and/or payroll disbursements are disseminated to utilized individuals shall be an absolute bar to any claim for damages against Innerstaff. Unless otherwise provided to Client by Innerstaff in writing, Client shall submit all time records for a given pay period no later than TWO (2) business days prior to the date paychecks and/or payroll disbursements are to be distributed to utilized individuals. If Client fails to provide the necessary information as required, or submits changes to the information previously reported on time, the delivery of payroll checks and/or payroll disbursements by Innerstaff will be delayed and Client, at Innerstaff's sole discretion, may be billed an out of cycle processing charge, plus any out-of-cycle shipping charges. Client shall be solely responsible for incorrect, improper or fraudulent records of hours worked, for improper classification of utilized individuals, and for any fraudulent, improper, or illegal activity engaged in by any utilized individual. Client shall be responsible for any checks and payroll disbursements that have been requested by Client and which have been issued by Innerstaff to any utilized individual, including any checks that have been cashed by a holder in due course, whether or not a stop payment request has been filed. Additionally, wherever state or federal law affixes payroll check

cashing fees or other disbursement fees as the responsibility of the “employer,” that responsibility shall be assumed by Client.

- D. Subject to the requirements and limitations set forth at Section IV. B., Client also represents and warrants that all payments that qualify as W-2 wages to be paid to any utilized individual are to be paid through Innerstaff and that any such utilized individuals will receive no additional wages in any form from Client. Client agrees it will be solely responsible for damages of any nature, including, but not limited to back wage claims, unpaid wage claims, wage theft claims, tax claims, as well as claims pursuant to the Fair Labor Standards Act, arising out of Client's failure to properly report hours worked, exempt status, and other required payroll and tax information to Innerstaff and for any direct payment by Client to a utilized individual of any remuneration. In addition, Innerstaff shall not be considered to have any obligations towards any employee of Client for whom required payroll information is not supplied during any payroll period (except as may be required by law). Client assumes full responsibility for workers' compensation claims, benefit claims (including but not limited to health insurance claims and pension claims), tax obligations, employment discrimination claims, general liability claims, third-party claims, and any and all other obligations or claims pertaining in any way to any individual for whom payroll information is not supplied during any payroll period (except as may be required by law), or who is paid or treated in whole or in part by Client, as a non-utilized individual, independent contractor, volunteer, or in any other capacity. Innerstaff shall have no obligation to provide workers' compensation insurance for independent contractors, subcontractors, and for employees of such entities engaged or hired by Client. Client shall not, directly or indirectly, engage or hire any independent contractor or subcontractor that does not have workers' compensation insurance coverage with respect to itself and its employees. Client shall obtain a certificate evidencing workers' compensation insurance coverage with respect to all independent contractors and subcontractors (and their respective employees and contractors) engaged or hired by Client, or shall provide workers' compensation insurance coverage with respect to the employees of any such contractor. In no event will any independent contractor (including any subcontractor of the independent contractor), subcontractor, volunteer, non-utilized individual, or any of the aforementioned's employees, be covered by Innerstaff's workers' compensation policy or be considered a utilized individual of Innerstaff. Client shall at all times maintain a workers' compensation policy encompassing all of its employees who are not utilized individuals pursuant to this Agreement and Client is on notice that pursuant to applicable law, Client has a statutory obligation to secure workers' compensation coverage for employees who are not utilized individuals of Innerstaff. Client agrees to unconditionally indemnify, hold harmless, protect, defend and unconditionally release, acquit, remise, waive and forever discharge all Innerstaff Indemnified Parties and any insurer of Innerstaff (including paying all of the aforementioned's attorneys' fees and costs) if any

claim (including administrative, legal, or equitable claim) is brought against a Innerstaff Indemnified Party or against an insurer of Innerstaff alleging a workers' compensation based claim, where Client was responsible for obtaining workers' compensation insurance for utilized individuals.

- E. In states where required or allowed by law or regulation, Innerstaff shall have the right to use Client's state identification numbers for unemployment tax reporting purposes. In such states, Client shall provide Innerstaff with its state identification number used for reporting state unemployment insurance, and shall forward all state unemployment information and notices to Innerstaff within FIVE (5) business days of receipt. In the event applicable law affords Innerstaff the option to report under Client's state identification number, Innerstaff shall have, at its sole discretion, the right to do so. In the event Innerstaff reports under its own number, then Client shall notify the state or states in which it operates that unemployment shall be reported under Innerstaff's identification number.
  
- F. At its own expense, Client shall provide a suitable place of employment for all utilized individuals, which shall comply with all applicable local, state and/or federal laws, ordinances, and regulations related to occupational health and safety, and Client agrees to provide all facilities, supplies, equipment, training and all other necessary items that may be required by utilized individuals to perform their services. Client represents that its working environment, equipment, machinery, supplies and training for existing employees currently meet all state and federal OSHA standards and that they will be maintained in compliance with such standards during the duration of this Agreement. Client agrees that it is solely responsible for compliance with safe work practices and the use of protective equipment imposed by controlling federal, state and local government, as well as any required by the applicable workers' compensation carrier. Client is also solely responsible to comply with all applicable laws, ordinances, and regulations related to environmental, equipment, machinery and all other matters affecting utilized individual safety. Client further agrees to comply with any Innerstaff's workers' compensation light-duty requirements, including reinstatement of utilized individuals in a light-duty capacity. Such Client light-duty obligations shall survive termination or expiration of this Agreement.
  
- G. Client shall comply with any and all safety requirements and recommendations, if any, made by the applicable workers' compensation carrier. Client also shall establish and maintain a safety program in accordance with state and/or federal laws and regulations, along with any committees, programs, policies, plans and training required under state and/or federal laws and regulations pertinent to professional employer organizations and their clients. Additionally, as Innerstaff is the holder of the workers' compensation policy that encompasses utilized individuals, Innerstaff or its workers' compensation carrier may provide guidance regarding injury prevention and safety issues. Such guidance is not provided as

an employer or joint employer, but instead is provided in furtherance of Innerstaff's goal to minimize injuries that will impact Innerstaff's experience rating regarding its workers' compensation policy. The parties recognize that Innerstaff's experience rating impacts all of Innerstaff's clients, not just Client, and accordingly, minimizing injuries benefits all Innerstaff clients, but in no way affects any client's ability to run its own business and control its own worksite(s) and its own employees. Client acknowledges with regard to Innerstaff and/or its workers' compensation carrier, in their either providing or not providing guidance and/or assistance, assumes no liability and no responsibility regarding safety issues at Client's worksite(s). Client expressly waives any claim against any Innerstaff Indemnified Party (as defined below) based on any safety, risk or hazard issue at Client's worksite(s).

