

PEO MASTER SERVICE AGREEMENT

This **Agreement** contains the terms and conditions between a **Client Employer**, (the “Client”), and **Group Management Services, Inc., an IRS Certified Professional Employer Organization** (“PEO” or “CPEO”).

1. INTRODUCTION

Commencing on the Effective Date (as defined in **Section 2. TERM OF AGREEMENT**), **Client** and **CPEO** intend to enter into a professional employer arrangement (CPEO contract) covering certain personnel identified and described in **Section 7.1 Shared Employee Defined**. This Agreement sets forth the rights and responsibilities between **Client** and **CPEO** and is not intended to create rights in any third party. “CPEO” means IRS Certified Professional Employer Organization.

2. TERM OF AGREEMENT

The term of this Agreement will begin on the first day of the first payroll period for which payroll is processed by **PEO** for **Client** (the “**Effective Date**”) and, except as provided elsewhere herein, shall continue for an initial term of not less than one year (the “**Initial Term**”). This Agreement will automatically renew upon expiration of the Initial Term for successive one-year periods unless either party gives 60 days prior written notice of non-renewal prior to the expiration of the Initial Term. During subsequent terms, the Agreement may be terminated upon 60 days prior written notice.

The Agreement will terminate should **PEO’s** license be terminated, merged or suspended for any reason, or to the extent any federal or state regulatory authority determines that the PEO does not maintain the requisite control necessary to cover such Shared Employee’s under **PEO’s** health plan. In the event of this type of termination or determination, each party hereto shall be released from all obligations contained in this Agreement.

3. SERVICES TO BE PROVIDED BY PEO

3.1 Basic Services. Subject to the terms and conditions of this Agreement and based on information and funding provided by **Client**, **CPEO** will provide the following basic services with respect to the Shared Employees:

- Assume responsibility for payment of wages without regard to the receipt or adequacy of payment from Client for such services
- Assume responsibility for reporting, withholding, and paying any applicable taxes without regard to the receipt or adequacy of payment from Client for such services.
- Assume responsibility for any PEO sponsored benefits without regard to the receipt or adequacy of payment from Client for such benefits
- Assume responsibility for recruiting, hiring, supervising and firing workers in addition to Client’s responsibility for recruiting, hiring, supervising and firing workers
- Assume responsibility for providing training and instruction to workers regarding the timing, manner and location in which they perform their services in addition to Client’s responsibility for providing such training and instruction
- Maintain employee records relating to Shared Employees
- Consulting on basic policies and procedures designed to assist **Client** in human resource management in **Client’s** business consistent with the level of service selected
- Processing of garnishments and similar orders
- Processing of unemployment claims
- Providing notice of employment by PEO

3.2 Additional Services. From time to time, **PEO** may offer to **Client** additional products or services of an optional nature (“**Optional Items**”) on terms and conditions to be agreed to by the parties.

4. SERVICE FEES AND PAYMENT TERMS

4.1 Fees.

- (a) **Initial Fee Schedule.** **Client** agrees to pay **PEO** fees for services provided by **PEO** in accordance with The Client Employer Service Agreement.
- (b) **Fee Adjustments.** Fees may be adjusted upon the effective date of an increase or decrease in employee wages, payroll taxes or employee benefit program charges. **Client** understands and acknowledges that **PEO’s** costs for such services provided may be greater or less than the amounts actually charged to **Client**. For administrative fees, **Client** acknowledges that **PEO** may propose modifications by written notice to **Client** given at least 30 days prior to any effective modification date. The Fee Adjustments will automatically become effective on such modification date unless **Client** gives written notice to **PEO** rejecting the proposed Fee Adjustments within ten (10) business days after receiving the proposed Fee Adjustments from **PEO**. If **Client** rejects the proposed Fee Adjustments, **PEO** may elect to terminate this Agreement by giving 30 days written notice to **Client**. This paragraph shall not limit any other termination or other right of **PEO** under this Agreement.

4.2 Payment Terms.

- (a) **Payment.** **Client** agrees to pay the total amount due (without offset) to **PEO** by Automated Clearing House the fees invoiced to **Client**. The invoice is payable upon delivery. **PEO** reserves the right to request payment in the form of a cashier’s check, C.O.D., C.O.D. certified, Automated Clearing House or bank wire transfer.
- (b) **Late Payment.** If **Client** fails to make any payment when due, **PEO** may elect to terminate this Agreement immediately. **Client** further agrees that the following constitutes reasonable liquidated damages, which **Client** agrees to pay **PEO** on demand; the delinquent amount, plus three percent (3%) of the delinquent amount, plus one and one-half percent (1.5%) of the delinquent amount per month for any period of delinquency

in excess of one month. **Client** further agrees that **PEO** is entitled to recover its reasonable attorneys' fees and other costs incurred in attempts to collect any past due amounts. In the event **Client** fails to make any payment when due, in addition to any other remedy provided for herein, **PEO** may elect to treat the Shared Employees as the employees of **Client** for all purposes (including but not limited to federal and state tax reporting purposes) with respect to all returns or reports required to be filed relating to such Shared Employees after the date of such failure by **Client**.

