

STAFFING COMPANY AGREEMENT
BETWEEN
ENSEMBLE WORKFORCE SOLUTIONS
AND
CONTRACTOR

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Temporary Worker

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Schedule F - Performance Metrics

STAFFING COMPANY AGREEMENT

This Staffing Company Agreement, including all schedules and attachments hereto, (the "Agreement") effective this _ day of _____, 200__ is entered into by and between Diversity MSP, Inc., a California corporation dba Ensemble Workforce Solutions ("Ensemble"), and _____ a _____ corporation ("Staffing Company").

BACKGROUND

WHEREAS Ensemble and (Customer) have entered into the Management Services Agreement effective as of February 13, 2006, pursuant to which Ensemble has agreed to provide services related to Customer's temporary workforce; and

WHEREAS, in connection with Ensemble's performance of its obligations to Customer, Ensemble wishes to engage Staffing Company to provide Temporary Workers (as defined below) or Direct Hires (as defined below) to Customer and Staffing Company wishes to provide such Temporary Workers or Direct Hires to Customer;

AGREEMENT

NOW, THEREFORE, Staffing Company and Ensemble, in consideration of the mutual promises contained herein and other good and valuable consideration given and received, agree as follows:

1. DEFINITIONS. The following terms shall have the meanings set forth in the section or schedule identified opposite each term:

Agreement.....	Introductory Section
Confidential Ensemble Information.....	Section 5.4
Confidential Customer Information	Section 5.3
Conversion Fee	<u>Schedule C</u>
Direct Hires.....	Section 2.1
Ensemble	Introductory Section
Ensemble Software	Section 2.5
Excluded Inventions	Section 5.1.2
Fellow Staffing Company.....	Section 3.11
Flat Fee	<u>Schedule C</u>
Indemnified Parties.....	Section 9.1
Invoice Period.....	<u>Schedule C</u>
Mark-Up Rates	<u>Schedule C</u>
Next Day.....	<u>Schedule A</u>
Next Day+.....	<u>Schedule A</u>
Notice	Article 11
Order	Section 2.2.1
Placement Fee	<u>Schedule C</u>
Same Day.....	<u>Schedule A</u>
Staffing Company.....	Introductory Section

Temporary Workers.....Section 2.1
Work Product.....Section 5.1

2. TEMPORARY SERVICES.

2.1 *Supply of Temporary Workers.* At Ensemble’s direction from time to time, Staffing Company shall supply workers (“worker” to be defined as *W-2 hourly temporary employed directly by Staffing Company only; not W-2 full time salaried, 1099/Independent Contractor, Third Party Supplier or H1B-Visa classifications*) who will work for Customer on a temporary basis (“Temporary Workers”) or candidates for Customer to hire on a regular basis (“Direct Hires”) for work to be performed for Customer. Staffing Company shall in accordance with Schedule A, provide its best available personnel to fill all Orders forwarded to Staffing Company by Ensemble. Staffing Company warrants that all Temporary Workers and Direct Hires assigned to Customer, whether by Staffing Company, Ensemble or Customers will materially satisfy all criteria and will possess the skills, experience, qualifications and capabilities specified in the Order for such Temporary Worker or Direct Hire.

2.2 *Orders for Temporary Workers.*

2.2.1 *Generally.* Customer will submit requests for Temporary Workers or Direct Hires to Ensemble (each request, an “Order”). Ensemble may, on an “as needed” basis, forward Orders to Staffing Company and Staffing Company shall respond to such Orders through the communication procedures identified in Schedule A.

2.2.2 *Governing Terms.* Any Order submitted to Staffing Company pursuant to this Agreement may contain express terms and conditions specific to such Order. Should a conflict arise between the terms of this Agreement and any Order, the terms of the Agreement shall govern.

2.2.3 *Change in or Cancellation of Orders.* Staffing Company acknowledges that Customer or Ensemble may, at their discretion, change or cancel any Order at any time prior to the start-date set forth in the applicable Order. In the event Customer cancels an Order, Ensemble shall notify Staffing Company within twenty-four (24) hours of Ensemble receiving Customer’s notice of such cancellation. If (i) Staffing Company is not notified of such cancellation within twenty-four (24) hours prior to the Order Start Date under the Order being cancelled, and (ii) if the Temporary Worker assigned to fill the cancelled Order arrives at the applicable Customer Facility under the Order, then Staffing Company may seek payment from Customer (through Ensemble on the applicable Invoice), and Customer shall pay Ensemble, who will, in turn, pay

Staffing Company for an amount equal to four (4) hours of work by such Temporary Worker at the applicable Bill Rate..

- 2.3 *Removal of Temporary Workers.* At any time, for any reason, with or without notice, at the request of either Customer or Ensemble, Staffing Company shall promptly remove any of its Temporary Workers assigned to Customer. Such request shall not in any way affect the right of Staffing Company, in its sole discretion as employer, to hire, assign, reassign, discipline or terminate its own employees. Neither Ensemble nor Customer shall have any liability to Staffing Company or any third party (including but not limited to any Temporary Worker) as a result of or arising out of such removal request. At the request of Ensemble or Customer, Staffing Company shall either promptly provide a replacement Temporary Worker, and Staffing Company shall ensure that any such replacement Temporary Worker shall have qualifications equal to or better than the Temporary Worker being replaced. While a Temporary Worker is assigned to Customer, Staffing Company shall not, without reasonable good cause reassign such Temporary Worker without Ensemble's prior consent.
- 2.4 *Limitation on Temporary Workers.* Staffing Company acknowledges that the assignment of Temporary Workers to Customer shall be limited, or shall cease, in accordance with Schedule B.
- 2.5 *Web-Based Services.* Ensemble shall permit the Staffing Company for the term of this Agreement to use Ensemble's web-based recruiting platform, (myEnsemble.com), its web-enabled workforce management solution ("Ensemble Software"), as the hub of electronic communication between the Staffing Company and Ensemble for tasks including but not limited to the input and submission of Temporary Workers for assignment(s) at the Customer site as well as timesheet entry by Temporary Workers. Ensemble Software will be used solely in connection with the services provided by the Staffing Company hereunder. Ensemble retains all right, title and interest in and to the Ensemble Software. The Staffing Company shall refrain from taking any steps to reverse assemble, reverse compile or otherwise derive a source code version of the Ensemble Software. The Staffing Company shall not license or distribute the Ensemble Software, and expressly acknowledges that it is proprietary to Ensemble and is subject to restrictions on any use other than specifically set forth in this paragraph. The Staffing Company shall execute any additional agreements regarding its use of the Ensemble Software required from time to time by Ensemble or by any vendor providing software or information technology services to Ensemble.

3. RESPONSIBILITIES OF STAFFING COMPANY.

- 3.1 *General Duties.* Staffing Company shall recruit, interview, select and assign Temporary Workers who, in Staffing Company's judgment, are best qualified to perform the services requested in the applicable Order. Staffing Company shall perform these services and other tasks related to such services, in accordance with the terms and conditions set forth in Schedule B.
- 3.2 *Compliance with Customer's Requirements.* Staffing Company agrees to comply, and to cause all Temporary Workers to comply, with all current and future work place requirements specified by Customer as supplied to Staffing Company from time to time in writing by Ensemble or Customer.
- 3.3 *Employment of Illegal Aliens.* Staffing Company guarantees that all Temporary Workers or Direct Hires supplied to Customer are eligible to work legally in the United States. In the event that a Temporary Worker is found to be ineligible to work legally in the United States, Staffing Company shall immediately (i) notify Ensemble in writing and (ii) terminate such Temporary Worker's assignment to Customer. In the event that a Direct Hire is found to be ineligible to work legally in the United States, Staffing Company shall immediately notify Ensemble of such finding. Staffing Company expressly agrees that it shall defend, indemnify and hold harmless Ensemble and Customer against any and all liability incurred as a result of the illegal immigration status of any Temporary Worker or Direct Hire. Staffing Company shall, from time to time and upon the request of Customer or Ensemble, furnish either Customer or Ensemble with a certification as to the immigration status of any Temporary Worker supplied to Customer.
- 3.4 *Customer Contact.* Except as requested or directed by Ensemble, Staffing Company shall deal directly and exclusively with Ensemble with respect to Staffing Company's performance under this Agreement, including supplying Temporary Workers and Direct Hires, and any services related thereto. Staffing Company shall not communicate with Customer regarding any Order, Confidential Customer Information or the provision of any Temporary Worker or Direct Hire to Customer other than through Ensemble. During the term of this Agreement, Staffing Company shall not, either directly or indirectly, provide any Temporary Workers or Direct Hires to Customer other than through Ensemble in accordance with the terms of this Agreement.
- 3.5 *No Contractual Restrictions on the Temporary Workers.* Staffing Company shall not enter into any agreement with any Temporary Worker restricting (i) the ability of such Temporary Worker to be hired for permanent employment by Customer or (ii) the ability of such Temporary Worker to be transferred to and hired by a Fellow Staffing Company in

accordance with Article 6. If such agreements are currently in effect, Staffing Company hereby waives any provisions of such agreements that restrict the Temporary Worker's ability to be permanently employed by Customer.

- 3.6 *Orientation, Training, Background Checks and Other Employee Screening.* Staffing Company shall provide services related to the orientation, training, background checking (including drug testing) and other screening of Temporary Workers and Direct Hires as provided in Schedule B.
- 3.7 *Reports and Information.* Staffing Company shall provide Ensemble with data, reports and other information as Ensemble may require from time to time relating to the performance of Staffing Company, the performance of Temporary Workers, or other management matters under this Agreement, within reasonable time of such request.
- 3.8 *Compliance with Laws.* Staffing Company and all Temporary Workers assigned by Staffing Company to Customer hereunder shall comply with all applicable laws, regulations, orders, ordinances, codes and standards, including identification and procurement of required permits, certificates, approvals and inspections, insurance coverage (including workers' compensation), proper withholding and submission of social security and income taxes, and any other laws which subsequently become applicable to Staffing Company or to the performance by Staffing Company's Temporary Workers or other of its agents under this Agreement. The foregoing shall include, without limitation, compliance with the Fair Labor Standards Act, the Immigration Reform and Control Act, and all equal opportunity employment and non-discrimination laws and regulations. Staffing Company shall procure and maintain all licenses, permits, and registrations necessary to perform the services contemplated by this Agreement.
- 3.9 *Representations; Warranties.*
- 3.9.1 Staffing Company represents and warrants that each Temporary Worker it assigns to Customer hereunder shall satisfactorily perform the services requested by Customer in the applicable Order. Ensemble shall notify Staffing Company if any Temporary Worker is determined by Customer not to be performing his or her job duties in a satisfactory manner. Staffing Company shall replace such Temporary Worker promptly upon request of such notice at no additional charge to either Ensemble or Customer; provided that such failure is not caused by or the result of Customer's material failure to adequately control, direct or supervise such Temporary Worker with regard to such job duties. In such event, at Ensemble's sole discretion, either (a) Customer shall not be billed,

and Ensemble shall not be invoiced, for any unsatisfactory work or (b) Customer shall not be billed and Ensemble shall not be invoiced, for the labor time necessary to correct any deficiency in work due to such unsatisfactory performance.