- H. If a utilized individual is injured, Client shall immediately report the accident and injury to Innerstaff, and shall cooperate in conducting any investigation related to the accident and injury. If Client fails to accommodate any utilized individual released for light-duty assignment, then Client shall pay to Innerstaff all workers' compensation wages disbursed to such utilized individuals that should have been paid in the form of earned wages for performing light-duty services. Workers' compensation work-related accidents or injuries must be reported to Innerstaff immediately after they occur. In the event Client or any utilized individual fails to notify Innerstaff within TWENTY-FOUR (24) hours following a work-related accident or injury, Client shall immediately reimburse Innerstaff for any fees, fines, or penalties imposed by Innerstaff's insurance carriers or any state or federal agency. This provision shall only be applicable in situations where Innerstaff provides workers' compensation coverage for utilized individuals.
- I. Client acknowledges that Innerstaff maintains for eligible utilized individuals only the employee benefit plans set forth in this Agreement. Any other employee benefit plans maintained by Client, regardless of whether they provide a benefit to the utilized individuals, shall be the sole responsibility of Client, and shall not duplicate or otherwise conflict with the benefits provided by Innerstaff. Client will provide to Innerstaff, written statements of its policies regarding all employee benefit programs related to utilized individuals. Such policies will comply with all local, state, and/or federal, governmental laws, ordinances, and regulations.
- J. Client retains all obligations for the continuation of coverage for any current COBRA participants as well as for any and all eligible utilized individuals at the time of termination or expiration of this Agreement if group health insurance is not provided to utilized individuals pursuant to this Agreement. If Innerstaff's group health insurance coverage, if any, has been accepted pursuant to this Agreement, upon termination or expiration of this Agreement, for any reason, Client shall obtain group health insurance coverage for all former utilized individuals, and shall assume from Innerstaff all responsibility and obligation for

the continuation of coverage for any COBRA participants listed in Exhibit C, as well as for any and all eligible utilized individuals at the time of termination or expiration of this Agreement for the remainder of their COBRA eligibility period. In the event Client fails to provide said group health insurance, Client shall pay an administrative fee to Innerstaff in the amount of ONE HUNDRED and NO/100 (\$100.00) dollars per month (this sum is in addition to the premium payment payable by the applicable utilized individual and/or family member/dependent), per former utilized individual who is a COBRA participant (the fee shall also be applicable for a family member/dependent who is receiving COBRA benefits through Innerstaff where the former utilized individual is not receiving COBRA benefits) under Innerstaff's plans. Client acknowledges that this amount is reasonable to cover Innerstaff's expense in extending continued health care coverage to the utilized individuals and this amount is not a penalty. Nothing in this provision shall be construed or interpreted as precluding or limiting Innerstaff's right to pursue damages in a court of law or equity, which arose as a result of Client's failure to obtain and provide insurance as set forth herein.

- K. Client shall provide, at its own expense, reasonable access and accommodations as required by the Americans with Disabilities Act, and any regulations related thereto. In addition, Client shall comply with the guidelines and provisions of the Americans with Disabilities Act in its determinations of individuals it desires to hire, promote, place at certain Client work location(s), or fire.
- L. Where applicable, Client shall comply with the Worker Adjustment and Retraining Notification Act ("WARN"), and will give Innerstaff at least SIXTY-FIVE (65) days' written notice prior to effecting any plant closing or effecting any mass lay-off as defined in WARN.
- M. To the extent the Family and Medical Leave Act ("FMLA") is applicable to Client, if at all, Client shall at all times comply with the FMLA and where the FMLA is applicable to Client, it is Client's responsibility to reinstate eligible utilized individuals, and in all other manner to comply with the FMLA. This provision shall survive termination or expiration of this Agreement.
- N. Client acknowledges that during the term of this Agreement, Client will be the sponsoring employer for purposes of petitioning or applying for immigration visas for the employment of an alien selected for hire as a utilized individual and that Client shall have sole and exclusive responsibility for compliance with the requirements of law regarding the employment of individuals working pursuant to a visa. Client understands and agrees that it is Client's responsibility to obtain and maintain any necessary visas and to pay all associated costs. In addition, Client acknowledges that to the extent allowed by law it has all responsibility to properly obtain and to maintain I-9 forms in conformity with the Immigration

Reform and Control Act of 1986. A copy of all such properly completed I-9 forms will be timely and immediately supplied to Innerstaff.

- O. Client shall abide by and comply with all other applicable employment-related laws, ordinances and regulations (local, state and federal), including, but not limited to, those related to discrimination based on race, sex, sexual orientation, harassment of any type (including sexual harassment), disability, color, age, genetic information, national origin, citizenship status, religion, retaliation, veteran status, military status, and union status.
  
- P. Any obligation placed upon an employer by applicable law to verify the eligibility of an individual for employment through the Basic Employment Verification Pilot Program as jointly administered by the United States Department of Homeland Security and the Social Security Administration (“E-Verify”) or any successor program or to in any manner utilize the E-Verify system, to the extent allowed by law, is retained solely and exclusively by Client.
  - 1. Should either Client or Innerstaff obtain actual knowledge that a utilized individual is an unauthorized alien, such knowledge shall immediately be conveyed to the other Party via facsimile, e-mail, and overnight delivery and it shall be the responsibility of Client to immediately conform with the requirements of applicable state and federal law and to terminate the employment of such unauthorized alien upon receipt of such actual knowledge (after providing all appropriate procedural due process rights to the affected individual). Client or Innerstaff shall be solely responsible for any actual knowledge which it may possess regarding the employment of any unauthorized alien which is not timely conveyed to the other party, as set forth herein. Neither Client nor Innerstaff shall utilize such unauthorized alien in any capacity whether as an employee, independent contractor, subcontractor, volunteer, or any other capacity, after it obtains actual knowledge of the unauthorized status of any individual.
  
- Q. If any utilized individual is required to be licensed, registered or certified under any federal, state, or municipal law or regulation, or to act under the supervision of such a licensed, registered or certified person or entity in performing services, then any such utilized individual shall be deemed to be an employee of Client for such purposes but shall remain covered by Innerstaff’s workers’ compensation policy where Innerstaff is supplying workers’ compensation coverage. Client shall also be solely responsible for verifying such licensure, registration, or certification and/or providing such required supervision.
  
- R. Innerstaff does not assume any responsibility for and makes no assurances, warranties, or guarantees as to the ability or competence of any utilized individual. This Agreement in no way alters any responsibilities of Client to

perform any and all work history, reference checks and background checks on utilized individuals (including driving record and accident record background checks). Additionally, Client assumes full and complete responsibility for the consequences of performing or failing to perform, initially and on an on-going basis, work history, reference checks and background checks on utilized individuals, including, but not limited to, driving record and accident record background checks on utilized individuals and Innerstaff shall have no responsibility with regard to these matters.