5. RIGHTS WITH RESPECT TO EMPLOYEES

- 5.1 **Direction of Shared Employees.** While **PEO** retains the primary right to direct day-to-day activities and responsibilities of Shared Employees, **PEO** delegates such responsibility to **Client** and does not intend to exercise such right except to the extent necessary to demonstrate an employment relationship for health coverage purposes.
- 5.2 **Management of Shared Employees.** **PEO** will maintain the right to: (a) terminate, suspend, discipline, promote, demote, rehire or retire any of the Shared Employees for any reasons not prohibited by law; (b) increase or decrease any of the Shared Employees' salaries and/or wages; and (c) grant extraordinary compensation to Shared Employees, including, but not limited to, bonuses, grants or warrants for stock options, or reimbursable employee expenses. Notwithstanding the foregoing, **PEO** delegates such responsibility to **Client**. **Client** agrees to give **PEO** at least three (3) days' notice of the occurrence of any such event, unless the event is the actual termination of employment of an Shared Employee (for any reason), in which case **Client** agrees to provide such notice within one (1) business day of the event if feasible.

6. RESPONSIBILITIES WITH RESPECT TO EMPLOYEES

- 6.1 **Background, Reference Checks and Dangerous Propensities.** **Client** will determine (through background and reference checks or other appropriate means) that each person intended to become a Shared Employee hereunder is competent and fit to perform his or her assigned duties and poses no danger to other persons or property. **PEO** retains the right to employ any legal method of pre-employment screening or post-employment verification of background but is under no obligation to perform such screening or verification unless specifically agreed in writing at **PEO's** then-applicable fees.
- 6.2 **Licenses and Fidelity Bonds.** During the term of this Agreement, **Client** will maintain all licenses necessary to carry out its business and engage in the services performed by the Shared Employees. To the extent that the Shared Employees themselves are required to be licensed to perform services for **Client** or clients of **Client**, **Client** will take all action necessary to ensure that the Shared Employees are properly licensed at all times. **Client** will maintain fidelity or other bonds covering it and the Shared Employees as required by applicable laws or industry standards. **Client** will provide **PEO** with copies of all such licenses and fidelity bonds.
- 6.3 **Acts and Omissions of Shared Employees.** **Client** will be solely responsible to third parties (including Shared Employees) for all claims, liabilities and expenses relating to any act or omission of a Shared Employee, whether intended or unintended, including without limitation any act of dishonesty or negligence and a Shared Employee's operation of a motorized vehicle. **PEO** will not be responsible or liable to **Client**, any third party or Shared Employee in any way for any actual or alleged act, omission or performance of a Shared Employee. This Agreement is not intended and shall not be deemed to create a relationship between **Client** or **PEO** as agents, legal representatives, partners, joint venturers or employees of the other.

7. PERSONS COVERED BY THIS AGREEMENT

- 7.1 **Shared Employee Defined.** "Shared Employee" shall be defined, collectively, as those employees who are permanently assigned to perform services for the **Client** and who are covered by a CPEO contract between **PEO** and **Client**. Shared Employee shall have a similar meaning as "Covered Employee" as defined within the federal regulations pertaining to Certified Professional Employer Organizations "CPEOs." Notwithstanding the foregoing, for purposes of health care benefit coverage only, the **PEO** shall be considered the sole and exclusive common law employer of Shared Employees.
- 7.2 **Determination of Shared Employee Status.** No person shall become a Shared Employee and no payroll shall be paid to such person until and unless **PEO** has received a completed W-4 form and I-9 form for such person a minimum of three days prior to the release of the next scheduled payroll. **PEO** may reject any proposed employee whose job description does not meet the then current workers' compensation guidelines. **Client** agrees that **PEO** (in its sole discretion) may elect to not process payroll for, or provide any workers' compensation insurance coverage or other benefits to, any employee with respect to which **PEO's** procedures are not followed. In the event **PEO** so elects, any such employee shall be deemed excluded from this Agreement, with no obligation whatsoever on the part of **PEO**.
- 7.3 **Notification.** **Client** represents and warrants that it employs employees only in the States listed on the Client Employer Service Agreement and agrees to provide **PEO** with at least 10 business days prior written notice before adding any new employees in any additional State or other jurisdiction.