3.9.2 Staffing Company represents and warrants that for the duration of this Agreement it shall perform its services described hereunder in a workmanlike manner according to the generally accepted standards of the temporary labor industry. In the event Staffing Company fails to perform all services provided hereunder in conformity with this warranty, Staffing Company shall, in Ensemble's sole discretion, either (a) not be paid the applicable fees charged for such non-conforming services or (b) re-perform such services as necessary to correct any deficiency due to such non-conforming services without additional charge to Ensemble.

3.9.3 Staffing Company represents and warrants that it will conduct, as defined by Ensemble and Customer, appropriate background and reference checks, including, without limitation, verification of social security numbers and drug testing, of all job applicants and conduct proper orientation and training of all Temporary Workers assigned to work at Customer's premises, Additionally, Staffing Company represents and warrants that it will use its best efforts to provide Customer with a pre-trained and pre-qualified pool of applicants, through the use of testing (i.e., computer assessment, dexterity, typing tests). Ensemble reserves the right, at anytime and without notice, to inspect and audit Staffing Company's drug, criminal and educational background records, which pertain to employees, assigned to Customer's facilities, during Staffing Company's regular business hours.

3.10 *Use of Name, Trademarks, or Logo.* Staffing Company shall specify in all recruiting materials and activities that all Temporary Workers shall be employees solely of Staffing Company. Staffing Company shall not use Ensemble's or Customer's name, trademark, service mark or logo in any recruiting, advertising or marketing activities or materials, without the prior written approval of either Ensemble or Customer, as the case may be, in each specific instance.

3.11 *Hiring of Employees of Customer or Fellow Staffing Companies.* Except as otherwise provided pursuant to Section 6.4 hereof or with the express written permission of Ensemble, Customer or the Fellow Staffing Company, as the case maybe, during the term of this Agreement and for a one (1) year period following its termination, Staffing Company shall not solicit for employment the employees of Ensemble, Customer or any Fellow Staffing Company who are staffed at any of Customer's facilities. For purposes of this Section, "Fellow Staffing Company" shall mean a

staffing company that provides temporary employees for work to be performed for Customer through a program managed by Ensemble.

- 3.12 *Labor Activity.* To the maximum extent possible, Staffing Company shall avoid labor or collective bargaining disputes with Temporary Workers assigned to Customer. In the event of such a dispute results in picketing at Customer's premises, or the imminent prospect of such picketing, Staffing Company, if requested by Ensemble or Customer to do so, shall immediately suspend services under this Agreement until the settlement or resolution of such labor dispute, or shall take such other action as Ensemble or Customer may reasonably direct. If, at any time in their sole judgment either Customer or Ensemble concludes that any potential labor dispute will endanger the business of Customer or impair its business activities, notwithstanding Article 6, Ensemble may terminate this Agreement immediately upon written notice to Staffing Company, and neither Ensemble nor Customer shall have any further liability to Staffing Company other than for services provided by Staffing Company to Customer prior to such termination.

4. PRICING, INVOICING AND PAYMENT TERMS.

- 4.1 *Pricing for Services.* Staffing Company shall be paid as set forth in Schedule C, as amended from time to time, for (i) each hour worked by a Temporary Worker for a Customer, (ii) a placement fee for any Direct Hires placed with Customer; and (iii) either a Mark-Up Rate or a Flat Fee for Staffing Company's services.
- 4.2 *Invoices.* On a weekly basis Ensemble shall, on behalf of Staffing Company, invoice the Customer for the applicable fees and rates as set forth in Schedule C based on those approved timesheets in the Ensemble Software.
- 4.3 *Payment.* Subject to the terms of Schedule C, Ensemble shall pay Staffing Company for all undisputed amounts invoiced within twenty (20) business days following the Services Invoice date (invoices are created by Ensemble on behalf of Staffing Company). However, Ensemble shall not be responsible for any invoice payment(s) until and unless paid by Customer. Payments made by Ensemble within ten (10) business days of the date of such Services Invoice shall be subject to a one percent (1%) discount. Payments due hereunder may be made through electronic fund transfers (the "EFTs").
- 4.4 *Costs.* Staffing Company shall be responsible for all costs and expenses incurred by it or its Temporary Workers arising out of the work performed under this Agreement, except as provided on Schedule C.

- 4.5 *Disputed Invoices.* Ensemble's invoice to the Customer shall be based upon the approved time authorized by the Customer for each Temporary Worker utilizing the electronic timekeeping system. In the event Ensemble or Customer questions or disputes any item in an invoice, Ensemble shall, within thirty (30) days, provide Staffing Company with notice of such question or dispute, which notice shall define the subject of the dispute. Upon such notice, the parties shall work together in good faith to resolve the issue. If Ensemble was incorrectly invoiced by Staffing Company based on incorrect time entered, Ensemble may withhold from payment the amount incorrectly invoiced or, if such amount has already been paid to Staffing Company by Ensemble, Ensemble may deduct such amount from all subsequent amounts until repaid in full. In the event Staffing Company questions or disputes any item in an invoice payment, Staffing Company shall, within thirty (30) days of receipt of such invoice payment, provide Ensemble with notice of such question or dispute, which notice shall define the subject of the dispute. Upon such notice, the parties shall work together in good faith to resolve the issue.
- 4.6 *Timesheets.* Staffing Company shall pay its Temporary Workers for all hours worked for Customer and approved by Customer's authorized representative. In submitting this time, Staffing Company shall only utilize the services of Ensemble's Software electronic timekeeping system or other required timekeeping systems, and the provisions of this section shall apply to any electronic timekeeping system used by Ensemble or Customer. Unless otherwise instructed by Ensemble, Staffing Company shall ensure the time is accurately and promptly entered into such timekeeping system on a weekly basis by the Temporary Worker. Staffing Company shall bear responsibility for time discrepancy reconciliation and for ensuring that all timecards bear the necessary Customer approvals, as set forth herein.
- 4.7 *Overtime, Optional Vacation or Holiday Pay.* Overtime, vacation and/or holiday pay for Temporary Workers, if any, as permitted by Customer, shall be billed at the rates referred to in Schedule C.
- 4.8 *Responsibility for Tax and Insurance Withholdings.* Staffing Company shall report and pay at the times and as otherwise required by law the employer's share of applicable state and local taxes, federal taxes, including, but not limited to, workers' compensation, FICA, federal unemployment insurance, and the like, with respect to all compensation received by Staffing Company's Temporary Workers. Staffing Company expressly agrees to defend, indemnify and hold harmless Customer and Ensemble against any liability for premiums, contributions or taxes payable under any workers' compensation, unemployment compensation, disability benefits, old age benefits, employee benefits payments, or tax withholdings with respect to any of Staffing Company's Temporary Workers.

- 4.9 *Tax Payments.* In the event that any federal, state and local sales, use, excise, value added, or other like tax payments are due under law on the amounts paid by Ensemble to Staffing Company, Staffing Company shall pay and bill to Ensemble, without any markup, such federal, state and local sales, use, excise, value added, or other like taxes on the services provided to Customer or Ensemble by Staffing Company under this Agreement. Ensemble shall bill such taxes through to Customer and shall, following payment by Customer to Ensemble of such taxes, forward such payment, without any deduction, to Staffing Company. Staffing Company agrees that Ensemble shall not be liable for the payment of such amounts. Nothing in this paragraph shall be deemed to refer to the payroll, unemployment, or income taxes described in paragraph 4.9 above.
- 4.10 *Direct Employment by Customer of Temporary Workers.* Customer may offer permanent, full-time employment to any Temporary Worker. In the event that a Temporary Worker converts to a full-time employee of Customer, the terms, conditions, and fees set forth on Schedule C shall apply.

5. WORK PRODUCT, CONFIDENTIALITY AND INTELLECTUAL PROPERTY.

- 5.1 *Ownership of Work Product.* Staffing Company acknowledges and agrees that Customer shall own exclusively all work performed or prepared by any Temporary Worker it supplies pursuant to this Agreement (collectively, the "Work Product") including, without limitation, all programs, derivative works, source code, object code, discoveries, concepts, inventions, innovations, improvements, materials, documentation, techniques, methods, processes and ideas which are conceived, made, proposed, or developed by any Temporary Worker it supplies, alone or with others, in connection with any work assignment hereunder, whether or not prepared on or off the premises of Customer or during regular work hours, but excluding any Excluded Inventions (as defined below). Staffing Company shall require Temporary Worker to promptly notify Customer of the creation of any such Work Product.

- 5.1.1 *Assignment of Rights in the Work Product.* Staffing Company hereby grants, assigns and transfers and agrees to require any Temporary Worker assigned to Customer as a third-party beneficiary of this Section 5.1.1 to grant, assign and transfer, to Customer all worldwide rights, title and interest in and to all Work Product including, without limitation, all patent rights, copyrights, trade secret rights, and all present and future rights of any kind pertaining to all such Work Product whether or not such rights are now known, recognized or contemplated, together with any related goodwill. During and after the term of this Agreement, Staffing Company shall provide Customer, at Customer's expense with all

assistance reasonably required to perfect such right, title and interest, including without limitation, the execution of all papers and documents and performance of all acts necessary or appropriate in Customer's discretion by Staffing Company or a Temporary Worker, to evidence or further document Customer's ownership of the Work Product.

