

STATE OF NORTH CAROLINA  
COUNTY OF MECKLENBURG

### EMPLOYMENT SERVICES AGREEMENT

This Employment Services Agreement (the "**Agreement**") is made this the \_\_\_\_ day of \_\_\_\_\_, 2017 (the "**Effective Date**") by and between **PLAXCO STAFFING, LLC**, a North Carolina limited liability company with offices located at 301 McCullough Dr., Charlotte, Mecklenburg County, North Carolina 28262 ("**Plaxco**") and \_\_\_\_\_ ("**Client**"), Address is \_\_\_\_\_.

#### WITNESSETH:

WHEREAS, Plaxco is engaged in the business of providing temporary employees to clients of Plaxco, and specifically in the business of hiring employees and assigning them to clients of Plaxco to support or supplement its clients' workforces in special work situations, including those occasioned by temporary employee absences, temporary skill shortages, demands of seasonal workloads, and/or special assignments and projects (collectively, the "**Temporary Employees**");

WHEREAS, Plaxco, from time to time, procures such Temporary Employees and then places such Temporary Employees with Clients of Plaxco and, in such context, serves as the employer of the Temporary Employees who have been so procured and referred, (collectively, the "**Assigned Employees**");

WHEREAS, Plaxco is also in the business of arranging for and implementing workers' compensation insurance coverage of such Assigned Employees in multiple states and of providing related specified payroll, tax remittance and personnel-related services; and

NOW THEREFORE, Plaxco and Client, in consideration of the premises set forth above, the covenants set forth below and other good and valuable consideration the receipt and sufficiency are hereby acknowledged, hereby agree as follows:

.1. **Relationship of the Parties; Services.** Plaxco will recruit Assigned Employees and refer them to Client. Plaxco will then assign them to work only for Client as directed by Plaxco in writing, and Plaxco will serve as the Assigned Employees' sole and exclusive employer in accordance with, and will provide Client with the services prescribed by, this Agreement (collectively, the "**Services**").

.2. **Rights and Responsibilities of Plaxco.**

2. 2.1 Plaxco will assume full responsibility and legal liability as the sole and exclusive employer of the Assigned Employees whom are referred by Plaxco in accordance with Paragraph 1 set forth above, and will perform all of the functions and execute all of the duties prescribed by this Paragraph 2 and other provisions of this Agreement (collectively, the "**Plaxco Duties**").

.2.2 Timely payment of all wages, as reported by Client to Plaxco, through Plaxco's payroll, to each and every Assigned Employee, including the following from which Plaxco will make all required deductions and withholdings, in accordance with all applicable federal, state, and local laws, including but not limited to the Fair Labor Standards Act of 1938, the North Carolina Wage and Hour Act and all analogous "wage and hour"/employee-compensation laws and regulations of each state in which a Assigned Employee has performed compensable work on behalf of Plaxco:

- .(a) required hourly wages and prescribed salaries;
- .(b) commissions;
- .(c) bonuses;
- .(d) premium overtime pay;
- .(e) vacation pay;
- .(f) sick time pay;
- .(g) paid time off;
- .(h) paid leaves of absence; and
- .(i) severance pay.

(collectively, the "**Wages**") *Provided*, that Plaxco shall provide payment of all such Wages to each and every Assigned Employee.

1. 2.7 Plaxco shall Provide workers' compensation insurance coverage that covers each Assigned Employee as and to the extent required by all applicable law and regulations, as well as processing and defending, vigorously, timely and in good faith, all workers' compensation claims *Provided*, however, in the event of the submission to Plaxco or any applicable regulatory authority of a worker's compensation claim by a Assigned Employee (a "**WC Claim**"), that Client shall be responsible for the first \_\_\_\_\_ of fees, expenses and wages that are attributable to the defense, mitigation or settlement of such WC Claim, after which Plaxco shall be responsible for all such fees, expenses and wages.

1. Plaxco shall Maintain all employee-related records required by federal and state laws and maintains all original signed employment applications and U.S. C.I.S. I-9 Forms. With respect to any given Assigned Employee.

2. Client shall oversee all day-to-day control and supervision of the Assigned Employees, such as but not limited to hiring, firing, discipline and promotion.