8. WORKERS' COMPENSATION INSURANCE; CUSTOMER WORK LOCATIONS AND SAFETY

- 8.1 **Work Location(s).** All work and services performed by the Shared Employees will be performed in the States set forth on the Agreement maintained at the sole cost and expense of **Client** or on the premises of such other entity as **Client** may direct.
- 8.2 **Workers' Compensation.** **Client** shall be responsible for securing any workers' compensation coverage for the Shared Employees required by any United States federal or state laws (other than Ohio law), commencing as of the effective date. **PEO** has agreements with insurers and will make every reasonable effort to assist **Client** in securing said coverage. The **Client** shall comply with all legal requirements necessary to maintain such workers' compensation coverage.
- 8.3 **Workers' Compensation Codes; Material Change in Underwriting Risk.** **Client** agrees to provide and maintain adequate job descriptions for the Shared Employees, so that the proper workers' compensation manual classification for each Shared Employee may be correctly determined. **Client** shall be solely responsible for the information provided to **PEO**. If such information is found to be incorrect upon audit or otherwise and results in additional premium or other charges, **Client** will be charged for such costs. **Client** represents and warrants that there are no workers' compensation losses or claims, except for those which are noted on **Client's** loss runs (or other documentation deemed adequate by **PEO** in its sole discretion) which have been provided to **PEO**, all of which are represented and warranted by **Client** to be accurate and

complete. If **PEO** determines in its sole discretion that **Client's** workers' compensation loss experience during the term of this Agreement represents a material adverse change in the underwriting risk accepted by **PEO** based on the information provided to **PEO** prior to the Effective Date, **PEO** shall have the right to modify the premium rate charged to client, refer client to the deductible program or terminate this Agreement upon 10 days, notice.

8.4 Claims Reporting. **Client** shall make a first report to Client's Insurer and **PEO**, on such form or forms as may be designated by said Insurer from time to time, within 24 hours of notice of the occurrence of any injury or accident which is work-related or which **Client** believes may be work-related. **Client** agrees to pay any additional costs (including fines, judgments, settlements or legal fees) caused by **Client's** failure to timely report any such injury or accident. The final adjudication for workers' compensation purposes whether the injury or accident is work-related shall be made by the **PEO** or its designated representative.

8.5 Deleted.

8.6 Inspection of Premises; Information Requests. **PEO** and any designated representative will have the right (but not the obligation) to inspect **Client's** premises annually or at any other time that **PEO** or such representative determines necessary or appropriate. **Client** will cooperate at its expense with any representative or **PEO** in meeting any of the representative's or **PEO's** reasonable information needs and/or safety recommendations within the time frames stipulated by the representative or **PEO**. Failure to follow said directives may result in termination of this Agreement at **PEO's** discretion.

PEO may offer a safety inspection and consultation for an additional fee. **PEO** does not warrant that any inspection will cause the **Client's** operations and/or premises to be in compliance with all health and safety laws, regulations, ordinances, directives, or rules. **PEO** shall have no liability to **Client** for losses or damages under any theory of liability or indemnity in connection with these services.

8.7 Notice of Certain Changes. **Client** agrees to give **PEO** at least 10 business days' prior written notice if **Client** or **Client's** business (or any significant part thereof) is sold, or of any intent to: (1) relocate **Client's** business outside the state in which it is located as of the date of this Agreement; (2) add a new line of business and/or manufacturing or work process; or (3) take any action that results in employees of **Client** being placed in a different workers' compensation classification. If **PEO** is unable or unwilling to provide coverage due to such changed circumstances, **PEO** shall have the right to terminate this Agreement immediately.

8.8 Independent Contractors, Etc. If **Client** uses or hires the services of any independent contractors, "owner-operators" or other personnel other than Shared Employees (collectively, "Contractors"), **Client** and/or the Contractors shall maintain separate workers' compensation or work accident and employer's liability insurance coverage for the Contractors. **Client** shall provide **PEO** with Certificate(s) of Insurance within 15 days of the execution of this Agreement and prior to the Effective Date), evidencing workers' compensation or work accident and employers liability insurance coverage for all Contractors. The following shall be the minimum limits for employer's liability insurance coverage: bodily injury by accident – \$1,000,000 each accident; bodily injury by disease – \$1,000,000 each disease; and bodily injury by disease – \$1,000,000 policy limit. Coverages as described above shall be required regardless of the State or States in which **Client** and the Contractors are operating or working and regardless of where services are being provided. Renewal certificates will also be provided to **PEO** at least thirty (30) days prior to the expiration of coverage. Additional certificates will be provided to **PEO** from time to time, upon **PEO's** reasonable request.

8.9 Risk Management. **Client** agrees that it will follow all directives from the Risk Department related to claims management including but not limited to issues involving reporting, medical care and treatment, light duty requirements and settlement. Failure to follow said directives may result in termination of this Agreement at **PEO's** discretion.