- 5.1.2 *Excluded Inventions.* Temporary Worker shall not be required to assign to Customer any idea, invention, discovery, innovation or improvement which the Temporary Worker can show was developed entirely on its own time and without the use of any Customer equipment, supplies, facility or Confidential Customer Information, and which (i) does not relate to the business of Customer or to Customer's actual or anticipated research or development or (ii) does not result from any work performed by such party for Customer (the "Excluded Inventions"). In any dispute with respect to these exclusions, the burden of proof shall be on Staffing Company or the Temporary Worker, as the case may be, to show that the exclusion applies.
- 5.1.3 *Work Made for Hire.* Except for Excluded Inventions, any and all Work Product prepared by a Temporary Worker under this Agreement that is eligible for copyright protection shall be a work made for hire on behalf of Customer as that term is used under the United States Copyright Act and ownership of all copyrights in such work shall vest in Customer. If for any reason, any such work shall not be deemed a work made for hire or, if for any reason, ownership of such copyrights would not vest in Customer, then all right, title and interest in such work, including all copyrights therein, are hereby transferred to Customer by Staffing Company pursuant to Staffing Company's execution of this Agreement. In those jurisdictions that deem any work performed on a "Work Made for Hire" basis as giving rise to an employee/employer relationship, the parties specifically agree that this provision shall not apply in such jurisdiction and that Temporary Worker shall continue to be deemed an independent contractor.
- 5.1.4 *Work Product Infringement.* To the extent a claim, suit or proceeding for infringement of any patent, copyright, mask right, trade secret or other proprietary right is brought against Customer due to or in connection with the modification of any Work Product, or any part thereof, by a Temporary Worker not at the direction or supervision of Customer or Customer's agents, Staffing Company shall indemnify Customer and shall
- 5.1.4.1 secure for Customer the right to continue using the Work Product, or the relevant part thereof; or

- 5.1.4.2 replace or modify the Work Product, or any part thereof, to make it non-infringing but without degrading its performance or utility; or
 - 5.1.4.3 refund to Ensemble all monies paid by Customer to Staffing Company for services performed by a Temporary Worker under this Agreement for work related to or affected by the infringing product.
- 5.1.5 *Notice of Claim.* Ensemble shall notify Staffing Company if Ensemble or Customer receives notice of any such claim, suit or proceeding of infringement described in subparagraph 5.1.4 above. Upon such notice, Staffing Company shall defend Customer and Ensemble and pay all damages, costs and expenses incurred by Ensemble or Customer (including reasonable attorney's fees, and past and future licenses fees and royalties) arising from any such claim, suit or proceeding.
- 5.1.6 *Limitation on Obligations.* To the extent a claim, suit or proceeding described in paragraph 5.1.5 above results from Customer's modification, direction or supervision of any Work Product, or any part thereof, furnished hereunder this Agreement or from specific actions taken by Staffing Company at the request of Customer or Customer's agents, Staffing Company shall have no obligation to defend or indemnify Customer.
- 5.2 *Non-Disclosure Agreements.* Staffing Company shall cause each of its Temporary Workers assigned to Customer to sign and deliver a non-disclosure/confidentiality agreement, in the form of the Temporary Worker Agreement attached hereto as Schedule D, prior to the assignment of such Temporary Worker to Customer. No Temporary Worker shall begin an assignment at Customer without first having executed such Temporary Worker Agreement, and Staffing Company shall not invoice Ensemble or Customer for any time for which a Temporary Worker, was assigned to Customer prior to the execution of such agreement.
- 5.3 *Confidential Customer Information.* From time to time, Customer may, or at Customer's direction, Ensemble may, disclose certain of Customer's confidential information to Staffing Company or its Temporary Workers. This confidential information may include, but is not limited to, information regarding Customer's past, present, and future business activities (including all proprietary information related to all intellectual property, trade secrets research, development, or business plans, operations, or systems), and may be contained on paper, computer disk or other electronic medium, or communicated orally ("Confidential Customer Information"). All Confidential Customer Information is proprietary to

Customer. Staffing Company and its employees shall, as the case may be:

- 5.3.1 use Confidential Customer Information only in the performance of services for Customer;
 - 5.3.2 not make copies of any Confidential Customer Information without the express permission of Customer;
 - 5.3.3 not use or disclose any Confidential Customer Information to any third party without the prior written consent of Customer;
 - 5.3.4 limit dissemination of Confidential Customer Information to Temporary Workers and personnel of Staffing Company who are directly involved in performing services for Customer, who have a need to know and use Confidential Customer Information in rendering those services, and who have agreed to honor the confidentiality of Confidential Customer Information through executing the Temporary Worker Agreement attached hereto as Schedule D;
 - 5.3.5 upon termination of this Agreement, deliver to Customer all papers, notes or other materials which may contain any Confidential Customer Information;
 - 5.3.6 upon the termination of any Temporary Worker's assignment to Customer, remind such Temporary Worker of his or her obligations not to disclose or use any Confidential Customer Information and to return to Customer all papers, notes or other materials which may contain any Confidential Customer Information;
 - 5.3.7 give prompt notice to Ensemble of any violation by a Temporary Worker of this confidentiality covenant or of the Temporary Worker Agreement (in the form attached at Schedule D) signed by such Temporary Worker; and
 - 5.3.8 defend, indemnify, and hold Ensemble harmless against any liability it may suffer arising from or related to a breach by Staffing Company or any Temporary Worker of their confidentiality obligations to Customer set forth above.
- 5.4 *Confidential Ensemble Information.* During the term of this Agreement and following its termination, Staffing Company shall not use or disclose any business information of Ensemble that Staffing Company knows or reasonably should know is confidential or proprietary information regarding Ensemble's past, present or future business operations (including, but not limited to information related to Ensemble's price lists, customers, potential customers, subcontractors, potential subcontractors,

employees, potential employees, business methods, trade secrets, proprietary information or databases business plans, etc.) which may be contained on paper, computer disk or other electronic medium, or communicated orally (“Confidential Ensemble Information”). All Confidential Ensemble Information is proprietary to Ensemble and Staffing Company and its employees (including Temporary Workers) shall:

- 5.4.1 use Confidential Ensemble Information only in the performance of services for Ensemble;
- 5.4.2 not make copies of any Confidential Ensemble Information without the express permission of Ensemble;
- 5.4.3 not use or disclose any Confidential Ensemble Information to any third party without the prior written consent of Ensemble;
- 5.4.4 limit dissemination of Confidential Ensemble Information to Temporary Workers and personnel of Staffing Company who are directly involved in performing services for Ensemble, who have a need to know and use Confidential Ensemble Information in rendering those services, and who have agreed to honor the confidentiality of Confidential Ensemble Information through executing the Temporary Worker Agreement attached hereto as Schedule D;
- 5.4.5 upon termination of this Agreement, deliver to Ensemble all papers, notes or other materials which may contain any Confidential Ensemble Information;
- 5.4.6 upon the termination of any Temporary Worker’s assignment to Ensemble, remind such Temporary Worker of his or her obligations not to disclose or use any Confidential Ensemble Information and to deliver to Ensemble all papers, notes or other materials which may contain any Confidential Ensemble Information;
- 5.4.7 give prompt notice to Ensemble and Ensemble of any violation by a Temporary Worker of this confidentiality covenant or of the Temporary Worker Agreement (in the form attached at Schedule D) signed by such Temporary Worker; and
- 5.4.8 defend, indemnify, and hold Ensemble harmless against any liability it may suffer arising from or related to a breach by Staffing Company or any Temporary Worker of their confidentiality obligations to Ensemble set forth above.

5.5 *Exceptions to Confidentiality Requirements.* The confidentiality requirements in Article 5.3 and 5.4 of this Agreement shall not apply to confidential information which:

- 5.5.1 was in the public domain at the time Staffing Company or the Temporary Worker learned of such information;
- 5.5.2 enters the public domain through no action of Staffing Company or any Temporary Worker;
- 5.5.3 was in Staffing Company's possession free of any confidentiality obligations at the time of disclosure to Staffing Company or Temporary Worker by Ensemble or Customer;
- 5.5.4 was developed by Staffing Company or Temporary Workers independently of Ensemble or Customer and without reference to any confidential information;
- 5.5.5 was rightfully obtained from third parties;
- 5.5.6 was released for disclosure by Ensemble or Customer; or
- 5.5.7 is identified by the Ensemble or Customer as no longer being proprietary to Ensemble or Customer respectively.

6. TERM AND TERMINATION.

- 6.1 *Term.* This Agreement shall continue indefinitely until canceled by either party in accordance with this Article 6.
- 6.2 *Termination for Cause.* Provided that written notice of such breach has been provided not less than thirty (30) days prior to any termination, either party may immediately terminate this Agreement for breach of its terms by the other party, unless (i) the breaching party causes such breach within such thirty (30) day notice period or, unless (ii) if such cure requires more than thirty (30) days, the breaching party undertakes and diligently pursues necessary actions to cure such breach within a reasonable time, provided that the breaching party does not cure such breach within the thirty (30) day notice period.
- 6.3 *Termination without Cause.* Provided that written notice has been provided not less than sixty (60) days prior to any termination, either party may terminate this Agreement without cause.
- 6.4 *Return of Work and Materials to Ensemble and/or Customer.* In the event either party terminates this Agreement, with or without cause, Staffing Company shall: (a) as directed by Ensemble, require each Temporary Worker to continue the assignment through the period of time referenced on the current Order; (b) to allow Ensemble to broker the transfer of Temporary Worker's employment to a Fellow Staffing Company of all Temporary Workers assigned to Customer at the time of such termination, and allow Temporary Workers to accept such transfer, at no cost or fee to

Ensemble, Customer or such Fellow Staffing Company; and (c) return all Ensemble and/or Customer materials in accordance with this Section 6.4. Upon termination of this Agreement, Staffing Company shall, and shall require all of its Temporary Workers to, deliver to Customer (a) all Confidential Customer Information in any medium, (b) all Confidential Ensemble Information in any medium, (c) any Work Product or work-in-progress, and all copies and originals of all drawings, designs, works of art, computer programs, marketing research, data, and other materials and information created produced pursuant to this Agreement, and (d) all documents or materials, confidential or otherwise, obtained from Ensemble or Customer, as the case may be, in the course of performance under this Agreement.

7. RELATIONSHIP OF PARTIES.

- 7.1 *Independent Status.* At all times during the term of this Agreement, Staffing Company and its employees (including Temporary Workers) shall be independent contractors to Customer and to Ensemble. The Temporary Workers assigned to Customer under this Agreement shall remain employees of Staffing Company and shall not by reason of their assignment to Customer, become or be deemed to be employees of Customer or of Ensemble. There shall be no partnership or joint venture created by this Agreement. Neither party shall have the power to bind or commit the other or Customer.
- 7.2 *No Benefits.* Regardless of the nature or duration of any assignment with Customer, neither Staffing Company nor any of Staffing Company's Temporary Workers or other employees shall be eligible for or entitled to participate in any of Ensemble's or Customer's employee benefit plans, programs, policies or practices which may now or in the future be in effect, including, without limitation, any pension, retirement, or 401(k) plan; any profit sharing, stock option, bonus or incentive compensation plan; any life or health insurance plan; any vacation or holiday pay plan; or any separation payment plan. Staffing Company shall defend, indemnify, and hold harmless Ensemble and Customer for any damages, costs, or liabilities each may respectively incur in respect of a claim proceeding or decision claiming that a Temporary Worker (or other Staffing Company employee) is eligible for or entitled to any such employee benefit or compensation or payment from Ensemble or Customer.

