

Client _____

FEIN: _____

Designated State(s) All Applicable States

Employers Resource Management Company (hereinafter referred to as "Employers Resource") and Client (herein named above) wish to enter into a contract for the provision of administrative services by Employers Resource for Client in the state(s) designated above. Both parties understand and agree that Employers Resource will not assume the responsibility of providing administrative services without adequate security from Client. Client's timely payment of all applicable Service Fees, Administrative Fees and Client Advance of Employers Resource is a *condition precedent* to Employers Resource's initial and continued duty to perform and Client's right to receive the obligations and benefits as set forth below.

TERMS AND CONDITIONS**1. Purpose**

Employers Resource agrees to provide administrative services as described herein ("Services") and Client agrees to accept such Services, and both parties respectively agree to abide by the covenants, terms and conditions hereinafter set forth.

2. Term of Agreement

This Agreement shall remain in effect from pay period to pay period; provided that the following condition precedents are met and complied with in all respects (the "Condition Precedent"): (1) Client makes payment in full of all Employers Resource's invoice amounts, fees, charges and Client Advance, in immediately available funds, at the conclusion of each pay period and before Employers Resource is required to issue paychecks and fund any payroll and/or (2) Client is not in material breach of this Agreement. The continued duty of Employers Resource to perform its obligations and Client's right to receive Services and benefits under this Agreement are subject to the satisfaction and/or compliance with the Condition Precedent unless waived in writing by Employers Resource. *Client's failure to satisfy the Condition Precedent abrogates and terminates the responsibilities and liabilities of Employers Resource arising under this Agreement after the date of such failure, without prejudice to the rights and remedies of Employers Resource. Client agrees to indemnify, defend and hold Employers Resource harmless in the manner set forth in Section 9 below in the event of such failure of the Condition Precedent.*

3. Services to Client

On behalf of Client, Employers Resource agrees to provide the following specific services:

- a. timely processing of payroll data according to Client's prior and timely written instructions;
- b. preparation of payroll, personnel and benefits monitoring reports;
- c. access to human resource advice and expertise;
- d. access to an alternate dispute resolution service by Client and Client's employees for any and all claims related to employment matters; and,
- e. maintenance of all records relative to the performance of this Agreement for a period of five years, or longer, if required by law.

In addition, Employers Resource agrees to provide the following specific services so long as the Client timely pays for and elects the service in writing in advance (see Section 21 below):

- f. timely filing and remittance of all Client's required federal, state and local tax obligations associated with Client's employees;
- g. timely filing and remittance of all required federal, state and local employee payments or withholdings from wages;
- h. timely filing and remittance of Client's deposits to state and federal unemployment insurance authorities;
- i. timely reporting of Client's new employees to the appropriate authorities;
- j. and, any ancillary service offered by Employers Resource
- k. originate CCD and PPD ACH transactions on behalf of Client and Employers Resource may suspend or terminate agreement if Client violates NACHA rules.

Employers Resource does not assume responsibility for the payment of wages of Client's employees nor payroll-related taxes from its own accounts unless the *Condition Precedent* has been met for that pay period. All responsibilities not specifically transferred in this Agreement to Employers Resource shall remain the exclusive province of Client.

4. Client Responsibilities

Client has the exclusive right, responsibility and power to control and direct all employee management functions including, but not limited to: the setting and enforcement of employee personnel policies and procedures; the recruiting, hiring, compensation, training, evaluation, supervision, discipline, replacement, reassignment and termination of employees; and the conducting of safety, risk and hazard control programs. Client retains the exclusive obligation to provide all its workers' compensation insurance coverage and other employee benefits.

Client will:

- a. submit wage and hour information for each employee by pay period on the forms and in the manner prescribed by Employers Resource;
- b. provide basic payroll data for each new employee such as hourly wage or salary amount, exempt/non-exempt status, amount of withholdings, vacation/sick leave accruals; and,
- c. secure workers' compensation insurance and ensure the safety of its employees.
- d. comply with all NACHA rules and regulations including subsection 2.2.2.1 and 2.2.2.2. Client gives Employers Resource the right to originate entries on Client's behalf under such rules and regulations. Client agrees not to provide information resulting in ACH transaction or transactions originated that would violate the laws of NACHA and the United States. **CLIENT AGREES TO ALLOW** Employers Resource or Bank to audit Client compliance with NACHA rules and this agreement.