9. PAYROLL

9.1 Presentment. **Client** agrees that all persons that currently are employees of **Client**, and all persons who are intended to become employees of **Client** in the future, shall be presented to **PEO** for its consideration to become an Shared Employee hereunder in the manner contemplated by **Section 7.2 Determination of Shared Employee Status.**, except as otherwise required by law. **Client** agrees that: (1) all cash compensation paid to the Shared Employees during the term of this Agreement in connection with their employment shall be paid exclusively through **PEO**; and (2) except as otherwise agreed by **PEO**, **Client** will not pay any wages, salaries or other forms of direct or indirect remuneration (including employee benefits) to the Shared Employees directly or through any other third party.

9.2 Information Required. **Client** agrees to provide **PEO** with complete, legible information concerning the Shared Employees' payroll, including but not limited to: (1) gross wages for salaried Shared Employees; (2) total hours and hourly wages for hourly Shared Employees; and (3) all W-4, state withholding, and applicable Internal Revenue Code Section 125 forms. **Client** is solely responsible for the accuracy and timeliness of such information. **Client** agrees that either of the following will constitute a breach, entitling **PEO** to terminate this Agreement immediately: (1) its failure to provide **PEO** with payroll information when due; or (2) its failure to report any payroll for a period of 30 days or more.

9.3 Garnishments, Support Orders and Wage Attachment Orders.

(a) **Procedures.** **Client** will receive instructions and/or procedures for administration of certain levies, child support orders, wage attachment orders, garnishment orders or similar legal matters (collectively, "Shared Employee Orders") related to any Shared Employees. The parties acknowledge that these procedures are necessary for both **Client** and **PEO** to comply with applicable wage attachment or garnishment laws in a timely manner.

(b) **Fees and Expenses.** Any charges applicable to a Shared Employee shall be deducted by **PEO** from the Shared Employee's wages in accordance with applicable law. Any charges applicable to **Client** will be invoiced to **Client** on the next following invoice from **PEO** to **Client**.

9.4 Maintenance of Information; Client Reports.

(a) **Records.** **Client**, on behalf of **PEO**, shall maintain records of actual time worked and verify the accuracy of wages and salaries reported to and paid by **PEO** during each pay period. **Client** shall make such records available to **PEO** for inspection and copying. **Client** agrees to comply with the Fair Labor Standards Act and report all overtime to **PEO**. Notwithstanding any expiration or other termination of this Agreement, **Client** shall verify and maintain all employee time records in accordance with Wage and Hour regulations for a minimum of five years from and after the date reflected on such records. **Client** will make such records available to **PEO** for inspection and copying within three (3) days after written request by **PEO**.

(b) **Reports.** **Client** will provide **PEO** with a periodic report regarding the Shared Employees, the hours worked, and any other information reasonably requested by **PEO** (the "Report") on a form and at such schedule as requested by **PEO**. **Client** represents and warrants that the information in the Report will be complete and accurate and that **PEO** may rely upon such information.

- 9.5 Insufficient Wages for Payroll Deductions.** If the payroll of any particular Shared Employee is insufficient to cover all deductions for taxes, employee benefits or otherwise (whether due to the Shared Employee's absence from work, reduced hours or otherwise), **Client** will be solely responsible for any such deficiency and agrees to pay such amounts to **PEO** immediately upon written notice.
- 9.6 Cessation of Operations.** In the event of the sale, dissolution, liquidation, reorganization, or permanent closing of **Client's** business which causes **PEO** to deactivate any Shared Employee covered by this Agreement, **Client** agrees to promptly reimburse **PEO** the actual cost for unemployment expenses and charges incurred by **PEO** with respect to such Shared Employees.
- 9.7 Certain Pre-Effective Date Matters.** **Client** represents and warrants that: (1) all compensation due and payable to **Client's** employees (including, without limitation, regular salaries and wages, overtime, bonuses, vacation pay and severance pay) has been paid for any pay period prior to such employees becoming Shared Employees; (2) prior to the Effective Date, **Client** will provide to **PEO** a correct and complete list of **Client's** most recent payroll; and (3) **Client** has deducted and remitted to the relevant governmental authorities all taxes, unemployment insurance contributions or other amounts that it is required by statute, rule or regulation to deduct and/or remit to any governmental authority for all periods prior to the Effective Date.
- 9.8 Legal Notices.** **Client** agrees to forward to **PEO** any legal notices relating in any way to Shared Employees received from any federal, state or other governmental authority within one (1) business day of receipt by Client. If submitting by fax, notices should be sent to 330-659-0509.