3. 2.12 Plaxco shall be exclusively responsible for compliance with all applicable employment laws with respect to each Assigned Employee, including, but not limited

to the following federal laws, and their state and local equivalents (collectively, "**Employment Laws**"):

- (a) Title VII of the Civil Rights Act of 1964, as amended;
- (b) Americans with Disabilities Act of 1990, as amended;
- (c) Fair Labor Standards Act of 1938;
- (d) North Carolina Wage and Hour Act, as amended;
- (e) Family and Medical Leave Act of 1993, as amended;
- (f) Patient Protection and Affordable Care Act of 2010, as amended;
- (g) Section 503 of the Rehabilitation Act of 1973, as amended;

- (h) Occupational Safety and Health Act (OSHA); and
- (i) Immigration Reform and Control Act of 1986 and other immigration laws, as amended.

*Provided*, that Plaxco, upon receipt of written request by Client, shall provide Client with complete copies of all of Plaxco's personnel policies pertaining to such Employment Laws, and shall in any event provide Client with prompt written notice of any claim of any kind of a Assigned Employee.

### 3. **Rights and Responsibilities of Client.**

- 1. 3.1 Client shall be responsible for the following duties described in this Paragraph 3.
- 2. 3.2 Properly classify Assigned Employees as exempt or non-exempt under applicable wage and hour laws (although no such employee will be paid a fixed weekly salary).
- 3.3 Provide accurate records regarding time worked by the Assigned Employees and timely transmit compensation payment information to Plaxco for each workweek on a weekly basis including:

- .(a) wages, including whether salaried or hourly, and regular rate of pay;
- .(b) overtime;
- .(c) commissions;
- .(d) bonuses;
- .(e) vacation pay;
- .(f) sick pay;
- .(g) paid time off;
- .(h) paid leaves of absence; and
- .(i) severance payments.

- 3. 3.4 Timely report to Plaxco any changes in any Assigned Employee's hourly wage.

4. 4. **Term.** This Agreement shall commence as of the Effective Date and shall continue thereafter for a period of one (1) year, unless sooner terminated pursuant to Section 6.

5. 5. **Fees; Payment Terms.** Plaxco shall issue invoices to Client (in the form attached hereto as Exhibit "B") every \_\_\_\_\_ with respect to the seven-day workweek that ended at \_\_\_\_\_, by e-mailing such invoices to Client. Such invoices shall be due and payable within \_\_\_\_\_ of submission of them to Client in accordance with this Section 5.1 and shall be paid by wire transfer. *Provided*, if Client has failed to pay an invoice by the time prescribed by this Section 5, that Client shall then be liable to Plaxco for a late-payment fee in the amount of one and ½ percent (1.50%) of the invoiced amount due.

### 6. **Termination; Effect of Termination.**

1. 6.1 Either Party, in its sole discretion, may terminate this Agreement, in whole or in part, at any time without cause, by providing thirty (30) days' prior written notice to the other Party. On the termination of this Agreement for any reason, Client shall be entitled to hire and employ the Assigned Employees.

.6.2 Either Party may terminate this Agreement, effective upon written notice to the other Party

(the "**Defaulting Party**"), if the Defaulting Party:

.(a) (i) materially breaches this Agreement, and such breach is incapable of cure; or (ii) with respect to a material breach capable of cure, the Defaulting Party does not cure such breach within thirty (30) days after receipt of written notice of such breach.

.(b) (i) becomes insolvent or admits its inability to pay its debts generally as they become due; (ii) becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law, that is not

fully stayed within seven business days or is not dismissed or vacated within 45 days after filing; (iii) is dissolved or liquidated or takes any corporate action for such purpose; (iv) makes a general assignment for the benefit of creditors; or (v) has a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.

1. 6.3 The rights and obligations of the parties set forth in this Section 6.3, Section 7, Section 8, Section 9, Section 10, Section 11, Section 12, and Section 13, and any right or obligation of the Parties in this Agreement that, by its nature, should survive termination or expiration of this Agreement, will survive any such termination or expiration of this Agreement.