- S. Any and all Affirmative Action Plan program development, administration, tracking, and the like, shall be the exclusive responsibility of Client.
- T. Client shall notify, in writing, all utilized individuals, of the inception and termination or expiration of this Agreement. Client shall also immediately upon termination or expiration of this Agreement notify all utilized individuals of the termination or expiration of this Agreement and inform them that if they were covered by Innerstaff's workers' compensation policy, they are no longer covered by Innerstaff's workers' compensation policy.
- U. Upon termination or expiration of this Agreement, Client shall continue sole responsibility for all accumulated, but unused, sick leave and vacation time for utilized individuals and for sole compliance with all employment agreements.
- V. If Innerstaff is providing workers' compensation coverage to utilized individuals, Innerstaff will only provide workers' compensation insurance for utilized individuals working in the state designated on Exhibit A as the "Home State" and for such other states or jurisdictions as are set forth on Exhibit A. No utilized individual may perform any work in a state other than the Home State and those other states and jurisdictions listed on Exhibit A without the prior written approval of Innerstaff and Innerstaff's workers' compensation carrier unless the performance of such temporary work outside the Home State (or such other state or jurisdiction as may be listed on Exhibit A where the utilized individual performs services) is permitted by Innerstaff's workers' compensation policy and is in compliance with the requirements of Home State law and the law of the state or jurisdiction where such utilized individual is temporarily performing services. Because of possible application of workers' compensation and professional employer organization statutory, regulatory, and contractual requirements, should Innerstaff and its workers' compensation carrier agree to allow any utilized individual to perform services outside of the Home State and those other states listed on Exhibit A as a utilized individual who is covered by Innerstaff's workers' compensation policy, Client and Innerstaff will negotiate any fee adjustment which is deemed applicable by Innerstaff. Absent the agreement of Innerstaff and its workers' compensation carrier to allow work to be performed outside the Home State and those other states and jurisdictions listed on Exhibit A and be

covered by Innerstaff's workers' compensation policy and absent agreement of the Parties on a fee adjustment, no utilized individual may perform such services outside the Home State and those other states and jurisdictions listed on Exhibit A and be covered by Innerstaff's workers' compensation policy. Innerstaff's workers' compensation policy shall not be applicable to any utilized individual performing work outside the Home State and those other states and jurisdictions listed on Exhibit A without the written permission of Innerstaff and its workers' compensation carrier and the performance of such work, without written permission, shall be a material breach of this Agreement, at the sole option of Innerstaff.

- W. Any tax imposed by any local or state taxing authority based upon Client's relationship with Innerstaff, such as a sales or use tax, or gross receipts tax, shall be the sole responsibility of Client.
- X. Client shall at all times comply with and be responsible for all federal, state, and local laws requiring the posting or providing of notices to employees at Client's workplace.

## **VI. SERVICE FEES**

- A. For services to be rendered under this Agreement, Innerstaff shall be entitled to a setup fee and service fee as specified on Exhibit A hereto (in determining the total charges billed to Client, the component parts of the total charges may be less than or may exceed Innerstaff's actual costs of doing business. It is the intent of the Parties that the total charges billed to Client be one composite charge where Client accepts, and is satisfied with, the total bill, which is billed to Client, irrespective of what Innerstaff's actual cost of any component part of the total bill may be or any refund, rebate, or credit which either Party may be entitled to receive). In addition, Client agrees that since FUTA and SUTA taxes may be adjusted at any time by any applicable state or by the federal government, FUTA and SUTA rates may be adjusted at any time by Innerstaff using reasonable business judgment following, or in anticipation of such increases. All funds due Innerstaff are payable by wire transfer or ACH, as specified on Exhibit C hereto, prior to Innerstaff's issuance of payroll checks and/or disbursements each pay period and shall be paid to Innerstaff on the day after each pay period ends. All accounts not paid when due will be subject to, at Innerstaff's sole discretion, a late payment charge of up to one and one-half percent (1.5%). Checks or other disbursements from Client to Innerstaff returned unpaid from Client's bank will be, at Innerstaff's sole discretion, subject to the late payment charge plus any additional costs incurred by Innerstaff. An unpaid balance will also be subject to, at Innerstaff's sole discretion, periodic charge of up to one and one-half percent (1.5%) per calendar month (or such maximum lesser interest amount if set by

applicable law at a lower amount) until paid in full. For any past due amounts or payments not paid for any reason, Client authorizes Innerstaff to convert the unpaid balance(s) to electronic check(s) for submission to Client's bank for payment via Automated Clearing House (ACH). Innerstaff reserves the right to at any time terminate this Agreement if full payment is not made when due.

- B. Should Client require additional services not included in this Agreement, the fee for any such additional services shall be negotiated and paid separately. The fees set forth on Exhibit A are subject to increase by Innerstaff based upon changes in local, state and/or federal employment law, increases in Innerstaff's cost of doing business (including, but not limited to, increases in taxes, premiums, fees, and/or assessments whether or not retroactive in nature), changes in insurance requirements or costs, costs directly attributable to Client or to utilized individuals working at Client, or changes in Client's payroll. Upon written notification to Client from Innerstaff of a fee adjustment, Client shall have the right to terminate this Agreement by giving notice of termination to Innerstaff within FOURTEEN (14) days after receipt from Innerstaff of a notice of a fee adjustment, and after payment of all funds owed to Innerstaff by Client. Such termination shall be effective THIRTY (30) days after Innerstaff's receipt of Client's notice of termination (or such other date as is mutually agreed to by the parties). Notwithstanding anything to the contrary contained herein, Client shall be liable for any retroactive increase imposed upon Innerstaff which is applicable to the period during which this Agreement has been in effect.
- C. Should Client and Innerstaff be agreeable to allowing Client to reimburse Innerstaff by means other than a wire transfer, Client may be required to maintain a prepayment with Innerstaff in an amount equal to the total payroll and any direct and indirect costs related to that payroll for one average payroll period. These monies shall be maintained by Innerstaff to help guarantee performance of all terms, covenants, and obligations of Client under this Agreement. Client agrees that should any interest be earned on such prepayment, such interest shall belong to Innerstaff. If Client should fail to pay Innerstaff any payment or any other funds when due, Innerstaff may apply the prepayment to the amount due. Innerstaff shall refund any remaining prepayment within TWENTY (20) days after the termination or expiration of this Agreement, provided Client has fulfilled all of its obligations under this Agreement.
- D. In addition, Client may also be required to provide to Innerstaff a financial assurance in the form of a Personal Guaranty (if a Personal Guaranty is required, it is attached hereto and incorporated herein by reference), an irrevocable letter of credit, a bond, or such other financial assurance acceptable to Innerstaff to guaranty the obligations of Client hereunder. Innerstaff may require additional financial assurance if, at any time, Innerstaff in its sole discretion determines that

a change has occurred in the financial condition of Client or if Client's average payroll increases.