10. INSURANCE

- 10.1 Liability Insurance.** **Client** agrees to maintain, at its sole expense and at all times during the term of this Agreement, a commercial general liability insurance policy (and, where applicable, a professional liability insurance policy) with a minimum combined single limit of one million dollars (\$1,000,000) insuring **Client** (and **Client's** Shared Employees) and **PEO** against bodily injury, death and property damage liability caused by **Client's** premises, operations, professional services rendered, completed operations, Employment Practices and/or products, as applicable. **PEO** will be named as an additional insured on such policies. The commercial general liability policy will include blanket contractual liability, personal injury and advertising liability coverage. This obligation shall be in addition to the requirements described in Section 8.8 of this Agreement.
- 10.2 Automobile Insurance.** **Client** agrees to maintain, at its sole expense and at all times during the term of this Agreement, automobile liability insurance coverage on all owned, non-owned and hired vehicles used by **Client** insuring **Client** (and **Client's** employees) and **PEO** against liability for bodily injury, death and property damage. The coverage will include: (1) a minimum combined single limit of one million dollars (\$1,000,000); and (2) uninsured and underinsured motorist insurance with a minimum combined single limit of one million dollars (\$1,000,000). In states where "no fault" laws apply, Personal Injury Protection (P.I.P.) or equivalent coverage shall also apply with minimum limits sufficient to meet applicable state statutes. **PEO** shall be named as an additional insured under each such coverage.
- 10.3 Responsibility for Obtaining Coverages.** It is expressly understood and agreed that **PEO** will not be liable for nor provide any of the insurance coverages outlined in **Sections 10.1 Liability Insurance**, and **10.2 Automobile Insurance**.
- 10.4 Insurance Certificates.** **Client** will provide to **PEO**, within 15 days of the execution of this Agreement (but, in any event, prior to the Effective Date), certificates of insurance evidencing the maintenance of the coverages required in this Agreement and **PEO's** status as an additional insured. **PEO** will be provided at least 30 days prior written notice of cancellation. Renewal certificates will also be provided to **PEO** at least 30 days prior to the expiration of coverage. Additional certificates will be provided to **PEO** from time to time, upon **PEO's** reasonable request.
- 10.5 Waiver of Subrogation.** In addition to naming **PEO** as an additional insured under the policies described in **Sections 10.1 Liability Insurance**, and **10.2 Automobile Insurance**, **Client** hereby waives all rights to any form of subrogation, express or implied, against **PEO** for any and all claims whatsoever.
- 10.6 Reliance by PEO.** It is acknowledged and agreed that: (1) the obligations of **Client** set forth in this **Section 10. INSURANCE** are reasonable and essential to protect **PEO** from risks that it cannot manage or control; and (2) **PEO** is relying on **Client's** performance hereunder in entering into this Agreement. Any failure by **Client** to fully comply with the provisions of this **Section 10. INSURANCE** shall constitute a breach of this Agreement, entitling **PEO** to terminate this Agreement immediately.

11. BENEFIT AND RETIREMENT PLANS

- 11.1 Benefit Programs.** **Client** and/or Shared Employees may participate in benefit programs offered by or through **PEO**. Such participation shall be subject to the terms and conditions of the specific program as applicable from time to time, including applicable termination provisions.
- 11.2 Current Plans.** **Client** acknowledges and agrees that **PEO** will not be responsible or liable with respect to any benefit, retirement or other plan maintained by **Client** independent of this Agreement. **Client** represents and warrants that: (1) all of **Client's** benefit, retirement and other plans in existence at the time of this Agreement are current and in compliance with applicable law; and (2) this Agreement will not violate the terms of those plans.
- 11.3 Information.** **Client** agrees to promptly comply with all reasonable requests for information and inspection by **PEO**, including requests by **PEO** for necessary information relating to benefits, summary plan documents or other material pertaining to the Shared Employees.
- 11.4 COBRA.** **Client** agrees to notify **PEO** as soon as **Client** becomes aware of any qualifying event that triggers COBRA eligibility for Shared Employees or their eligible family members (such as death, termination or reduction of hours, divorce or legal separation, Medicare entitlement, dependent child changing status, or bankruptcy of **Client**). In the event that **Client** fails to provide notice of such qualifying event to **PEO** within 14 days of its occurrence, **Client** will assume any and all resulting liability triggered by such qualifying event.

12. COMPLIANCE WITH LAW

- 12.1 Compliance with Laws.** **Client** agrees to comply at its sole expense with applicable federal, state and local laws, including, without limitation, all safety, health, employment and immigration laws, regulations and rules, and any applicable state equivalent thereof and any hazardous material laws imposed by controlling federal, state and local governments. **Client** will also ensure compliance with safe work practices and use of protective equipment imposed by any applicable workers' compensation insurance carrier or controlling federal, state and local government agencies. The duties of **Client** include, without limitation, any training and record-keeping requirements imposed by or associated with any of the foregoing.
- 12.2 Current Compliance; No Claims.** **Client** represents and warrants that: (1) it is in compliance with all applicable statutes, regulations and policies, and (2) there is no pending litigation, or other proceeding or basis for an unasserted claim against **Client** which is based on claims

arising out of any Shared Employee's employment relationship with **Client** (including without limitation claims for breach of contract, tort, discrimination, employee benefits, wrongful termination or any common law or statutory claims).