8. INSURANCE.

- 8.1 *Required Insurance Coverage.* Staffing Company shall procure and maintain adequate insurance of the types and in amounts no less than the minimum coverage listed on Schedule E, placed with insurers having a current Best's rating of no less than as required in Schedule E, during the entire term of this Agreement. Staffing Company shall provide Ensemble

with certificates evidencing such coverage upon each annual policy renewal during the term of this Agreement and at any other time upon request of Ensemble or Customer.

- 8.2 *Additional Named Insured and Alternate Employer Status.* Ensemble, Customer, each of their corporate parents, affiliates, subsidiaries, partnerships, trusts, and joint ventures, and each of their corporate affiliates, parents, subsidiaries, trusts, and partnerships and their respective officers, employee, representatives and agents shall be named as additional insured's on the required commercial general liability, automobile liability and umbrella liability coverage. Workers' compensation coverage shall also include an Alternate Employer Endorsement naming Ensemble and Customer as an Alternate Employer. All such policies shall be endorsed to provide Ensemble and Customer with thirty (30) days notice of any cancellation, modification, reduction in coverage, or non-renewal. Each such policy shall contain a waiver of any subrogation rights any such insurer may have against Ensemble or Customer. Such insurance shall also be primary to any other insurance maintained by Ensemble and Customer, and any insurance or self-insurance maintained by Ensemble or Customer shall not be contributing.

9. INDEMNIFICATION.

- 9.1 *INDEMNIFICATION.* IN ADDITION TO OTHER INDEMNIFICATION PROVIDED ELSEWHERE IN THIS AGREEMENT, STAFFING COMPANY SHALL DEFEND, INDEMNIFY AND HOLD HARMLESS CUSTOMER AND ENSEMBLE (AND THEIR CORPORATE PARENTS, AND AFFILIATES, AND THE RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, SERVANTS AND AGENTS OF ALL SUCH ENTITIES) (THE "INDEMNIFIED PARTIES") FROM ANY AND ALL CLAIMS, DAMAGES, SUITS, JUDGMENTS, FINES, SETTLEMENTS, OR LIABILITIES (INCLUDING ANY COSTS OF DEFENSE THEREOF) OF ANY KIND ARISING FROM OR RELATED TO: (A) THE ACTIONS, ERRORS, OR OMISSIONS OF STAFFING COMPANY, ITS TEMPORARY WORKERS, SERVERS OR AGENTS WHILE IN THE PERFORMANCE OF SERVICES UNDER THIS AGREEMENT; (B) ANY CLAIM OR SUIT ASSERTED BY ANY EMPLOYEE OF STAFFING COMPANY AGAINST CUSTOMER OR ENSEMBLE; (C) ANY BREACH BY STAFFING COMPANY OF ANY PROVISION OF THIS AGREEMENT; (D) ANY LIABILITY FOR COMPENSATION OR EMPLOYEE BENEFITS TO ANY TEMPORARY WORKER OR OTHER STAFFING COMPANY EMPLOYEE; (E) MATERIAL INTERFERENCE WITH THE PERFORMANCE OF OTHER CONTRACTORS OR EMPLOYEES OF CUSTOMER; AND (F) ANY LIABILITY FOR REMOVAL OF TEMPORARY WORKERS, LABOR OR COLLECTIVE BARGAINING DISPUTES WITH TEMPORARY WORKERS OR ANY RISK ASSUMED BY STAFFING COMPANY UNDER THIS AGREEMENT. ALTHOUGH STAFFING

COMPANY HAS CAUSED THE INDEMNIFIED PARTIES TO BE NAMED AS ADDITIONAL INSUREDS UNDER STAFFING COMPANY'S POLICIES OF INSURANCE, STAFFING COMPANY'S LIABILITY UNDER THIS AGREEMENT SHALL NOT BE LIMITED TO THE LIABILITY LIMITS SET FORTH IN SUCH POLICIES EXCEPT THAT THIS INDEMNIFICATION EXPRESSLY EXCLUDES ANY AND ALL CLAIMS ARISING (1) OUT OF OR IN CONNECTION WITH THE GROSS NEGLIGENCE OR INTENTIONAL MISCONDUCT OF CUSTOMER OR CUSTOMER'S EMPLOYEES, SERVANTS OR AGENTS, OR (2) SOLELY FROM THE NEGLIGENCE OF CUSTOMER.

- 9.2 *Notification of Claim; Choice of Counsel.* The Indemnified Parties shall reasonably notify Staffing Company of the assertion of any claim related to this defense and indemnification, so as to permit Staffing Company reasonable time within which to notify its insurers of such claim and the tender of the defense thereof by Staffing Company; provided however, the failure to so notify shall not relieve Staffing Company of its indemnification obligations hereunder. The choice of any counsel appointed by Staffing Company to defend the Indemnified Parties shall be subject to prior approval by Ensemble or Customer, as the case may be.
- 9.3 *ASSUMPTION OF RISK.* STAFFING COMPANY AGREES THAT IT AND/OR ITS EMPLOYEES (INCLUDING TEMPORARY WORKERS) IS ENTERING ONTO CUSTOMER'S PREMISES AT ITS OWN RISK, AND STAFFING COMPANY WAIVES ANY CLAIMS THAT IT MAY HAVE, NOW OR IN THE FUTURE, AGAINST THE INDEMNIFIED PARTIES FOR PERSONAL INJURY OR PROPERTY DAMAGE ARISING OUT OF OR CONNECTED IN ANY WAY WITH STAFFING COMPANY'S OR THE TEMPORARY WORKERS' PRESENCE ON CUSTOMER'S PREMISES OR THE SERVICES COVERED BY THIS AGREEMENT.

10. AUDIT RIGHTS.

- 10.1 *Right to Audit.* For a period of five (5) years following the termination of this Agreement, or for such longer period as may be required by applicable law, Staffing Company shall maintain accounting, operational, and business records necessary to verify: (i) the basis for all charges billed by Staffing Company to Ensemble for work hereunder, and (ii) Staffing Company's compliance with the terms of this Agreement. Customer and Ensemble shall each have the right to audit such records during normal business hours upon reasonable notice to Staffing Company. In the event that such audit reveals that Staffing Company has billed Ensemble in excess of the correct amount to be billed, Staffing Company shall immediately pay to Ensemble all amounts equal to the over billing and the cost incurred by Ensemble for such audit. Except as provided in the preceding sentence, each party shall bear its own costs and expenses in connection with such audit.

11. NOTICES.

11.1 *Method of Delivery.* Any notice required or permitted to be delivered by one party to another under or in connection with this Agreement shall be deemed sufficiently given after three (3) business days if sent by certified U.S. mail, return receipt requested, or after one business day if sent by nationally recognized overnight carrier to the attention of the individual(s) and at the address(es) indicated below:

If to Ensemble, to:

Ensemble Workforce Solutions
c/o Diversity MSP, Inc.
5800 Wilshire Boulevard
Los Angeles, California 90036
Attn: Michael Werblun

If to Staffing Company, to:

12. MISCELLANEOUS.

12.1 *Successors and Assigns.* This Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto, and their respective successors and assigns. This Agreement shall not be assigned in whole or in part by Staffing Company without Ensemble's prior written consent, and any such unauthorized assignment shall be void. Ensemble may assign this Agreement to an affiliate.

12.2 *No Delegation of Responsibility.* Staffing Company shall not delegate or subcontract any portion of the services to be provided under this Agreement without the prior written consent of Ensemble.

12.3 *Governing Law.* This Agreement shall be governed by and construed and enforced in accordance with the laws of the State of California, notwithstanding choice of law principles.

12.4 *No Inducements.* Staffing Company warrants and represents to Ensemble that it has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee or agent of Ensemble or Customer for any purpose. Staffing Company shall not provide or offer

any gifts, payments, or other inducements to any officer, employee or agent of Ensemble or Customer for any purpose and shall ensure that no Temporary Worker assigned to Customer provides or offers and such gifts, payments or inducements.

- 12.5 *Severability.* In the event that any provision of this Agreement or the application thereof becomes or is declared by a court of competent jurisdiction to be illegal, void or unenforceable, the remainder of this Agreement shall continue to be in full force and effect. The parties further agree to replace such illegal, void or unenforceable provision of this Agreement with a legal, valid and enforceable provision that shall achieve, to the extent possible, the economic, business and other purposes of such illegal, void or unenforceable provision.
- 12.6 *Waiver.* The delay or failure of either party to enforce at any time or for any period of time any of the provisions of this Agreement shall not be construed to be a waiver of such provisions or of its right thereafter to enforce each and every provision as written.
- 12.7 *Breach.* In the event of a breach by Staffing Company of this Agreement, Ensemble shall be entitled, in addition to any other remedies, to obtain a temporary restraining order and injunctive relief to restrain such breach by Staffing Company. Staffing Company acknowledges that Ensemble will be irreparably harmed by a breach of this Agreement, and that such harm is not compensable by money damages. Staffing Company shall pay the attorneys fees and costs incurred by Ensemble in the event of a breach of this Agreement by Staffing Company.
- 12.8 *Dispute Resolution/Arbitration.* Any controversy, claim, or dispute arising under or relating to this Agreement, including the existence, validity, interpretation, performance, termination or breach thereof, shall finally be settled by arbitration in accordance with the Dispute Resolution Procedures (Including Mediation and Arbitration Rules) of the American Arbitration Association. This Agreement will be enforceable, and any arbitration award will be final, and judgment thereon may be entered in any court of competent jurisdiction. The arbitration will be held in Los Angeles, California. Agent irrevocably waives, to the full extent permitted by law, any objection that it may now or hereafter have to the arbitration in Los Angeles, California of any such action, suit or proceeding has been brought in an inconvenient forum. The prevailing party in any such arbitration shall be entitled to recover its reasonable outside attorneys' fees and costs in arbitrating such dispute from the non-prevailing party.
- 12.9 *Force Majeure.* Neither party to this Agreement shall be liable for its failure to perform hereunder due to circumstances beyond its reasonable control, including but not limited to strike, riot, war, fire, act of God,

accident, plant breakdown not caused by the fault or neglect of such party, compliance with any law, regulation or order, whether valid or invalid, of the United States of America or any other governmental body.