## **VII. INDEMNIFICATIONS**

- A. Client will provide proof of comprehensive general liability insurance coverage for its operations and all utilized individuals, with a minimum limit of liability not less than one million (\$1,000,000.00) dollars per occurrence. If any utilized individual will operate a vehicle owned or otherwise of any kind for Client, Client shall maintain automobile liability insurance (including Hired/Non Owned automobile liability insurance) and furnish liability insurance encompassing liability for bodily injury and property damage and against uninsured motorists, each with a minimum limit of liability no less than one million (\$1,000,000.00) dollars per occurrence. Such policies shall also include blanket contractual liability and personal injury liability coverage. In addition, if professional employees become utilized individuals pursuant to this Agreement, professional liability coverage will be secured and maintained by Client with a limit of liability of no less than one million (\$1,000,000.00) dollars per occurrence. If Client's business includes the sale of alcoholic beverages, including beer and wine, it shall obtain liquor liability insurance with a combined single limit of liability of not less than one million (\$1,000,000.00) dollars per occurrence in addition to general liability insurance and Hired/Non Owned automobile liability insurance. Client agrees, at its own expense, to include Innerstaff as an additional named insured on all of Client's insurance policies, including without limitation professional liability policies and fidelity bonds. Client shall at the request of Innerstaff deliver to Innerstaff a certificate evidencing such insurance and the agreement(s) of the insurer(s) that such insurance may not be canceled without TWENTY (20) days prior notice to Innerstaff. Any coverage that issues against the dishonest or criminal conduct or misappropriation of any funds engaged in by any utilized individual maintained hereunder, such as fidelity bonding, shall be at Client's expense. All insurance policies maintained by Client shall provide coverage, which will be primary in the event of any claim. All insurance policies shall waive Client's subrogation rights in favor of Innerstaff. Client's obligation under this Section shall survive termination or expiration of this Agreement.
- B. Without regard to the fault or negligence of any party, Client hereby unconditionally indemnifies, holds harmless, protects and defends and unconditionally releases, acquits, remises, waives and forever discharges, and to the extent allowed by law covenants not to sue Innerstaff, and all subsidiary, affiliate, related, and parent companies, their current and former respective shareholders, non-utilized individuals, attorneys, officers, directors, agents and representatives (all indemnified parties referred to as "Innerstaff Indemnified Parties") from and against any and all claims, demands, damages (including

liquidated, punitive and compensatory), injuries, deaths, actions and causes of actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and all other consequences of any sort, whether known or unknown, without limit and without regard to the cause or causes thereof or the negligence (whether active or passive) of Innerstaff or any Innerstaff Indemnified Party that may be asserted by Innerstaff or asserted or brought against any Innerstaff Indemnified Party which is in any way related to this Agreement, the products or services provided by Client or by Innerstaff, the actions of any utilized individual, the actions of any non-utilized individual employed by Client, or of any other individual, any act by or against any individual who is acting outside the capacity of a utilized individual at the time the matter arises, including without limitation, all safety, risk, and hazard issues, all unsafe conditions and safety violations, any violation of any local, state and/or federal law, regulation, ordinance, directive or rule whatsoever, and all employment-related matters which shall include but not be limited to all matters arising under local, state and/or federal right-to-know laws, environmental laws, immigration laws (including I-9 obligations), all laws within the jurisdiction of the NLRB, OSHA, U.S. Department of Labor, and EEOC, including Title VII of the Civil Rights Act of 1964, as amended, the Americans with Disabilities Act (including without limitation those aspects relating to employment, public access and public accommodation), the WARN Act, ERISA, all laws governing wages and hours (including without limitation: prevailing wage rate; exempt and non exempt status; child labor; family and medical leave; and minimum wage and overtime matters), all laws governing race, sex, sexual orientation, harassment of any type (including sexual harassment), disability, color, age, genetic information, national origin, citizenship status, religion, retaliation, veteran status, military status, union status, and all other types of discrimination prohibited by applicable law, all laws governing disclosed and undisclosed benefit plans, all other labor laws, and all contract and all tort claims.

- C. Innerstaff hereby unconditionally indemnifies, holds harmless, protects and defends Client, and all subsidiary, affiliate and parent companies, their shareholders, employees, attorneys, officers, directors, agents and representatives from and against any and all claims, demands, damages, injuries, deaths, actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and all other consequences of any sort, arising out of the negligent or willful failure of any non-utilized individual employed by Innerstaff at any of its corporate offices to comply with applicable workers' compensation coverage for utilized individuals (where correct information is timely supplied by Client to Innerstaff and Innerstaff is providing such insurance), withholding tax, or ERISA laws, ordinances, and regulations, or where any action is taken by Client in compliance with a corporate Innerstaff policy, procedure, or

direction, which is in writing and which is illegal under any applicable local, state or federal law.

- D. All indemnifications are and shall be deemed to be contractual in nature and shall survive the termination or expiration of this Agreement.

## **VIII. BENEFIT PLANS**

- A. Innerstaff shall have such rights and authority so as to allow Innerstaff to provide benefits to utilized individuals and to have an insurable interest with regard to utilized individuals. Client acknowledges that Innerstaff has available employee benefit plans for the possible application to utilized individuals. Any other employee benefit plans maintained by Client, regardless of whether they provide benefits to the utilized individuals, shall be the sole responsibility of Client. All benefit plans shall be subject to the terms and conditions of eligibility and to such modifications as may occur to such plans. Innerstaff reserves the right to change any benefit plan which it offers to utilized individuals (including the right to change carriers) and to raise the rates charged for such benefit plans.
- B. To assure compliance with the Internal Revenue Code, the Employee Retirement Income Security Act and other federal regulations, Client agrees to properly disclose to Innerstaff all information reasonably required by Innerstaff for the proper administration of its benefit plans. This includes, without limitation, certification by Client that it has disclosed to Innerstaff all information requested by Innerstaff in any benefit plan questionnaires including the following information: (1) any retirement plans currently or previously maintained by the adopting company or any related entities (within the meaning of the Internal Revenue Code Section 414, including 414(b), 414(c), 414(m) or 414(o)); (2) listed all of the owners, officers and shareholders (to identify those highly compensated and key employees for purpose of discrimination and top heavy testing); (3) listed/entered any family relationships for owners, officers and shareholders with utilized individuals. In the event that Client has failed to properly identify and/or properly complete any benefit plan questionnaire, Client agrees to indemnify Innerstaff Indemnified Parties for any and all liability associated therein.
  - 1. Prior to Client merging its plan into the qualified Innerstaff Retirement Plan, or prior to Client transferring assets from its qualified plan into the Innerstaff Retirement Plan, Client understands and agrees that Innerstaff shall have the right, but not the obligation, to inspect all plan documents, records, IRS determinations, etc. for compliance with the law.
  - 2. If Client maintained a plan during the plan year (January 1 through December 31) prior to contracting with Innerstaff, Client agrees to

provide Innerstaff with all required information (including but not limited to Box I wages and employee deferrals, employer matches, and contributions, etc.), prior to contracting with Innerstaff so that Innerstaff may conduct discrimination testing on a combined basis for the first plan year.

3. Client agrees that in the event the Innerstaff Retirement Plan as adopted by the Client plan becomes top heavy as defined by the prevailing Internal Revenue Code and/or regulations, Client will be solely responsible for making a contribution to non-key employees (utilized individuals) working at Client to satisfy the top heavy test.
4. Client acknowledges that it is solely responsible for any matching, nonelective, or qualified nonelective contributions to be made to the Innerstaff plan on behalf of the Client's employees (utilized individuals).
5. If Client adopts the Innerstaff Plan, Client acknowledges that it has reviewed the adoption agreement for the Innerstaff Plan and agrees to comply with all of the obligations and responsibilities set forth in the terms of said adoption agreement.