12.3 Collective Bargaining. Except as **Client** has disclosed to **PEO** in writing, **Client** represents and warrants that: (1) none of the Shared Employees is represented by any labor union; (2) there is no pending labor strike, unfair labor practice complaint or other material labor dispute affecting **Client** (including any organizational campaign) and there is no material labor grievance pending against or affecting **Client**; (3) there are no pending arbitration proceedings arising out of or under any collective bargaining agreement to which **Client** is a party; and (4) to the best knowledge of **Client**, there is no basis on which a claim may be made under any collective bargaining agreement to which **Client** is a party affecting the Shared Employees. **PEO** is not and will not (1) be a party to any collective bargaining agreement; (2) be deemed a joint employer under any collective bargaining agreement; or (3) assume any liability under any collective bargaining agreement.

13. REPRESENTATIONS AND WARRANTIES

13.1 Representations and Warranties. **Client** represents and warrants to **PEO** that:

- (a) **Client** operates under the organizational form specified in the first sentence of this Agreement, is validly existing and in good standing under the laws of the State indicated in such sentence.
- (b) **Client** has full power to: (a) own, lease, and operate its properties and assets; (b) conduct its business as that business is currently being conducted; and (c) consummate the transactions contemplated by this Agreement.
- (c) This Agreement has been duly authorized, executed, and delivered by **Client** and constitutes a valid and binding agreement enforceable against **Client** in accordance with its terms, subject to the effect of bankruptcy, insolvency, moratorium and other laws relating to and affecting the rights of creditors generally and to equitable principles of general application.
- (d) Neither the execution nor delivery by **Client** of this Agreement will result in the breach of any term or provision of, or constitute a default under, any charter provision or bylaw, or material agreement, order, law, rule or regulation to which **Client** is a party or is subject.
- (e) Except as specified in this Agreement, **Client** is not a party to any separate agreements or arrangements that would obligate **PEO**.
- (f) Except as disclosed to **PEO** in the form of a written exhibit (signed and initialed by both parties) attached to this Agreement, there is no action, suit, proceeding or investigation pending, or to the knowledge of **Client** threatened, against **Client** related to the Shared Employees or otherwise.

13.2 Effect of Representations and Warranties. The representations and warranties made by **Client** in this **Section 13. REPRESENTATIONS AND WARRANTIES** and elsewhere in this Agreement shall survive the term of this Agreement. All representations and warranties are deemed to be material. **PEO** is entering into this Agreement in reliance on such representations and warranties and has the right to immediately terminate this Agreement in the event any such representation or warranty is inaccurate.

14. TERMINATION

14.1 Termination Right. Except as specifically provided for in **Sections 2 and 4.2(b) Late Payment.**, and in addition to any termination right provided elsewhere, either party may terminate this Agreement upon material breach by the other party, provided that no such termination will be effective unless the party allegedly in breach of this Agreement fails to cure such breach within 90 days (15 days in the event of a breach involving a material violation of any applicable laws or regulations) after receipt of written notice from the other party specifying the alleged breach.

14.2 Automatic Termination. This Agreement will terminate automatically, without notice or passage of time, upon the occurrence of any of the following events: (1) any failure of client to comply with Section 6.2 or any provision of Section 8 hereof; (2) the return of any payment made by Automated Clearing House pursuant to this Agreement; (3) an assignment by **Client** for the benefit of creditors or a voluntarily or involuntarily adjudication of the **Client** as bankrupt by any court of competent jurisdiction; (4) a filing of petition for reorganization of **Client**; (5) **Client** declares a decision to go out of business or ceases doing business; or (6) a petition in bankruptcy is filed by or against **Client**. In any of these events, **Client** and any guarantor of **Client's** obligations under this Agreement will immediately notify **PEO**. In the absence of such notice, **Client** acknowledges that the acceptance of any payrolls after the occurrence of any of the foregoing events would be fraudulent against **PEO**.

14.3 Termination Payment. If this Agreement is terminated by **Client** (except in the event of a termination by **Client** in compliance with **Section 14.1 Termination Right** or **Section 2. Term of Agreement**) or by **PEO** as a result of a **Client** breach, **Client** agrees to pay a termination payment to **PEO** in the amount of \$500.00.