**.7. Confidential Information.** Both Parties may be given access to or acquire information that is proprietary, confidential and commercially valuable regarding, for example, the other Party and/or its business, business strategies, pricing information, finances, affiliated persons and entities, clients, and/or customers (collectively, the "**Confidential Information**"). Plaxco, specifically, will in accordance with this Agreement provide Confidential Information to Client regarding its business and commercial strategies that is highly valuable to Plaxco, the misappropriation and/or inappropriate dissemination of which would damage Plaxco enormously. Both Parties agree to hold such Confidential Information in strict confidence and not to disclose it to third parties or to use such information for any purposes whatsoever other than to facilitate the provision of Services under this Agreement. Either Party may require the other Party to ask those of its personnel who facilitate such Party's compliance with this Agreement, *to the extent allowed by law*, to execute and deliver a brief written non-disclosure agreement prohibiting such personnel from misappropriating or disclosing the Confidential Information other than as specifically authorized in writing by the Party seeking such an agreement, which shall then be provided to the Party seeking it. **Provided**, that nothing in this Agreement shall be construed to preclude either Party from exercising its rights and remedies pursuant to the North Carolina Trade Secrets Protection Act, as amended, and analogous laws and statutes of other states.

**.8. Representations and Warranties.**

.8.1 Each Party represents and warrants to the other Party that:

.(a) it is duly organized, validly existing and in good standing as a company or corporation or other entity as represented herein under the laws and regulations of its jurisdiction of incorporation, organization, or chartering;

.(b) it has the full right, power, and authority to enter into this Agreement, to grant any rights and licenses granted hereunder and to perform its obligations hereunder;

.(c) the execution of this Agreement by its representative whose signature is set forth at the end hereof has been duly authorized by all necessary action of the Party;

.(d) when executed and delivered by such Party, this Agreement will constitute the legal, valid, and binding obligation of such Party, enforceable against such Party in accordance with its terms; and

.(e) No current or former member, shareholder, officer or member of the board of directors of such Party has ever been indicted regarding, charged with or convicted of a crime of any kind (excluding minor traffic offenses) or filed a petition in bankruptcy or otherwise sought legal protection from the claims of any judgment creditor.

.8.2 Plaxco represents and warrants to Client that:

.(a) it shall perform the Services using personnel of required skill, experience, and qualifications and in a professional and workmanlike manner in accordance with generally recognized and commercially reasonable industry standards for similar services and shall devote adequate resources to meet its obligations under this Agreement; and

.(b) it is in compliance and shall perform the Services in compliance with all applicable federal and state laws, and has obtained any and all licenses that may be required by all applicable law.

2. 8.3 EXCEPT FOR THE EXPRESS WARRANTIES IN THIS AGREEMENT: (A) EACH PARTY HEREBY DISCLAIMS ALL WARRANTIES, EITHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE UNDER THIS AGREEMENT; AND

(B) PLAXCO SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE.

## 9. **Indemnification.**

9.1 Client shall defend, indemnify, and hold harmless Plaxco and Plaxco's affiliates and its/their officers, directors, employees, agents, successors, and permitted assigns (each a "Plaxco's Indemnitee") from and against any and all claims, demands, damages (including liquidated, punitive, and compensatory), actions in state or federal courts or before administrative agencies, losses and liabilities, costs, and expenses (including attorneys' fees), and monetary fines or penalties assessed by any administrative agency (hereafter "Actions") arising out of or resulting from:

.(a) bodily injury, death of any person, or damage to real or tangible personal property resulting from the willful, fraudulent, or negligent acts or omissions of Client or Client Personnel; and

.(b) Client's material breach of any representation, warranty, or obligation of Client set forth in this Agreement, including but not limited to Client's failure to comply with any employment law pertaining to its employment of a Assigned Employee in connection with the Services provided by Plaxco under this Agreement.

.9.2 Plaxco shall defend, indemnify, and hold harmless Client and Client's affiliates and its/their officers, directors, employees, agents, successors, and permitted assigns from and against any and all Actions arising out of or resulting from:

.(a) bodily injury, death of any person, or damage to real or tangible personal property resulting from the negligent or willful acts or omissions of Plaxco; and

.(b) Plaxco's material breach of any representation, warranty, or obligation of Client set forth in this Agreement.