- C. In addition, Client further warrants that no utilized individual will receive W-2 wages originating from Client that will not be paid directly by Innerstaff. Client understands that any payment made to any utilized individual outside this Agreement may result in the Innerstaff Retirement Plan being disqualified. Should the Innerstaff Retirement Plan be disqualified as a result of Client failing to report any compensation to covered employees (utilized individuals), Client will be solely liable for any damages of any nature arising out of the failure to report such compensation to Innerstaff.
- D. Client represents and warrants that there are no unfunded accrued benefits due to any utilized individual or due pursuant to any existing or previously existing employee retirement plan, or collective bargaining agreement.

## **IX. EFFECT OF TERMINATION**

- A. If for any reason payment is not made by Client when due, Client agrees that Innerstaff will have the right to immediately terminate this Agreement, terminate its performance hereunder and/or bring suit seeking damages. Upon termination or expiration of this Agreement, for any reason, or should Client fail to timely pay Innerstaff for its services, all of the utilized individuals shall be deemed to have ceased their Innerstaff relationship with Innerstaff and immediate notification of this shall be provided by Client to utilized individuals who had been utilized individuals pursuant to this Agreement. Client shall immediately assume all

federal, state and local obligations of an employer to the employees, which are not in conflict with state or federal law, and shall immediately assume full responsibility for providing workers' compensation coverage. Innerstaff shall immediately be released from such obligations as are permitted by law. If for any reason (whether or not required by applicable law) Innerstaff makes any payment to or on behalf of any of the utilized individuals, or to any governmental agency related to Client's utilized individuals, after this Agreement has been terminated or expires, Innerstaff shall be entitled to full reimbursement from Client for such expenditures.

- B. Innerstaff may also terminate this Agreement if, at any time, Innerstaff in its sole discretion determines that a material adverse change has occurred in the financial condition of Client, or that Client is unable to pay its debts as they become due in the ordinary course of business. This Agreement may also be terminated at any time by Innerstaff in the event of any federal, state, or local legislation, regulatory action, or judicial decision which, in the sole discretion of Innerstaff, adversely affects its interest under this Agreement or where Innerstaff in its sole discretion determines the workers' compensation risk is unacceptable. Where the workers' compensation risk becomes unacceptable to Innerstaff in Innerstaff's sole discretion, Innerstaff will provide Client at least fourteen (14) days written notice prior to termination. Additionally, notwithstanding anything to the contrary, either Innerstaff or Client may terminate this Agreement upon thirty (30) days written notice to the other party. Except as otherwise expressly provided or required by law, all services provided by Innerstaff to Client shall cease immediately as of the effective date of the termination. Any termination or expiration shall not relieve Client of any obligation set forth herein, including but not limited to its payment obligations to Innerstaff. In addition, in the event of any bankruptcy of Client, Client agrees that any unpaid amounts to Innerstaff will be considered as owing employment wages and taxes to utilized individuals.
- C. Innerstaff may immediately terminate this Agreement if the Client fails to disclose key information regarding the nature of work duties, business operations and locations of utilized individuals.

## **X. HEALTH CARE REFORM**

- A. Any and all penalties and liabilities assessed against or incurred by any Innerstaff Indemnified Party as a result of a violation of the provisions of the Patient Protection and Affordable Care Act of 2010, the Health Care and Education Reconciliation Act of 2010, as well as any guidance and regulation issued thereunder (such laws, guidance and regulations are collectively referred to as "Health Care Reform") with respect to the utilized individuals are the sole responsibility of Client, except as is set forth in Section X. B. Notwithstanding and in addition to any other indemnification provision contained in this Agreement,

without regard to the fault or negligence of any party, Client hereby unconditionally indemnifies, holds harmless, protects and defends all Innerstaff Indemnified Parties and unconditionally releases, acquits, remises, waives and forever discharges (and to the extent allowed by law covenants not to sue) all Innerstaff Indemnified Parties from and against any and all penalties and liabilities assessed against any Innerstaff Indemnified Party, incurred by any Innerstaff Indemnified Party, or due as a result of an actual or alleged Health Care Reform violation, including, but not limited to, any penalty and/or liability resulting from a violation of the nondiscrimination requirements and/or the employer mandate requirements regarding the provision of affordable minimum essential coverage related to Client's utilized individuals and non-utilized individuals and their dependents. Furthermore, in the event that penalties are assessed or liabilities are incurred by any Innerstaff Indemnified Party in any situation where: (i) any Innerstaff Indemnified Party acts (or does not act) with respect to utilized individuals in the absence of any written directions from Client; (ii) as a result of incorrect information provided to Innerstaff by Client; or (iii) the failure of Client to provide required information, which in turn was included or not included on reports or returns provided and/or generated by Innerstaff, including, but not limited to Form W-2, Client agrees to indemnify, hold harmless, protect and defend all Innerstaff Indemnified Parties. The provisions of this paragraph shall not apply in the event that any penalty imposed by Health Care Reform is assessed against any Innerstaff Indemnified Party as a direct result of Innerstaff's actions (or inactions) that are contrary to the lawful and timely written directions received by Innerstaff from Client regarding Health Care Reform.

- B. Innerstaff hereby unconditionally indemnifies, holds harmless, protects and defends Client Indemnified Parties from and against any and all penalties and liabilities assessed against any Client Indemnified Party, incurred by any Client Indemnified Party, or due as a result of an actual or alleged Health Care Reform violation incurred as a direct result of Innerstaff's actions (or inactions) that are contrary to the lawful and timely written directions received by Innerstaff from Client regarding Health Care Reform.
- C. In the event Client offers its own health benefits to utilized individuals, Client shall, with or without the assistance of Innerstaff, be the sole plan sponsor and administrator of such plan(s). In any case, Client understands and agrees that Client is solely responsible for establishing and monitoring: (i) the plan under Client's own tax identification number; (ii) employee notices, Form 5500, plan updates, plan testing, HIPAA compliance, COBRA compliance, compliance with Health Care Reform and ERISA responsibilities; and (iii) the correct identification and representation of the plan in any correspondence, communication, or statement issued by Client or by any representative of Client. Client may, in Innerstaff's sole discretion, be allowed by Innerstaff to adopt Innerstaff's multiple employer Section 125 plan in order to allow the utilized individuals' contributions,

if any, to be deducted on a pre-tax basis, as allowed by applicable law. If Client requests assistance from Innerstaff with the administration of such plan(s), then Innerstaff, with written direction from Client, shall assist with plan administration, including bill reconciliation and claims processing. Client shall execute those additional agreements necessary or required by Innerstaff to provide such assistance, including, but not limited to, the Indemnification Agreement, Administrative Assistance Agreement and the HIPAA Business Associate Agreement. In addition to the foregoing, Client is solely responsible for any premium payments due under its own health benefits plan and any COBRA continuation coverage plan.