14.4 Consequences of Termination. Termination of this Agreement for any reason will not relieve **Client** from any of its obligations to **PEO**, including without limitation, indemnification of **PEO** as provided herein, payment of any fees, taxes or charges, as reimbursement of any health insurance charges, workers' compensation, or unemployment claims or liabilities incurred by **PEO** which are, or pre-termination were the responsibility of **Client**. **Client** shall assume full responsibility for Shared Employees, who shall be deemed employees of client immediately upon termination. **Client** further agrees that **PEO** has no further obligation whatsoever to the Shared Employees as of the effective date of termination of this Agreement.

15. MISCELLANEOUS

15.1 Sales and Other Taxes. **Client** will be responsible for paying (or reimbursing **PEO** for paying) any tax imposed by any State or other jurisdiction on Client.

15.2 Subpoenas and Other Court Orders. If **PEO** is served with a subpoena or court order ("Court Order") with respect to **Client** or **PEO**:

- (a) The parties mutually recognize and agree that **PEO** may incur additional costs and expenses in complying with the Court Order, in the form of additional labor costs, photocopying costs, and delivery costs and that **PEO** may not be reimbursed for all such costs and expenses by the party requesting documentation (the "Requesting Party"). **Client** agrees to reimburse **PEO** for said costs and expenses not paid by the requesting party.

15.3 Employment Prohibition. During the period of this Agreement and for a period of one (1) year thereafter, **Client and PEO** agree not to solicit for employment or employ any of **the other's** employees contacted during the performance of this Agreement. A penalty of 50% of the first year's salary of the solicited employee shall be imposed for breach of this provision.

16. INDEMNIFICATION

16.1 Indemnification by PEO. PEO agrees to defend, indemnify and hold **Client**, its shareholders, officers, directors, employees and controlling persons, harmless from any and all claims, fees, costs and expenses resulting from: (1) any breach or default by **PEO** under this Agreement or any other agreement between the parties; (2) any action, conduct or omission, real or alleged, of **PEO**, its agents, employees, officers, directors and Shared Employees occurring at any time. Prior to invoking this indemnification provision, **Client** must first give **PEO** written notice of any applicable or alleged nonperformance and a reasonable period of time to cure the same.

16.2 Indemnification by Client. **Client** agrees to defend, indemnify and hold **PEO**, its shareholders, officers, directors, employees and controlling persons harmless from and against any and all claims, fees, costs and expenses resulting from: (1) any breach or default by **Client** under this Agreement or any other agreement between the parties; (2) any action, conduct or omission, real or alleged, of **Client**, its agents, employees, officers, directors and Shared Employees occurring at any time. Prior to invoking this indemnification provision, **PEO** must first give **Client** written notice of any applicable or alleged nonperformance and a reasonable period of time to cure the same.

16.3 Stop Payments. If **Client** requests **PEO** to stop payment on a check to a Shared Employee, **Client** agrees to indemnify, defend and hold harmless **PEO** for the amount of the check, and from and against any and all Claims associated therewith, including costs and attorneys' fees. Requests by **Client** for such a stop payment order must be in writing to **PEO** and will be subject to fees plus any applicable bank charges.

16.4 Survival. The provisions of this **Section 16. INDEMNIFICATION** will survive the expiration or termination of this Agreement. In addition, any other duty of either party to indemnify, defend and hold harmless the other party shall survive the expiration or other termination of this Agreement.

17. GENERAL PROVISIONS

17.1 Entire Agreement. This Agreement is the entire agreement of the parties and supersedes any previous agreements or representations with respect to the subject matter herein between **Client** and **PEO** (or any predecessors-in-interest of such parties), including sales presentations. Except as provided elsewhere herein, this Agreement may not be altered or amended except by written agreement.

17.2 Counterparts. This Agreement may be executed in counterparts, each of which shall be deemed an original. Such counterparts shall together constitute one and the same Agreement.

17.3 Assignment. **Client** will not transfer or assign its rights or duties under this Agreement without the prior written consent of **PEO**, such consent to be granted or withheld by **PEO** in its sole discretion. It is expressly understood and agreed that **PEO's** rights and duties under this Agreement may be assigned by **PEO** (in its sole discretion and upon notice to **Client**) to one or more of its affiliated entities.

17.4 Arbitration Provision. Except as provided below, any dispute arising out of or relating to this Agreement, or the breach, termination or validity thereof, shall be settled by arbitration in accordance with the then current American Arbitration Association Rules for Arbitration by a single arbitrator judgment upon the award rendered by the arbitrator may be entered by any court having jurisdiction thereof.

The arbitration shall take place in mutually agreed location in accordance with AAA's rules and procedures.

An arbitration shall be commenced by a written notice of a demand for arbitration, which must be sent by certified mail to the other party within ninety (90) days of the date of the conduct giving rise to the dispute. Failure to mail written notice of a demand for arbitration within such ninety-day period shall constitute an absolute bar to the institution of any proceedings and a waiver of the claimed wrongful act.