Nothing in this section shall constitute a release of Client's duties under the laws of any jurisdiction or as set forth in this Agreement.

5. Service Fees and Miscellaneous Charges

- a. For new Clients, fees for Services and the amount of Client Advance are as outlined in the attached Fee Schedule.
- b. The Client Advance may be adjusted at the discretion of Employers Resource to reflect current estimated payroll charges for each pay period and to ensure performance of the terms of this Agreement.
- c. Employers Resource reserves the right to establish charges for returned checks or bank items, freight or delivery charges and/or miscellaneous charges incurred in the normal course of business.
- d. Employers Resource reserves the right to adjust rates any time there is a change in payroll taxes, unemployment taxes, employee benefits or other statutory or third-party charges (collectively "Changes"). Adjustments in Employers Resource's rates will be effective immediately and retroactively to the effective date of such Changes. Employers Resource shall credit Client's invoice for any overpayment and reserves the right to invoice Client for any shortage. Client is obligated to pay such invoices upon receipt.
- e. Any delinquent payments shall bear interest at the rate of eighteen percent (18%) per annum, or the highest rate allowed by law, whichever is the lesser.

6. Changing This Agreement

Employers Resource may change this Agreement and related documents, including Administrative and other fees, benefits, Services and service providers, at any time at its sole discretion. Client may accept such changes or terminate this Agreement. Client's decision to maintain the Agreement, indicated by its submission of payroll data and all required fees after the effective date of such change, will constitute its ratification and agreement to the change(s) and such change(s) shall thereafter be fully legally binding upon Client.

7. Material Breach

The following actions or failure to act either singularly or jointly shall constitute material breach of this Agreement by Client:

- a. failure to pay Service Fees or other fees and financial obligations, when due, as required by this Agreement;

- b. failure to provide insurance required by Section 4c of this Agreement;
- c. failure to comply with any other provision in this Agreement.

8. Termination of the Agreement

This Agreement may be terminated at any time by either party upon thirty (30) days notice to the other party. Employers Resource may terminate this Agreement immediately, without prior notice, in the event of a "material breach" as described in Section 7 by Client and such termination shall be effective retroactively to the end of the last day of the last pay period for which Employers Resource received full payment, except as described below. All rights and/or obligations arising (i) prior to termination and (ii) at any time before or after termination pursuant to Section 5(d) shall fully survive any termination.

9. Hold Harmless

Client agrees to indemnify, defend and hold Employers Resource harmless from and against any and all liability, expense (including any and all court costs, attorney fees and any other costs incurred by Employers Resource) and claims for damage of any nature whatsoever, whether known or unknown, which Employers Resource may incur, suffer, become liable for or which may be asserted or claimed against Employers Resource as a result of: (1) Client's acts, errors, omissions or negligence of the Client or employees of Client; and/or (2) Client's breach of this Agreement.

Employers Resource agrees to indemnify, defend and hold Client harmless for direct out-of-pocket costs which result from Employers Resource's failure to pay any required payment specified. Direct out-of-pocket costs as hereinabove set forth shall not include, nor shall Employers Resource be responsible or liable for, Client's loss of profit, business goodwill, consequential, special or incidental damages.

In the event of any payment by Employers Resource of any liability of Client, Employers Resource, at its sole discretion, may be subrogated to the extent of such payment to all rights of recovery thereof, and Client shall execute all papers required and shall do everything that may be necessary to secure such rights, including the execution of such documents necessary to enable Employers Resource to effectively bring suit in the name of Client.