## **XI. GENERAL PROVISIONS**

- A. Client acknowledges that it has not been induced to enter into this Agreement by any representation or warranty not set forth in this Agreement, including but not limited to any statement made by any marketing agent of Innerstaff. Client acknowledges that Innerstaff has made no representation concerning whether Innerstaff's services will improve the performance of Client's business. Client acknowledges and agrees that any decisions made relative to cancellation or termination of any insurance policies in effect prior to the Effective Date of this Agreement are the sole responsibility of Client.
- B. Client acknowledges that Innerstaff shall not be liable for any Client loss of business, goodwill, profits, or other damages.
- C. Client specifically authorizes Innerstaff to conduct a credit and background reference check on Client and such officers of Client, as Innerstaff deems appropriate in compliance with the requirements of law.
- D. This Agreement is assignable by Innerstaff at its sole discretion.
- E. Client acknowledges and agrees that Innerstaff is not engaged in the practice of law or the provision of legal, financial, tax, or investment advice or services, and that Client alone is completely and independently responsible for its own legal rights and obligations, regardless of any human resource advice which may be supplied to Client. Client at all times retains the right to seek appropriate advice from professionals of its own choosing, including, but not limited to attorneys and accountants.
- F. This Agreement constitutes the entire agreement between the parties with regard to this subject matter and no other agreement, statement, promise or practice between the parties relating to the subject matter shall be binding on the parties. This Agreement may be changed only by a written amendment signed by both parties, with the exception that any change to this Agreement sent by Innerstaff

to Client in writing, in a manner in which proof of delivery can be established shall be deemed to have amended this Agreement and have been accepted by Client where such change has not been objected to in writing by Client. Notice of such objection must be received by Innerstaff within FOURTEEN (14) days of Client's receipt of Innerstaff's notification of change (proof of Innerstaff's receipt of objection must be supplied by Client upon request of Innerstaff).

- G. The failure by either party at any time to require strict performance by the other party or to claim a breach of any provision of this Agreement will not be construed as a waiver of any subsequent breach nor affect the effectiveness of this Agreement, or any part thereof, or prejudice either party as regards to any subsequent action.
- H. In the event of any lawsuit or other proceeding between the Parties, including, but not limited to, any action by either Party to enforce the provisions of this Agreement, any party who shall substantially prevail in such lawsuit or other proceeding shall be entitled to an award of its costs and reasonable attorneys' fees incurred at all levels of proceedings.
- I. Any notice or demand given hereunder shall be accomplished by the personal delivery in writing (with written receipt) or by other delivery with proof of delivery or attempted delivery to the address set forth herein for the other party, and shall be deemed effective upon proof of attempted delivery (actual delivery to be made as soon as is practicable following attempted delivery).
- J. No rights of any third party are created by this Agreement and no person not a party to this Agreement may rely on any aspect of this Agreement notwithstanding any representation, written or oral, to the contrary.
- K. In the event that any provision contained in this Agreement is held to be unenforceable by a court of competent jurisdiction, the validity, legality, or enforceability of the remainder of this Agreement shall in no way be affected or impaired thereby.
- L. Any false statement, omission, or fraudulent act by or on behalf of Client with regard to any information supplied by Client to Innerstaff in anticipation of Client's contracting with Innerstaff or at any other time shall be deemed a material breach of this Agreement and Innerstaff, at its option, may terminate this Agreement and seek appropriate relief.
- M. Any and all inventions, discoveries, improvements, copyrightable works and creations (hereafter referred to as "Intellectual Property") which Client has previously, solely or jointly, conceived or made or may conceive or make during the period of this Agreement, whether or not accomplished through the use of

utilized individuals, shall be the sole and exclusive property of Client. Client shall have sole and exclusive responsibility for protecting its rights to such Intellectual Property and to all of its other assets and Innerstaff shall have no responsibility with regard to same.

- N. Client may not assign this Agreement nor its rights and duties hereunder, nor any interest herein, without the prior written consent of Innerstaff. Client will provide at least FOURTEEN (14) days' prior written notice to Innerstaff of any sale of Client, whether a stock or asset sale. Where Innerstaff agrees in writing to a successor becoming obligated to comply with this Agreement, this Agreement may be terminated by Innerstaff at any time, in Innerstaff's sole discretion, during the first SIXTY (60) days following successor's assumption of this Agreement. Thereafter, this Agreement may only be terminated by Innerstaff in conformity with the terms of this Agreement.
- O. Client represents that there is no existing employee who is subject to collective bargaining or who is subject to any collective bargaining agreement at any Client worksite. Any responsibility and/or liability with regard to collective bargaining, any union contract, union representation petition, union drive, unfair labor practice charge, and with regard to any employment contract between Client and any utilized individual shall be the exclusive responsibility and/or liability of Client. It is the intent of the Parties that Innerstaff shall not be a party to or have any responsibility for any such contract, including any employment contract with any utilized individual (unless otherwise mandated by law). Innerstaff will have no responsibility or liability in connection with or arising out of any such union or employment contract or collective bargaining agreement, except to prepare checks and/or make payroll disbursements and to pay any such utilized individual who is a party or is subject to such a contract, in conformity with information provided by Client. Innerstaff shall not make any payment to any union or to any union trust fund as all such required payments shall be made by Client. With respect to any employment contract between Client and any utilized individual, and with regard to any union contract, Client shall be acting solely on its own volition and responsibility with regard to all aspects of any such contract, including but not limited to its negotiation, compliance, implementation, renewal, enforcement, and termination. The Parties agree that Innerstaff is not and will not become a paying entity or contributing employer within the meaning of the Multi-Employer Pension Plan Amendment Act and does not and will not have any withdrawal liability under this Act or any comparable law.
- P. Client represents that it is not a local, state, or federal contractor and that prior to becoming a local, state, or federal contractor Client will immediately notify Innerstaff in writing as Client understands that there may be specific E-Verify (or its successor or replacement law) obligations and other obligations to which such contractors must adhere.

- Q. In recognition of the effort that is necessary to provide the services described in this Agreement, Innerstaff and Client agree to cooperate with each other. This duty to cooperate shall encompass the obligation of the other party to timely supply documents, witnesses and such other evidence as is necessary for a party to properly fulfill its obligations under this Agreement.
- R. Client represents that it has met any and all prior premium and fee obligations with regard to workers' compensation premiums and professional employer organization payments, to all prior professional employer organizations and workers' compensation carriers, with which Client has previously had a contractual relationship.
- S. Upon any request by Innerstaff or its assigns, Client shall allow an on-site physical examination of such books, records, documents and other information sources deemed appropriate by Innerstaff and/or its assigns to aid Innerstaff and its assigns in the determination of proper workers' compensation classifications of utilized individuals and to aid in the determination of payroll amounts paid to such utilized individuals. Such examination shall be strictly for the purposes of determining proper workers' compensation classifications of utilized individuals and to aid in the determination of payroll amounts paid to such utilized individuals. Any such examination can only occur upon reasonable notice to and consent from Client. Such consent shall not be unreasonably withheld. Client shall remain obligated to Innerstaff for any misclassification, delinquency and/or unpaid premium amount found in the audit. This provision shall survive the expiration or other termination of this Agreement.
- T. This Agreement shall be valid and enforceable only upon signature by an authorized officer of Innerstaff. Any individual signing this Agreement on behalf of Client represents, warrants and guarantees that she or he has full authority to do so. Each party represents that it has the power and actual authority to enter into this Agreement and to be bound by the conditions and terms contained herein.
- U. With respect to any dispute concerning the meaning of this Agreement, this Agreement shall be interpreted as a whole with reference to its relevant provisions and in accordance with its fair meaning, and no part of this Agreement shall be construed against Innerstaff on the basis that Innerstaff drafted it. This Agreement shall be viewed as if prepared jointly by Innerstaff and Client.
- V. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida both as to interpretation and performance (excluding its choice of law provisions if such law would result in the application of the law of a jurisdiction other than Florida) and venue shall be in the applicable court in

\_\_\_\_\_ County, Florida. The Parties hereby irrevocably waive, to the extent they may do so, the defense of an inconvenient forum.