As to any dispute or controversy which under the terms hereof is made subject to arbitration, no suit at law or in equity based on such dispute or controversy shall be instituted by either party hereto, other than a suit to confirm, enforce, vacate, modify or correct the award of the arbitrator as provided by law; provided, however, that this clause shall not limit **PEO's** right to obtain any provisional remedy, including, without limitation, injunctive relief, writ for recovery or possession or similar relief, from any court of competent jurisdiction, as may be necessary in **PEO's** sole subjective judgment to protect its property rights.

Neither party shall be entitled to written or deposition discovery from the other. The arbitrator shall have the authority to award compensatory damages and to provide for the division of the arbitrator's fees between the parties. The arbitrator is not empowered to award damages in excess of compensatory damages, and each party hereby irrevocably waives any right to recover such damages with respect to any dispute subject to arbitration. Each party shall bear the costs of attorneys, expert witnesses and/or other expenses incurred by that party except as otherwise provided herein, and the arbitrator shall have no authority to allocate or apportion such costs.

The arbitrator shall have no authority to alter, amend or modify any of the terms and conditions of this Agreement, and further, the arbitrator may not enter any award which alters, amends or modifies the terms or conditions of this Agreement in any form or manner.

This paragraph does not govern or apply to disputes or circumstances involving non-payment by **Client** to **PEO** of the service fees, payroll or termination fees provided for in this Agreement, for which **PEO** may pursue any lawful remedy.

17.5 Notices. Notwithstanding any contrary provision herein, any notice, request, demand or other communication required or permitted hereunder must be made in writing and will be deemed as properly given: (1) on the date of service if served personally on the party to whom notice is to be given; (2) the third day after mailing when deposited in the United States Postal Service, postage prepaid; (3) when sent via facsimile, with written confirmation of successful transmission to the address indicated on the signature page below (or such other address as may be provided by a party in accordance with this Agreement); or (4) on the day after sending if sent to the party to whom notice is to be given by private courier (e.g. FedEx or UPS) for next day delivery.

17.6 Waivers. No waiver of any rights under this Agreement will be valid unless in writing and signed by the party to be charged with such waiver. Waiver by either party of any term or provision of this Agreement shall not constitute a continuing waiver thereof nor of any further or additional rights such party may hold under this Agreement.

- 17.7 Governing Law and Venue.** This Agreement will be governed by and construed in accordance with the laws of the State of Client's domicile(exclusive of its choice of law provisions). Exclusive venue for any permissible legal actions or other proceedings brought by any party in regard to or otherwise arising out of this Agreement will be in either state or federal court.
- 17.8 Construction.** The language in this Agreement shall be construed as a whole according to its fair meaning and not strictly for nor against any party. The article, section and paragraph headings contained in this Agreement are for reference purposes only and will not affect the meaning or interpretation of this Agreement. Terms used in one number or gender shall be construed to include any other number or gender as the context may require. Each party has reviewed this Agreement and has had the opportunity to have counsel review the same. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not apply in the interpretation of this Agreement or any amendment or any exhibits hereto.
- 17.9 Binding Agreement.** This Agreement shall be binding upon and inure to the benefit of the parties, their heirs, personal representatives, successors, permitted assigns, and shareholder beneficiaries-in-interest. **PEO's** affiliated entities and their officers, directors, employees, and representatives shall each be a third-party beneficiary under this Agreement and shall be entitled to enforce the provisions of this Agreement conveying any right or remedies to **PEO**. In the event that more than one person or entity signs this Agreement as a **Client** or as a guarantor of any **Client**, the rights, duties, and indemnities of each such **Client** or guarantor shall be joint and several.
- 17.10 Severability.** In the event any term or provision of this Agreement is declared by a court of competent jurisdiction to be invalid or unenforceable, this Agreement shall remain in full force and effect, and either: (1) the invalid or unenforceable provision shall be modified to the minimum extent necessary to make it valid and enforceable; or (2) if such modification is not possible, this Agreement shall be interpreted as if such invalid or unenforceable provision were not a part of the Agreement.
- 17.11 Limitation of Liability.** IN NO EVENT SHALL **PEO OR CLIENT** BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL, PUNITIVE OR EXEMPLARY DAMAGES OF ANY KIND IN CONNECTION WITH OR ARISING OUT OF THIS AGREEMENT OR ANY SCHEDULE OR ADDENDUMS HERETO, EVEN IF **EITHER PARTY** HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 17.12 Force Majeure.** **Each Party** shall be excused for failure to perform any obligation where such failure results from circumstances beyond its control.
- 17.13 Attachments.** In addition, if necessary to comply with any applicable laws or regulations, **PEO** may propose the addition of one or more additional riders or attachments designed to comply therewith, by written notice to **Client** given at least 10 days prior to any effective modification date, which additional riders or attachments shall become a part of this Agreement 10 days after receipt.