- 12.10 *Survival.* Any respective obligations of Ensemble or Staffing Company hereunder which by their nature would continue beyond the termination, cancellation or expiration of this Agreement shall survive such termination, cancellation or expiration.
- 12.11 *Complete Understanding; Modification.* The attachments, exhibits and addenda attached hereto form an integral part of this Agreement and are expressly incorporated in this Agreement. This Agreement, together with all such attachments, exhibits and addenda, constitute the full and complete understanding and agreement of the parties relating to the subject matter hereof and supersede all prior or contemporaneous understandings and agreements relating to such subject matter. Any waiver, modification or amendment of any provision of this Agreement shall be effective only if in writing and signed by the parties hereto.
- 12.12 *Non-Exclusive Arrangement.* This Agreement does not create an exclusive arrangement between Ensemble and Staffing Company or constitute a commitment by Ensemble, whether express or implied, to use the services provided by Staffing Company or to forward any Orders to Staffing Company. Ensemble reserves the right, in its sole discretion, to utilize the services of other subcontractors to perform services for Customer or any other Customer of Ensemble.
- 12.13 *Limitation.* Any liability of any kind of Ensemble to Staffing Company shall be limited to the amount (net of taxes, benefits costs, and compensation paid by Staffing Company to all Temporary Workers) paid by Ensemble to Staffing Company during the six (6) month period preceding the incident giving rise to such liability. In no event shall Ensemble be liable for any unforeseen, special, punitive, or consequential damages or lost revenue or lost profits.
- 12.14 *Headings.* Section heading are included for convenience only and are not to be used to construe or interpret this Agreement.
- 12.15 *Compliance with Laws.* In the performance of this Agreement, each party agrees to comply with all applicable laws, rules and regulations.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the dates set forth below, to be effective as of the date first set forth above.

**Diversity MSP, Inc. dba
Ensemble Workforce Solutions**

Staffing Company:

By: _____

By: _____

Printed Name: _____

Printed Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

Schedule A

Order and Response Process

I. Orders.

Orders shall set forth the job title, job description and skill set of the Temporary Worker and/or Direct Hire requested and shall set forth any job-specific information, including by way of example, rate limitations, start dates, anticipated duration of project, etc. Such skill sets shall include: **Administrative/Clerical, Customer Service, Light Industrial, Information Technology, Accounting and Finance and Professional.**

II. Order Communication/Response Procedure.

- A. *Order Communication Procedure.* Orders shall be placed via Ensemble's web-enabled application, or other mutually agreed upon process such as phone, email, fax, etc. Each Order shall specify whether the Order is:
- (a) **Same Day:** Orders may be placed in the morning for Temporary Workers to start work in the afternoon;
 - (b) **Next Day:** Orders may be placed before 5:30 p.m. for Temporary Workers to start work the next day; or
 - (c) **Next Day+:** Orders may be placed for Temporary Workers or Direct Hires to start work at a specified date after the next day.
- B. *Change in Communication Procedure.* Ensemble shall provide Staffing Company with reasonable advance notice and details about any changes to its communication system prior to initiating such changes.
- C. *Equipment.* Staffing Company shall, at its own cost, obtain and maintain necessary equipment and personnel to receive, process and respond to Orders submitted through the communication procedure used by Ensemble as amended from time to time. Staffing Company shall ensure that Orders are received, processed and responded to in accordance with the terms of this Agreement.
- D. *Response Procedure.* Once Ensemble has submitted an Order to Staffing Company, Staffing Company shall advise Ensemble within one (1) hour for non-ASAP orders and 15 minutes for ASAP orders, via accepting or rejecting such Order in Ensemble Software, whether it can fill such Order. Staffing Company shall transmit all resumes provided in response to such Order promptly and electronically to Ensemble.
- E. *Selection of Temporary Worker/Candidate for Direct Hire.* In response to all Same Day Orders, Ensemble shall forward such Orders to Staffing Company

and will work with Staffing Company as, in Ensemble's discretion, deemed necessary to select a Temporary Worker to fill such Same-Day Order. With regard to Next Day and Next Day+ Orders, Ensemble shall forward such Orders to Staffing Company, shall receive resumes from Staffing Company of candidates to fill such Orders, and shall either (a) work with Staffing Company to select the candidate to fill the Order, or (b) at Customers request (set forth in the applicable Order), forward such resumes, as it deems necessary, to Customer for Customer to select the person to fill the position. Ensemble shall bear no responsibility for, and Staffing Company hereby promises to indemnify, defend and hold harmless Ensemble for any and all claims brought against Ensemble related to the selection of any person to fill any Order.

Schedule B

Obligations and Performance Standards

- I. General. Staffing Company shall:
 - A. Require all Temporary Workers arrive (for commencement of an assignment) at the agreed start date and time one hundred percent (100%) of the time, unless there are extenuating circumstances beyond the reasonable control of the Temporary Worker.
 - B. Require all Temporary Workers assigned to and Direct Hires hired by Customer read and understand, and in the case of Temporary Workers, act in accordance with Customer's standards and policies as set forth by Customer.
 - C. Require all Temporary Workers to execute the Temporary Worker Agreement with Ensemble in the form of the agreement set forth in Schedule D.
 - D. Perform each of the following tasks related to the Temporary Workers:
 - (i) obtain valid proof of each Temporary Worker's ability to work legally in the United States, including an I-9 form, as required by the Immigration Reform and Control Act of 1986;
 - (ii) maintain all necessary personnel and payroll records for the Temporary Workers;
 - (iii) calculate their wages and withhold applicable federal, state and local taxes, Federal Social Security payments and other government mandated charges, if any;
 - (iv) remit on a timely basis such taxes and charges to the appropriate governmental entity and make employer contributions for Federal FICA and Federal and State unemployment insurance payments;
 - (v) except as provided herein, pay net wages and fringe benefits, if any, (e.g., vacation and holiday pay) directly to the Temporary Workers;
 - (vi) provide for liability and fidelity and Workers Compensation insurance as specified in this Agreement;
 - (viii) prior to assigning any employee to Customer, complete all appropriate testing and screening (including drug screening and background checking) as set forth herein or as Customer may request;

(ix) at the request of Ensemble or Customer for any valid legal reason, permit Ensemble and/or Customer to audit Staffing Company's books and records for assuring compliance with the foregoing obligations in accordance with the terms of this Agreement;

(x) deliver to Ensemble for Customer any information about such Temporary Worker (including resume or background information), which Customer reasonably requests in the applicable Order; and

(xi) provide any State mandated training for each Temporary Worker.

- E. Require that the Temporary Workers do not disturb the personal property, equipment, or supplies located on Customer's premises, and promptly pay for the repairs to any damage to any of Customer's equipment or premises caused by any Temporary Worker.
- F. Customer reserves the right to conduct searches or inspections on Customer property at any time. Staffing Company understands and agrees random searches can be conducted throughout the year and shall cause Temporary Workers to comply with these searches that shall include but not be limited to Temporary Workers' lockers, clothing, purses and bags. Staffing Company agrees should Temporary Worker be found to be in possession of unauthorized property or fail to comply with a random search, Temporary Worker's assignment will be ended immediately.
- II. Badging. Staffing Company shall be responsible for the reasonable costs of badging for its Temporary Workers assigned to Customer.
- III. Pre-Order Site Tour. Pre-scheduled site tours will be conducted by Ensemble each week at each Customer location. Staffing Company, at its discretion, may schedule candidate(s) to take tour so they may preview the work location and each position prior to presenting that candidate for a future Order. Ensemble and Customer shall not be responsible to pay for any candidate's time in taking the tour.
- IV. Orientation and Training of Temporary Workers. **Orientation and Training is a five (5) day process outlined below.** Staffing Company shall require its Temporary Workers and/or Direct Hires assigned to Customer to execute all documents required by Customer prior to beginning any assignment. Upon the request of Ensemble or Customer, Staffing Company shall ensure that its Temporary Workers and/or Direct Hires perform certain tasks (described below) to familiarize Temporary Workers with the Ensemble Program and Customer's policies and procedures ("On-Boarding"). On-Boarding shall include the following:

- A. *Orientation.* Staffing Company shall require each Temporary Worker assigned to Customer, prior to such Temporary Worker beginning an assignment at Customer, to attend an orientation meeting explaining Customer's procedures and expectations related to Temporary Worker's assignment, which meeting shall be conducted by Ensemble in coordination with Staffing Company. Orientation shall be at no charge to Customer or Ensemble.
- B. *Pre-Start Documentation.* Staffing Company shall require each Temporary Worker assigned to Customer to read, execute and comply with all documents required by Customer prior to a Temporary Worker beginning any assignment for Customer, including Customer's requirements and policies as set forth in more detail in the Temporary Worker Agreement attached as Schedule D.
- C. *Industry Certification, Qualification and Non-Customer Specific Training.* Staffing Company shall ensure that Temporary Workers assigned to Customer (i) obtain and maintain all applicable, public or industry-specific certification related to their duties as described in the applicable Order; and (ii) have been properly trained in the skills necessary to perform the requirements of their assignment to Customer. Provided that such training is not Customer-specific, Staffing Company shall bear the costs of such training and shall properly document and maintain records related to such certification.
- D. *Drivers License & Insurance Verification.* Staffing Company shall ensure that all Temporary Workers who, in the performance of their assignment under the applicable Orders, are required to operate motor vehicles; possess and maintain (1) a valid driver's license (either commercial or regular as applicable to their assignments) and (2) automobile liability insurance coverage in an amount not less than the amount required under the applicable state law.
- E. *Skills Testing.* Staffing Company shall ensure all Temporary Workers have completed and passed all Customer required skills testing prior to submission for consideration. Staffing Company shall also share all skills testing scores with Ensemble.
- F. *Customer-Specific Training.* Staffing Company shall cooperate with Ensemble to require that each Temporary Worker has attended the Customer-specific training necessary to perform under an Order. The hours (or portions thereof) during which a Temporary Worker attends such Customer-specific training will be invoiced to Customer, on Staffing Company's behalf, by Ensemble in accordance with the terms in Schedule C. Customer shall not be billed for any training that is not Customer-specific information. Any Staffing Company training, including but not limited to, use of timekeeping systems, attendance, and paychecks, shall be at Staffing

Company's expense regardless if such training is conducted on or off-site of Customer premises.