- W. Excluding any payment obligations to Innerstaff as provided hereunder, either party hereto will be excused from performance under this Agreement for any period of time that the party is prevented from performing its obligations hereunder as a result of a Force Majeure event, which shall include an act of God, war, terrorism, civil riot, generalized labor strike, lockout, utility or communication failure, hurricane, tornado, flood, earthquake, tsunami, or other cause beyond the party's reasonable control. Both parties will use reasonable efforts to mitigate the effect of a Force Majeure event.
  
- X. The subject headings of the sections and subsections of this Agreement are included for purposes of convenience only and shall not affect the construction or interpretation of any of its provisions.

#### ADDENDUM

#### PREAMBLE

The following Addenda apply to utilized individuals and to Client to the extent Client has, at any time while this Service Agreement is in effect, utilized individuals working in any applicable state set forth below. Should any provision in any Addendum conflict with wording contained in this Service Agreement, the terms of the Addendum shall prevail with regard to utilized individuals working in that state, however, to the extent allowed by law, notwithstanding any provision set forth in any of the following Addenda, those sections of this Service Agreement, including, but not limited to Sections IV. A., IV. B., V. A. and V. B. of this Service Agreement that do not conflict with this Addendum shall continue in full force and effect and the Parties shall fully adhere to such sections. Any applicable state specific PEO requirements that conflict with either this Service Agreement or the Addendum will control to the extent of such conflict. Where a state law requires the sharing of any right, authority or responsibility, this shared reference shall only encompass the obligation of Innerstaff to comply with decisions made by Client to the extent allowed by applicable law. Additionally, since Innerstaff provides services in multiple states, including Florida, and since Florida has longstanding legislation and rules regarding employee leasing/professional employer organizations, in order to help ensure uniformity with regard to the services provided by Innerstaff, to the extent allowed by applicable law, any requirement set forth in this Service Agreement, including any Addendum, or in any applicable law, pertaining to Innerstaff's direction and control over utilized individuals or over any Client worksite and any requirement regarding Innerstaff's hiring, firing, terminating, disciplining, assigning,

reassigning, promoting or exercising any other control over utilized individuals at any worksite where utilized individuals perform their job duties, is the responsibility of Client, does not abridge Client's rights and responsibilities with regard to Client's ability to run its own business, and to the extent allowed by Florida Administrative Code Section 61G7-6.001, does not require the actual exercise of such authority, responsibilities or rights by Innerstaff, even if Florida law is not applicable to this Service Agreement. Innerstaff only reserves and retains such rights, responsibilities, and authority as is required by applicable law and employment responsibilities not those of Innerstaff pursuant to this Service Agreement or applicable law shall remain with Client. This Preamble shall be applicable in all states where Innerstaff has utilized individuals, whether or not there is a state specific Addendum.

### **ALABAMA**

1. To the extent required by Alabama law and to the extent that Client has funded Innerstaff's wage payment obligations, Innerstaff, as set forth in this Service Agreement, assumes responsibility for the payment of wages to the utilized individuals, to make payments for employee benefits for utilized individuals (to the extent that Innerstaff has assumed this responsibility in this Service Agreement), and to withhold, collect, report, and remit payroll-related and unemployment taxes.

2. Innerstaff reserves such right of direction and control over utilized individuals as is required by applicable law. Innerstaff's reservation of a right of direction and control shall only be exercised in the context of the need to do so according to the terms and conditions of this Service Agreement. While both Innerstaff and Client have a right to hire, terminate, and discipline the utilized individuals, the parties acknowledge and agree that any retention of any right of direction and control and any right to hire, terminate, and discipline the utilized individuals by Innerstaff, to the extent allowed by applicable law, does not require the actual exercise of such authority, responsibilities or rights by Innerstaff.

3. Innerstaff shall maintain necessary records and comply with reporting procedures to the extent required by Alabama law.

4. Innerstaff shall maintain records regarding the loss experience related to workers' compensation insurance provided to utilized individuals pursuant to this Service Agreement. At termination of this Service Agreement, if this information is requested by Client, Innerstaff shall provide this information to Client.

5. Client shall post all required employment notices required by Alabama law.

6. In the State of Alabama, professional employer organization services are registered and regulated by the Alabama Department of Labor, PEO Division, 649 Monroe Street, Montgomery, AL 36131; phone: (800) 528-5166. Any questions or complaints should be directed to the Director of the Alabama Department of Labor, PEO Division.

### **FLORIDA ADDENDUM**

1. Innerstaff assumes such responsibility for the payment of wages to the utilized individuals without regard to payments by Client to Innerstaff as is required by applicable law. In the event Client does not pay Innerstaff for all services rendered, Innerstaff may pay utilized individuals at the minimum wage rate or minimum salary provided for in the Fair Labor Standards Act and pursuant to Florida law. This provision in no way affects the obligation of Client to pay Innerstaff for all services rendered and in no way affects the obligations of Client pursuant to local, state and federal law, including but not limited to the requirement to timely pay all utilized individuals their regular rate of pay through Innerstaff (or directly, if otherwise required by law). Notwithstanding anything to the contrary, unless otherwise required by law, the term "wages," pursuant to Florida Administrative Code Section 61G7-6.001, does not include any obligation on the part of Innerstaff to assume any contractual obligation which may exist between Client and any utilized individual, or any other compensation or benefit, in any form and does not include any obligation between Client and any utilized individual for payments beyond or in addition to the utilized individual's salary, draw, or regular rate of pay unless Innerstaff specifically adopts such obligations by way of a written agreement entered into with the utilized individual and signed by a Controlling Person of Innerstaff. The parties agree that as of the Effective Date of this Agreement, Innerstaff has not entered into any such written agreement with any utilized individual and has not assumed any of the aforementioned obligations of Client as set forth in this Section. In this regard, Innerstaff does not assume responsibility for payment of bonuses, commissions, severance pay, deferred compensation, any other compensation or benefit in any form, profit sharing, vacation pay, sick leave, or other paid time off pay, or for any other payment not required by law, where payment for such items has not been received by Innerstaff from Client and Innerstaff assumes no contractual obligation which may exist between Client and any utilized individual.