10. Dispute Resolution

Employers Resource and Client hereto mutually contract and agree that each, every, any and all claims, disputes and/or controversies, now existing or hereafter arising, whether known or unknown, shall be exclusively resolved, as follows:

- a. by attempting settlement by mediation utilizing the Rules and Mediator provided by Dispute Systems Inc. or any successor;
- b. and, failing settlement by mediation, the parties agree that all claims and disputes, including those of jurisdiction and arbitrability, shall be resolved by neutral binding arbitration conducted by the National Arbitration Forum (NAF), under the NAF Code of Procedure in effect at the time any claim is made. Each party shall pay its own costs of arbitration. The parties stipulate that this agreement involves transactions in interstate commerce, is subject to the Federal Arbitration Act, invoke its jurisdiction and agree that any award of the arbitrator(s) may be entered as a judgment in any court of competent jurisdiction.

No provision of nor the exercise of any rights under this Agreement shall limit the right of any party to: (i) foreclose against any collateral; (ii) exercise self-help remedies; (iii) obtain provisional or ancillary remedies such as garnishment, injunctive relief, attachment, the appointment of a receiver, etc.; or, (iv) enforce any non-competition or non-disclosure agreement. The institution of judicial relief for the above remedies shall not constitute a waiver of the right to submit Disputes to mediation or arbitration.

By signing this Agreement, the parties are giving up any right to sue each other and any right to trial by jury is expressly waived except as set forth above.

11. Governing Law. This Agreement shall be governed by the laws of the state in which Client maintains its corporate domicile.

12. Assignment. No rights or obligations under this Agreement may be assigned by Client without prior written consent of Employers Resource. It is expressly understood and agreed that Employers Resource may assign this Agreement and all Addendums at its sole discretion.

13. Entire Agreement. This Agreement, attached Fee Schedule or other related documents, constitute the entire agreement between the parties as to this subject matter, including dispute resolution, and may be executed by any authorized representative of Employers Resource.

14. Relationship. No provision of this contract is intended to create nor shall be deemed or construed to create any relationship between Client and Employers Resource other than that of independent entities contracting with each other hereunder solely for the purpose of effecting the provisions of this Agreement. Neither of the parties hereto, nor any of their respective officers, directors or employees shall be construed to be the agent, employee, representative, partner or in a joint venture with the other party.

15. Waiver. Failure by either party to require performance or to claim a breach of the Agreement shall not constitute a waiver of any provision of this Agreement or any subsequent breach, nor will it constitute prejudice to either party with regard to action for a subsequent breach.

16. Partial Invalidity. Should any term, warrant, covenant, condition or provision of this Agreement be held to be invalid or unenforceable, the balance of the Agreement shall remain in full force and stand as if the unenforceable provision did not exist.

17. Section Headings. The section headings in this Agreement are for reference only and shall not be considered in the interpretation of this Agreement.

18. Notices. Any written notice or demand required under this Agreement may be given by personal delivery, express mail or by facsimile sent to the recipient party and be effective upon receipt. In matters that require immediate communication, face-to-face verbal notice, telephone communications or e-mail may be used with written confirmation by facsimile or mail.

19. Legal Fees and Costs. In the event any action at law or in equity or other proceeding (including mediation and arbitration) is brought to interpret or enforce this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees and other costs reasonably incurred therein.

20. Addendums. All Addendums, forms and exhibits related hereto, when signed by the parties, constitute a material part of this Agreement and are incorporated into and made a part hereof.

21. Optional Services Available to Client

Client designates its election(s) by initialing the desired service(s) below:

- _____ Filing and remittance of federal, state and local tax obligations associated with Client's employees
- _____ Filing and remittance of all required federal, state and local employee payments and withholdings from wages
- _____ Payments to state and federal unemployment insurance authorities
- _____ Reporting of Client's new employees to appropriate authorities
- _____ Process employee payroll deductions designated for benefits
- _____ Remit employee benefit contributions to Client

Client _____

FEIN _____

Signature _____

Printed Name _____

Title _____

Executed at _____ Effective as of _____

Employers Resource

Signature _____

Printed Name _____

Title _____