- G. *Badging.* Ensemble shall facilitate Customer's badging services as it applies to such Temporary Workers. Staffing Company shall be responsible for the reasonable costs associated with such badging.
 - H. *Customer Equipment or Materials.* Ensemble will coordinate assignment of Customer Equipment and/or Materials for the Temporary Worker as set forth in an Order. Replacement cost for any lost items including but not limited to: cutters, gloves, non-slip shoe covers, radio guns and badges is the responsibility of the Staffing Company.
 - I. *Lockers and Storage Facilities.* Where applicable, and at its discretion, Ensemble may assign Lockers or Storage bags to Temporary Worker. Neither Ensemble nor Customer shall be responsible for any issues such as theft, lost items or other arising out of or in connection with the assignment of any Storage facilities.
 - J. *Customer In-House Medical Department.* Staffing Company shall, to the best of its ability, ensure Customer's in-house Medical Department is solely utilized by its Temporary Workers for EXTREME medical emergencies only. In addition, Staffing Company, as part of its Orientation, shall inform its Temporary Workers they are not to utilize Customer's Medical Department for non Emergency services.
 - K. *Liability.* Ensemble shall bear no liability to Staffing Company for, and Staffing Company hereby waives any claim against Ensemble related to, such On-Boarding services.
- IV. Temporary Worker Testing. Staffing Company shall perform interviews, resume verification, testing and background checks, as specified below, with respect to each Temporary Worker assigned to Customer except as to Incumbent Workers with respect to their Incumbent Assignment. Temporary Workers who fail to reasonably satisfy any of the tests or checks set forth below shall not be assigned to Customer without Customer's written approval after notice of such failure. The Parties' obligations related to such screening, background checks and testing are set forth in full in as follows:
- A. *Screening and Background Checks.* Staffing Company shall perform or cause to be performed, prior to the applicable Order Start Date of any Temporary Worker, the following:
 - 1) *Resume Verification.* Verification of all information on such Temporary Worker's resume including minimum two (2) reference checks, education history, and employment history

2) *Background Checks.* Background checks on the criminal history of the Temporary Worker in the current jurisdiction in which the candidate resides and in each jurisdiction where such candidate has resided over the seven (7) years preceding the date of the Order; Staffing Company shall conduct a new background check on any Temporary Worker that has exceeded a 100 consecutive day break in service from Customer

3) *Drug Testing.* Staffing Company shall perform or cause to be performed, prior to the applicable Order Start Date of any Temporary Worker, the following:

- a. A **five (5)** panel drug test, which shall include testing for use of Amphetamines, Marijuana (THC) Metabolite, Cocaine Metabolite, Opiates, and Phencyclidine (PCP)

4) *Costs.* Staffing Company shall be responsible for the costs associated with all screening and testing, and shall not assign to Customer any Temporary Worker who does not reasonably pass, or test negative for use of certain drugs as the case may be, any of the aforementioned tests or checks.

V. Performance Guarantee. Customer shall be provided a trial period of forty (40) hours from any Temporary Worker's starting date to determine if a Temporary Worker meets the performance standards. If Customer is not satisfied with the performance of the Temporary Worker, there will be no charge for their services for up to the first twenty-four (24) billable hours of the assignment.

VI. Performance Evaluations. Staffing Company shall participate in quarterly performance evaluations with Ensemble. The Evaluation criteria shall include both the performance of the Staffing Company and the Temporary Workers being provided by Staffing Company to Customer. Metrics shall be based on the Performance Metrics outlined in Schedule F.

VII. Off-Boarding. At the completion of an assignment, Staffing Company shall perform the following activities:

- A. *Badge Termination.* Ensemble will coordinate with Security to de-activate the Access Badge assigned to the Temporary Worker. Staffing Company will retrieve the badge from the Temporary Worker if not already done so by Ensemble.

B. *Return of Company Equipment or Materials.* If, during the course of a Temporary Worker's assignment to Customer, Customer (or Ensemble on Customer's behalf) provided Temporary Worker with equipment or job related materials owned by Customer and so noted in the Order, Staffing Company shall return, or cause to be returned, all Customer equipment or materials to Ensemble (for Ensemble to return to Customer) upon the earlier of (i) termination of the assignment for which such Customer equipment or materials were provided to the Temporary Worker, (ii) removal of the Temporary Worker from Customer for any reason, or (iii) Customer's demand for return of such equipment or materials.

VIII. Monitoring Temporary Workers' Hours. Staffing Company shall monitor the duration of each Temporary Worker's assignment at Customer's facilities and shall ensure that no Temporary Worker works at Customer's facilities for more than twelve (12) consecutive months. Staffing Company shall inform Ensemble when any Temporary Worker assigned to Customer has completed ten (10) months of work. Staffing Company also shall not re-submit for future assignment consideration any Temporary Worker whose assignment was ended due to Tenure Limits unless and until a period of one hundred (100) consecutive days have passed.

Schedule C

Pricing and Invoicing

- I. Pricing. Customer shall pay, and Ensemble shall forward to Staffing Company in accordance with the payment terms set forth in the Agreement, the following prices for the types of work and services supplied to Customer:
- A. Pay Rate. The rate for each hour of services performed by the Temporary Worker provided to the Customer. Such rate shall be comprised of direct labor cost without any additional employment costs or burdens included, and shall vary based on the type of services being provided (each, a "Pay Rate"); such Pay Rates are as set forth below:
1. The Pay Rate shall be agreed upon by the parties from time to time, but in no event later than the applicable Order Start Date for any given Temporary Worker.
 2. Pro-Ration of Hours. The Pay Rate for a partial hour performed by a Temporary Worker shall be pro-rated in accordance with the portion of such hour performed.
 3. Staffing Company acknowledges that Customer shall pay only for Approved Time, which shall not include payment for absences due to illness, vacation, holiday pay or any other personal business.
- B. Bill Rate. The "Bill Rate" shall be the aggregate amount charged by Staffing Company to Ensemble for work performed by Temporary Workers. Such Bill Rate shall be the sum of the Pay Rate plus the Mark-Up Rate.
- C. Overtime Bill Rate. The Bill Rate for any Approved Overtime worked by a Temporary Worker shall be the sum of (i) a Pay Rate of 1.50% the regular rate, multiplied by (ii) the Mark-Up Rate for that specific job category as listed below.
- D. Mark-Up Rates. The "Mark-Up Rate" shall be the fees charged by the Staffing Company for the assignment of Temporary Workers provided to Customer. Rates below are applicable to Phase I (Service Centers.) Additional Phases and corresponding rates will be referred to in pricing addendums attached to this Statement of Work. Such Mark-Up Rate shall be the applicable percent over the applicable Pay Rate for each hour worked by Temporary Worker and shall not exceed:

Phase I – Mark-Up Rates:

Site Location	Admin/Clerical	Light Industrial	Professional
	30.15%	33.15%	37.15%

Notwithstanding the foregoing, the Mark-Up Rate for each hour of service performed by an Incumbent Worker during the course of the Incumbent Assignment shall be the lesser of (a) the amount over the hourly rate paid for the services of an Incumbent Worker already established between Staffing Company and Customer for such Incumbent Assignment or (b) the amount equal to the applicable percentage set forth above.

Notwithstanding the foregoing, the Mark-Up Rate for any hours worked as Approved Overtime, shall be as set forth above in Article I, Section C of this Schedule.

E. Placement Fee. The one-time fee charged by the Staffing Companies for the placement of a Direct Hire with the Customer shall be **10%** of the projected annual salary of such Temporary Worker (the “Placement Fee”) for positions falling under Administrative, Clerical, Customer Service, Light Industrial, Technical and Professional categories, and **15%** of the projected annual salary for positions falling under Accounting and Finance categories.

II. Cost Reimbursement of Temporary Worker Expenses. Customer shall reimburse the reasonable costs incurred by Temporary Worker during the course of their assignment to Customer, provided that those costs are (a) reimbursable under Customer’s reimbursement policy, (b) in accordance with Internal Revenue Service regulations and guidelines for allowable expenses and limits applied thereto; (c) pre-approved by the applicable Agent Supervisor, (d) are accompanied by original receipts, and (e) properly submitted to Ensemble for invoicing (collectively the “Worker Expenses”). All Worker Expenses shall be payable by Ensemble with no Mark-Up.

III. Conversion Procedure. A Temporary Worker assigned to Customer may be hired by Customer at any time and may be subject to a Conversion Fee. Such hiring shall be subject to the terms and/or payment obligations, if any, as defined below. The “Conversion Fee” shall be the fee charged by a Staffing Company when a Temporary Worker is converted to a permanent employee of Customer. Conversion Fees shall not be adjusted by the Mark-Up Rate. The Conversion Fees shall be:

- A. The fee for Administrative, Customer Service, Sales Clerks/Cashiers, and Clerical positions shall be ten percent (**10%**) of the projected annual compensation of such Temporary Worker, provided that such Temporary Worker is converted any time prior to such Temporary Worker having worked **thirty (30) calendar days** for Customer. There shall be no fee for any Temporary Worker converted after such Temporary Worker has worked 30 calendar days or more for Customer.
 - B. The fee for Light Industrial positions shall be ten percent (**10%**) of the projected annual compensation of such Temporary Worker, provided that such Temporary Worker is converted any time prior to such Temporary Worker having worked **thirty (30) calendar days** for Customer. There shall be no fee for any Temporary Worker converted after such Temporary Worker has worked 30 calendar days or more for Customer.
 - C. The fee for Accounting and Finance positions shall be fifteen percent (**15%**) of the projected annual compensation of such Temporary Worker, provided that such Temporary Worker is converted any time prior to such Temporary Worker having worked **sixty (60) calendar days** for Customer. There shall be no fee for any Temporary Worker converted after such Temporary Worker has worked 60 calendar days or more for Customer.
 - D. The fee for Technical and Professional positions shall be ten percent (**10%**) of the projected annual compensation of such Temporary Worker, provided that such Temporary Worker is converted any time prior to such Temporary Worker having worked **sixty (60) calendar days** for Customer. There shall be no fee for any Temporary Worker converted after such Temporary Worker has worked 60 calendar days or more for Customer.
- IV. Invoice Process. On a weekly basis, Ensemble shall submit an invoice to Customer on behalf of Staffing Company reflecting the fees related to all Approved Time (in Ensemble Software, in accordance with the applicable Order (the "Services Invoice"). Ensemble shall also submit to Customer on a weekly basis any approved Worker Expenses as set forth above, reflecting costs incurred by Temporary Workers or Staffing Company, accompanied by original receipts and in accordance with the applicable Order. No mark-up will apply to any Worker Expenses.
- V. Payment Services Invoice. Ensemble shall pay all undisputed invoices as set forth in the Agreement twenty (20) business days following the Services Invoice date. However, Ensemble shall not be responsible for any invoice payment(s) until and unless paid by Customer. Notwithstanding the foregoing, in the event Ensemble pays the invoiced amount within ten (10) business days of the Services Invoice date, Staffing Company agrees to discount such amount by one percent (1%).