2. Innerstaff shall prepare and distribute payroll disbursements to utilized individuals, make the appropriate payroll deductions and collection of taxes, file the appropriate reports and make payment to proper governmental authorities for federal, state, and local income taxes, Social Security tax, federal and state unemployment insurance taxes and any other federal or state tax directly attributed to the employment of the utilized individuals. Innerstaff shall maintain necessary records and comply with reporting procedures and Innerstaff assumes full responsibility for the payment of payroll taxes and collection of taxes from payroll on utilized individuals regarding payroll

reported to and paid by Innerstaff.

3. Innerstaff shall secure workers' compensation coverage in such amounts as is required by applicable law. This will be accomplished by way of a workers' compensation policy issued to Innerstaff by a carrier admitted to issue such policies in the State of Florida.

4. Innerstaff reserves such right of direction and control over utilized individuals and shall retain such authority to hire, terminate, discipline and reassign utilized individuals as is required by Florida law. Notwithstanding this provision, to the extent allowed by Florida law and Florida Administrative Code Section 61G7-6.001, Client will exercise the assignment of performing such rights and authority to allow Client to exercise sole and exclusive control over the day-to-day job duties of all utilized individuals and sole and exclusive control over the job site at which, or from which, utilized individuals perform their services. Additionally, Client and not Innerstaff, shall have the right to control the manner, means, and details of the work performed by the utilized individuals. In this regard, authority to change utilized individuals' employment and working conditions, the services provided by utilized individuals, the tools and equipment used by utilized individuals, and the ability to determine utilized individuals' rate and method of pay are all the responsibility of Client. The parties acknowledge and agree that any retention of any right of direction and control and any right to hire, terminate, discipline, and reassign the utilized individuals by Innerstaff, to the extent allowed by applicable law, does not require the actual exercise of such authority, responsibilities or rights by Innerstaff. To the extent allowed by applicable law, the parties shall fully adhere to Sections V. A. and V. B., of this Service Agreement. Innerstaff only reserves and retains such rights, responsibilities, and authority as is required by applicable law and employment responsibilities not those of Innerstaff pursuant to this Service Agreement or applicable law shall remain with Client.

5. Innerstaff retains such right of direction and control over management of safety, risk, and hazard control at the worksite or sites affecting its utilized individuals, including, with regard to utilized individuals: such responsibility for performing safety inspections of Client equipment and premises; such responsibility for the promulgation and administration of employment and safety policies; and such responsibility for the management of workers' compensation claims, claims filings, and related procedures, as is required by Florida law. Notwithstanding this provision, to the extent allowed by Florida law and Florida Administrative Code Section 61G7-6.001, Client has contractually undertaken the assignment of performing such rights and responsibilities so as to allow Client to exercise sole and exclusive direction and control over the following: the management of safety, risk, and hazard control at the worksite or sites affecting utilized individuals including responsibility for performing safety inspections of Client equipment and premises; and responsibility for the promulgation and administration of employment and safety policies. Client agrees that Innerstaff, as a

professional employer organization, has no presence at any Client worksite(s) and cannot and is not warranting the safety of Client's business and worksite(s) and Client expressly waives any claim against any Innerstaff Indemnified Party based on any safety, risk or hazard issue at Client's worksite(s). Client acknowledges that Innerstaff, in either providing or not providing such assistance and responsibility as set forth in this Addendum Section assumes no liability and no responsibility regarding safety issues at Client's worksite(s). While Innerstaff shall retain such right of direction and control over the management of safety, risk and hazard control involving utilized individuals performing work at Client worksite(s), as is required by applicable law, compliance with all applicable laws related to such matters is a responsibility of Client. Additionally, Innerstaff shall not be liable for any workers' compensation claim from any employee of Client or from anyone else who is not a utilized individual. Also, unless otherwise required by law, Innerstaff shall not be liable for any workers' compensation claim from any employee of Client, when Client is maintaining its own workers' compensation policy.

6. Innerstaff and Client shall each notify, in writing, all utilized individuals of the inception and termination of this Service Agreement and this Addendum.

7. Under penalties of perjury, the undersigned representative of Client declares that Client has met any and all prior premium and fee obligations with regard to workers' compensation premiums and employee leasing/professional employer organization payments, to all prior employee leasing/professional employer organization and workers' compensation carriers, with which Client has previously had a contractual relationship.

8. Upon any request by Innerstaff or its assigns, Client shall allow an on-site physical examination of such books, records, documents and other information sources deemed appropriate by Innerstaff and/or its assigns to aid Innerstaff and its assigns in the determination of proper workers' compensation classifications of utilized individuals and to aid in the determination of payroll amounts paid to such utilized individuals to the extent set forth in Section 440.381, Florida Statutes, and the rules promulgated thereunder. Such examination shall be strictly for the purposes of determining proper workers' compensation classifications of utilized individuals and to aid in the determination of payroll amounts paid to such utilized individuals. Client shall remain obligated to Innerstaff for any misclassification, delinquency and/or unpaid premium amount found in the audit. This provision shall survive the expiration or other termination of this Service Agreement.

9. Innerstaff does not assume any responsibility for and makes no assurances, warranties, or guarantees as to the ability or competence of any utilized individual. This Agreement in no way alters any responsibilities of Client which arise from Section 768.096, Florida Statutes, and Client assumes all responsibilities pursuant to Section 768.096, including, but not limited to, responsibility to perform any and all

work history, reference checks and background checks on utilized individuals, including driving record and accident record background checks. Additionally, Client assumes full and complete responsibility for the consequences of performing or failing to perform, initially and on an on-going basis, such work history, reference checks and background checks on utilized individuals, including, but not limited to, driving record and accident record background checks on utilized individuals and Innerstaff shall have no responsibilities with regard to these matters.

10. Client shall immediately report to Innerstaff all complaints, allegations or incidents of any tortious misconduct or workplace safety violations, regardless of the source. Client shall provide to Innerstaff complete and accurate disclosure of all circumstances surrounding such matters.

### **GEORGIA**

1. Should Innerstaff report unemployment to the State of Georgia utilizing Innerstaff's account number, Innerstaff shall, to the extent required by law adhere to SUTA obligations as follows:

- a. Negotiate with Client for such matters as time, place, type of work, working conditions, quality, and price of service;
- b. Determine assignments of utilized individuals, even if the utilized individuals retain the right to refuse specific assignments;
- c. Set the rate of pay of the utilized individuals, whether or not through negotiation;
- d. Pay the utilized individuals from its accounts; and
- e. Hire and terminate utilized individuals who perform services for Client.

### **INDIANA ADDENDUM**

1. Innerstaff shall maintain and provide to Client, at Client's request at the termination or expiration of this Service Agreement, records regarding workers' compensation loss experience for utilized individuals.

2. Unemployment compensation payments shall be reported as elected by Innerstaff in accordance with applicable law.

**AGREED TO:**

**INNERSTAFF EAST, INC.**

By: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)  
**CLIENT**

By: \_\_\_\_\_  
(Date)

\_\_\_\_\_  
(Address)