VI. Payment Worker Expenses. Ensemble shall pay all undisputed Worker Expenses as set forth in the Agreement. Payment shall be made in net 45 and no discount will be applied.

Schedule D

TEMPORARY WORKER AGREEMENT OVERVIEW

The purpose of this overview is to explain the main points of the Temporary Worker Agreement. If you have additional questions, please contact your Staffing Company or an Ensemble representative.

Section 1 – Temporary Worker

In Section 1, the Temporary Worker understands and agrees that they may or may not be assigned to work at (Customer) and that, if assigned, they will, to the best of their ability, perform quality work. In addition it clarifies that the “Temporary Worker Agreement” does not form a binding employment agreement between the Temporary Worker and (Customer) or Ensemble, but is only between the Temporary Worker and his or her employer (Staffing Company).

Section I also clarifies the Employee/Employer relationship between the Temporary Worker and his or her Staffing Company in regards to all forms of payment including but not limited to payment of time, reimbursement of expenses, benefits and employment taxes.

Section 2 – Customer Work Policies and Rules

In Section 2, the Temporary Worker agrees to abide by the worksite policies and any codes of conduct presented to them and acknowledges responsibility for damage to Customer’s equipment, property or business operations. In addition, the Temporary Worker agrees to be responsible for his or her own safety while on assignment with Customer.

Section 3 - Confidentiality and Non-Disclosure

In general, this section defines what is considered confidential and what is not considered confidential. It also gains the temporary worker’s agreement to maintain confidentiality in regards to the customer’s materials and agreement not to disclose confidential information.

Section 4 - Injunctive Relief

If a situation arises, whereby Ensemble learns of the disclosure or threatened disclosure of confidential information, this statement enables Ensemble to request a court injunction requiring the temporary worker to stop disclosing confidential information.

Section 5 – Work Product

This section establishes that work produced or developed while on assignment will remain the customer’s property with the exception of excluded inventions.

Section 6 through Section 12 – Agreement Terms

Standard contractual terms are outlined in these sections.

TEMPORARY WORKER AGREEMENT

This Temporary Worker Agreement (the “Agreement”) is made this ____ day of _____, 200_ by and among _____, an individual (“Temporary Worker”) and _____ a _____ corporation, Temporary Worker’s employer (“Employer”).

WHEREAS, Employer has contracted with Diversity MSP (d.b.a Ensemble Workforce Solutions, Inc.) a California corporation (“Ensemble”), for Employer to provide certain services, including work performed on a temporary basis by Temporary Worker, to Ensemble’s Customer (defined below); and

WHEREAS, Ensemble has contracted with (“Customer”), for Ensemble to provide certain services related to Customer’s temporary workforce under a program managed by Ensemble (the “Program”); and

WHEREAS, Temporary Worker may be assigned by Employer, at Ensemble’s direction, to work for Customer on a temporary basis.

NOW, THEREFORE, for good and valuable consideration, the parties agree as follows:

1. Temporary Worker.

1.1 Temporary Worker may, in Ensemble’s sole discretion, be engaged to provide services to Customer through the Program as an employee of Employer and not as an employee of Customer. Temporary Worker shall perform all services or work under the Program to the satisfaction of Customer.

1.2 Temporary Worker acknowledges and agrees that no employment relationship between Temporary Worker and Customer or between Temporary Worker and Ensemble is created by this Agreement, the agreement between Ensemble and Customer, or by Employer’s agreement with Ensemble. Temporary Worker acknowledges and agrees that he or she is not a third party beneficiary of the

agreement between Ensemble and Customer and hereby waives any such rights, which may arise under such agreement between Ensemble and Customer.

1.3 Temporary Worker acknowledges and agrees that Employer shall be solely responsible for all payments to Temporary Worker including payment of compensation, premium payments for overtime, and other incentive payments, if any, and payments for vacation, holiday, sick days or other personal days, if any. Temporary Worker acknowledges and agrees that Temporary Worker is not eligible to participate in or receive any benefits under the terms of either Ensemble’s or Customer’s pension plans, savings plans,

health plans, vision plans, disability plans, life insurance plans, stock option plans, or any other employee benefit plan sponsored by Ensemble or by Customer.

- 1.4 Temporary Worker acknowledges and agrees that the cash payments and benefits, which Temporary Worker receives from Employer, shall represent the sole compensation to which Temporary Worker is entitled, and that Employer will be solely responsible for all matters relating to compliance with all employer tax obligations arising from the performance of services in connection with this Agreement. These tax obligations include the obligation to withhold employee taxes under local, state and federal income tax laws, unemployment compensation insurance tax laws, state disability insurance tax laws, social security and Medicare tax laws, and all other payroll tax or similar laws, and in no event shall either Ensemble or Customer be liable for any such obligations.

- 1.5 Temporary Worker acknowledges and agrees that Customer and Ensemble shall have no liability of any kind to the Temporary Worker related to payment for the time worked, if any, for Customer pursuant to this Agreement, the agreement between Employer and Ensemble, or the agreement between Customer and Ensemble. Temporary Worker hereby waives any claim he or she may have against Customer or Ensemble related to such payment.

2. Customer Work Policies and Rules.

- 2.1 Temporary Worker acknowledges and agrees that during the performance of Temporary Worker's job duties for Customer, Temporary Worker will not violate any of Customer's work rules and policies, including those specified in any code of conduct of Customer or other Customer workplace manual. Temporary Worker shall at all times comply with all rules, policies and procedures of Ensemble and/or Customer as provided to Temporary Worker by Employer, Ensemble and/or Customer. Temporary Worker agrees that Temporary Worker shall not harm Customer's equipment, property or

inventory (other than ordinary wear and tear), and shall not interfere with Customer's business operations.

2.2 Temporary Worker agrees that he or she enters onto Customer's premises at his or her own risk and, to the fullest extent possible under applicable laws, waives any claims he or she may have now or in the future against Customer or Ensemble for personal injury or property damage arising out of or connected in any way with Temporary Worker's presence on Customer's premises or his or her assignment to Customer.

3. Confidentiality and Non-Disclosure.

3.1 For purposes of this Section, "Confidential Information" shall include all business or technical information, including proprietary information about costs, customers, pricing, profits, markets, sales, lists of customers, employees, potential customers, potential employees, methods of doing business, plans for future development, information regarding matters of a technical nature, such as scientific, trade and engineering secrets, all "know-how", formulas, designs, secret processes,

machines, inventions, computer programs (including documentation of such programs) and research projects, information obtained by examination of any product, design, production equipment or drawings thereof and any other information of a similar nature that is marked "Confidential" or that the Temporary Worker knows or has reason to know is the confidential or proprietary information of Customer or Ensemble, as the case may be. Notwithstanding the foregoing, Confidential Information shall not include any information that:

3.1.1 is hereafter lawfully disclosed to the Temporary Worker under conditions which do not restrict further disclosure or by a third party which did not acquire the Confidential Information under an obligation of confidentiality to Customer or Ensemble, as the case may be;

3.1.2 properly came into the Temporary Worker's possession from a third party which is not under any obligation to maintain the confidentiality of such

- Confidential Information; or
- 3.1.3 has become part of the public domain through no act or fault of the part of the Temporary Worker.
- 3.2 Confidentiality. The Temporary Worker agrees that he or she will:
- 3.2.1 Maintain in strict confidence all Confidential Information of Customer or Ensemble, as the case may be;
- 3.2.2 Use or reproduce the Confidential Information solely as necessary for purposes of providing services as an independent contractor to Customer;
- 3.2.3 Not remove any copyright notices, trademark notices, or other proprietary legends or indications of confidentiality set forth on or contained in any of the Confidential Information;
- 3.2.4 Immediately notify Ensemble or Customer, as the case may be, in writing of any known unauthorized use or disclosure of the Confidential Information, providing a detailed description of the circumstances of the disclosure and the parties involved.
4. **Injunctive Relief. Temporary Worker acknowledges that it is likely to be difficult to value the damages sustained by Ensemble or Customer, as the case may be, due to any breach of Section 3 herein and that such damages are likely to be substantial or irreparable and the damaged party’s remedy at law would be inadequate. Therefore, in the event of a breach of Section 3 herein, in addition to any other relief, Ensemble or Customer, as the case may be, shall be entitled to temporary and permanent injunctive relief without the necessity of proving actual damages.**
5. **Work Product. Temporary Worker acknowledges and agrees that during and incident to Temporary Worker’s work for Customer, Temporary Worker may create inventions, discoveries, improvements, computer or other apparatus programs, and related documentation and other works of authorship (“Work Product”), whether or not patentable, copyrightable, or subject to other forms of legal protection. Temporary Worker agrees to assign to Customer all of Temporary Worker’s right, title and interest (including rights in copyright) in and to all Work Product Temporary Worker makes, creates or develops, either solely or jointly with**

others, during Temporary Worker's assignment to Customer. Temporary Worker agrees that the above assignment is binding upon Temporary Worker's estate, administrators, or other legal representatives or assigns.

3.3 Excluded Inventions.
Temporary Worker shall not be required to assign to Customer any idea, invention, discovery, innovation or improvement which Temporary Worker developed entirely on his or her own time and without the use of any of Customer's equipment, supplies, facility or Confidential Information (as defined above), and which (i) does not relate to Customer's business or to Customer's actual or anticipated research or development, and (ii) does not result from any work performed by Temporary Worker specifically for Customer (the "Excluded Inventions"). In any dispute with respect to these exclusions, the burden of proof shall be on Temporary Worker to show that the exclusion applies.

3.4 Work Made for Hire.
Any and all Work Product prepared by Temporary Worker for

Customer that is eligible for copyright protection shall be a work made for hire on behalf of Customer as that term is used under the United States Copyright Act and ownership of all copyrights in such work shall vest in Customer. If for any reason, any such work shall not be deemed a work made for hire or ownership of such copyrights would not vest in Customer, then Temporary Worker shall transfer all right, title and interest in such work, including all copyrights therein to Customer. In those jurisdictions that deem any work performed on a "Work Made for Hire" basis as giving rise to an employee/employer relationship, the parties specifically agree that this provision shall not apply in such jurisdiction and that Temporary Worker shall continue to be deemed an independent contractor of Customer.

6. **Term.** This Agreement shall be effective as of the date first written above, and shall remain in effect notwithstanding Temporary Worker's termination of employment with Employer or termination of Temporary Worker's assignment to Customer.

7. **Severability.** In the event that any provision of this Agreement is held to be invalid or unenforceable, then such invalid or enforceable provisions shall be severed, and the remaining provisions shall remain in full force and effect to the fullest extent permitted by law.

8. **Waiver.** This Agreement may be amended, or its requirements waived, only by a writing signed by the party against whom enforcement of the waiver or amendment is sought.

9. **Governing Law; Jurisdiction.** This agreement shall be governed by the law of the State of California. Any litigation under this Agreement shall be filed and pursued in a court of proper venue in the State of California. All parties expressly consent to the jurisdiction of such courts.

10. **Assignment.** Neither party's rights or obligations under this Agreement can be assigned without the express prior written consent of (i) the other party hereto, and (ii) Ensemble. Any attempted or purported assignment of this Agreement without such consent shall be void.

11. **No Inducements.** Temporary Worker warrants and represents that he or she has neither provided nor offered to provide any gifts, payments, or other inducements to any officer, employee

or agent of Ensemble or Customer for any purpose. Temporary Worker shall not provide or offer any gifts, payments, or other inducements to any officer, employee or agent of Ensemble or Customer for any purpose.

12. **Entire Agreement.** This Agreement constitutes the entire Agreement and understanding between the parties with respect to the subject matter hereof, and this Agreement supersedes all prior and contemporaneous negotiations, discussions and understanding of the parties with respect to the subject matter hereof.

IN WITNESS WHEREOF, the parties hereto have executed this Temporary Worker Agreement as of the date first written above.

Employer

By: _____

Name:

Title:

Temporary Worker

Name:

Schedule E

Insurance Requirements

Throughout the entire term of this Agreement, Staffing Company shall obtain and maintain at least the following minimum insurance coverage's, unless otherwise indicated hereunder. It is understood that these are minimum requirements and Ensemble may, at their discretion, determine that additional insurance coverage is appropriate. Ensemble shall then provide Staffing Company written notification and explanation for additional insurance coverage along with reasonable notice and time to obtain such coverage.

A. GENERAL

(a) Staffing Company agrees to cause its insurance company or companies to issue to Ensemble and Customer certificates of insurance giving evidence of insurance as required.

(b) Staffing Company's liability and indemnification of Ensemble and Customer shall not be relieved nor diminished by Staffing Company securing insurance coverage's in accordance with Ensemble's requirements nor by Ensemble's approval of certificates or policies. Any approval by Ensemble of such insurance coverage shall not be construed as accepting in any way deficiencies in Staffing Company's insurance.

(c) All insurance policies shall be issued by companies authorized to do business under the laws of the State of California or other applicable State. Coverage's shall be procured from an insurer licensed to do business in the State where work will be performed with an A.M. Best rating of "A-, XI" or better.

(d) Such limits of insurance noted herein shall be minimum limits of insurance and may be provided and supplemented with Excess or Umbrella Liability coverage.

(e) Except where barred by statute, certificates of insurance shall provide for at least thirty (30) days prior written notice to Ensemble and Customer of cancellation or material modification or change.

(f) If the insurance is administered under the direction and control of a duly authorized agency of the State in which the work is performed, Staffing Company shall furnish to Ensemble a copy of a current letter, permit or certificate as evidence of compliance with all provisions of such fund, including payment of premium and tax.

(g) If Staffing Company is a joint venture, each of the entities that form such joint venture must each meet the insurance requirements described herein.

(h) Staffing Company's insurance shall be primary to any insurance maintained by Ensemble and Customer.

(i) Any self-insured retention must be disclosed to Ensemble and is subject to review and approval by Ensemble.

B WORKERS' COMPENSATION / EMPLOYER'S LIABILITY

Statutory Workers' Compensation coverage covering all operations of Staffing Company, with Employers' Liability insurance including Coverage B limits of \$1,000,000 Per Occurrence or compliance with a state administered fund by reason of payment of all premiums or tax or qualified as a self-insurer. Such insurance shall be maintained for operations performed at or away from the project site, and any insurance required by any employee benefit acts or other statutes applicable where the work is to be performed.

If a qualified self-insurer, a copy of a current letter, permit or certificate issued by the appropriate California State, or other applicable State, agency must be submitted to Ensemble.

The provisions of the following paragraph must be included in this contract when Staffing Company is a qualified, approved self-insurer of Workers' Compensation:

"Staffing Company waives any right of recovery Contractor may have or acquire against Ensemble and/or Customer, Architect-Engineer and other Contractors or Subcontractors of all tiers by reason of Staffing Company having paid worker compensation benefits as a self-insurer."

Staffing Company shall require that all insurance policies secured for this coverage include clauses providing that each insurance company waives all of its rights of recovery of subrogation, or otherwise, against Ensemble, Customer and each of their parent companies and their respective employees, agents, affiliates or subcontractors. Workers Compensation Insurance coverage must also include a voluntary compensation endorsement as well as an endorsement naming Ensemble and Customer as Alternate Employers.

C. COMMERCIAL GENERAL LIABILITY/EXCESS LIABILITY

Commercial General Liability/Excess Liability insurance in form providing coverage not less than that of a Standard Commercial General Liability Insurance policy to include personal injury, property damage (Broad Form, including Completed Operations), Contractual Liability coverage (on a "blanket" basis designating all written contracts), and Completed Operations for five (5) years from final acceptance of the work by Customer and coverage for claims arising out of the work hereunder such that the total available limits to all insureds combined will be not less than:

General Liability: \$1,000,000 Each Occurrence, \$2,000,000 General Aggregate, and \$2,000,000 Completed Operations
Excess Liability: \$4,000,000 Each Occurrence and \$4,000,000 Aggregate following form over primary Commercial General Liability and Business Automobile Liability

Ensemble reserves the right to change these minimum insurance requirements at any time. Also, the aggregate limits set forth above must be reinstated on an annual basis.

This insurance shall include Ensemble and Customer as an additional insured in accordance with Section 8.2 of this Agreement by endorsement the ISO form CG2010 (07/04) and ISO form CG2037 (07/04) or the equivalent of such forms. A waiver of subrogation by endorsement shall apply. These forms must be maintained for at least a minimum of five (5) years.

D. BUSINESS AUTOMOBILE LIABILITY

Commercial Automobile Liability insurance covering all owned, non-owned and hired automobiles, trucks and trailers. Such insurance of Staffing Company shall provide coverage not less than that of the Standard Comprehensive Automobile Liability Policy including owned, non-owned and hired automobiles in Combined Single Limits for Each Accident for Bodily Injury and Property Damage of not less than \$1,000,000. This insurance shall include Ensemble and Customer as an additional insured by endorsement and include a waiver of subrogation.

E. PROFESSIONAL (ERRORS & OMISSIONS) LIABILITY

Professional (Errors and Omissions) Liability insurance on a claims-made basis in an amount not less than \$2,000,000 Each Claim and \$2,000,000 Aggregate shall be provided. Such coverage shall apply continuously with a retroactive date prior to or coinciding with the commencement of any professional services performed for this Agreement and shall include an extended reporting period of five (5) years following termination of this Agreement. Such coverage shall include Ensemble and Customer as indemnified parties for any vicarious liability caused by professional services performed for this Agreement.

F. FIDELITY BOND/CRIME COVERAGE

Crime Insurance in an amount not less than \$1,000,000 Per Claim.

Schedule F

Performance Metrics

Category	Measurement	Reason	Attainment Goal
Program Service & Quality	<u>Response Time</u> Time to respond to ordering source once order is received	Validate staffing company is monitoring system activity and response times	1 Business Hour – Non-Lead Time Emergencies 15 Business Minutes– Lead Time Emergencies
	<u>Response Time (for candidate) -</u> Time it takes to (a) present resume (resume first order) or candidate (go to work order) to ordering source once authorized order is received or (b) notify ordering source if unable to present any candidates	Monitor and track candidate submittal response time	Light Industrial/ Clerical/Admin/ Customer Service 4 hours Lead Time Emergencies 24 hours Non-Lead Time Emergencies Professional/Technical 8 hours Lead Time Emergencies 72 hrs Non-Lead Time Emergencies Minimum 85%
	<u>Submittal Ratio</u> Number of candidates presented to hiring manager for consideration (resume first order,) or number of candidates placed on assignment (go to work order) vs. total number of submitted candidates	Monitor quality of candidates submitted. Excludes candidates rejected due to job description revision	Your performance rating will be based on comparison with your peer suppliers
	Arrival Rate First day, on-time, arrival rate (does not include circumstances beyond reasonable control)	Monitor and track on-time arrival rate of temporary employees on first day of assignment	Minimum 98%
	<u>Replacement Ratio</u> Number of replacements vs. total filled with reason codes	Monitor total number of replacements, turnover and fall-off including reason codes	< 15% for Light Industrial/Customer Svc < 10% for Clerical/Admin and Professional/Technical

Category	Measurement	Reason	Attainment Goal
<p style="text-align: center;">Labor Quality</p>	<p><u>Individual Productivity Metrics</u> <u>In accordance with Customer's Shared Success Program</u></p>	<p>Monitor the Productivity and Accuracy for certain identified Light Industrial positions. Attainment of quality metrics increases productivity and reduces ramp-up and training times</p>	<p><u>Productivity Metrics</u> Minimum 80%</p> <p><u>Quality Metrics</u> Mechanical = 8000 PPE's* Manual Assembly = 5000 PPE's* Set Tables = 2500 PPE's* (*Pieces Picked prior to error)</p> <p>Bin Filling and Warehouse/Receiving= 99.8% accuracy rate</p>
	<p><u>Employee Performance</u> Measures quality performance rating for temporary employees based on hiring manager's returned survey and through quality call processes</p>	<p>Track and monitor performance for those positions not under Shared Success Program. Attainment of quality metrics increases productivity and reduces ramp-up and training times</p>	<p>Must be above a 3.5 rating on a scoring system of 1-5 with 5 being the highest score attainable</p>