2. 9.3 The Party seeking indemnification hereunder shall promptly notify the indemnifying Party in writing of any Action and cooperate with the indemnifying Party at the indemnifying Party's sole cost and expense. The indemnifying Party shall immediately take control of the defense and investigation of such Action and shall employ counsel of its choice to handle and defend the same, at the indemnifying party's sole cost and expense. The indemnifying Party shall not settle any Action in a manner that adversely affects the rights of the indemnified Party without the indemnified Party's prior written consent, which shall not be unreasonably withheld or delayed. The indemnified Party's failure to perform any obligations under this Section 10.3 shall not relieve the indemnifying Party of its obligations under this Section 9.3 except to the extent that the indemnifying Party can demonstrate that it has been materially prejudiced as a result of such failure. The indemnified Party may participate in and observe the proceedings at its own cost and expense.

**10. Limitation of Liability.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER OR TO ANY THIRD PARTY FOR ANY LOSS OF USE, REVENUE, OR PROFIT OR LOSS OF DATA OR FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE, REGARDLESS OF WHETHER SUCH DAMAGE WAS FORESEEABLE AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**11. Insurance.**

.11.1 At all times during the Term of this Agreement, Client shall procure and maintain, at its sole cost and expense, at least the following types and amounts of insurance coverage:

.(a) If available on commercially reasonable terms: Commercial General Liability insurance provided by a carrier duly licensed to underwrite and provide such insurance in North Carolina with limits of no less than \$1,000,000 per occurrence and \$3,000,000 in the aggregate.

.11.2 A

.11.3 Upon the written request of Plaxco, Client shall provide Plaxco with complete copies of the certificates of insurance and policy endorsements for all insurance coverage required by this Section 11, and shall not do anything to invalidate such insurance. This Section 11 shall not be construed as waiving, restricting or limiting the liability of either Party for any obligations imposed under this Agreement (including but not limited to any provisions requiring a Party hereto to indemnify, defend, and hold the other harmless under this Agreement).

**12. Non-Solicitation.**

2. 12.1 During the Term of this Agreement and for a period of Three (3) years after the end of such Term, regardless of why this Agreement came to an end, Client shall not whether alone or in concert with any other person, firm, partnership, joint venture, company or corporation encourage or induce any other person or entity to hire, employ or engage for compensation of any kind, any Assigned Employee unless such Employee has previously been employed by the Client. A general advertisement or notice of a job listing or opening or other similar general publication of a job search or availability to fill employment positions, including on the internet,

shall not be construed to violate this Section 12.1.

.12.2 If Client breaches Section 12.1 set forth above, then Plaxco shall have the right to seek and obtain any and all legal and equitable remedies provided by law, and, if it seeks injunctive relief, shall not be required first to post a bond of any kind.

.13. **Notices.**

3. 13.1 All notices, requests, consents, claims, demands, waivers, and other communications hereunder shall be in writing and shall be deemed to have been given: (a) when delivered by hand (with written confirmation of receipt); (b) when received by the addressee if sent by a nationally recognized overnight courier (receipt requested); or (c) on the third day after the date mailed, by certified or registered mail, return receipt requested, postage prepaid. Such communications must be sent to the respective Parties at the addresses indicated below (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 13.1.

If to Plaxco:

Plaxco Staffing, LLC 301 McCullough Drive Charlotte, NC 28262 Email: abrown@plaxcostaffing.com Attention: Mr. Alton L. Brown "includes," and "including" shall be deemed to be followed by the words "without limitation;"

If to Client:

(Client) \_\_\_\_\_

Address:

Email:

Attention: \_\_\_\_\_

13.2 For purposes of this Agreement: (a) the words "include,"

(b) the word "or" is not exclusive; and (c) the words "herein," "hereof," "hereby," "hereto," and "hereunder" refer to this Agreement as a whole. Unless the context otherwise requires, references herein to a statute means such statute as amended from time to time and includes any successor legislation thereto and any regulations promulgated thereunder. This Agreement shall be construed without regard to any presumption or rule requiring construction or interpretation against the Party drafting an instrument or causing any instrument to be drafted.

1. 13.3 This Agreement, together with all Schedules, Exhibits, and any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties to this Agreement with respect to the subject matter contained herein, and supersedes all prior and contemporaneous understandings and agreements, both written and oral, with respect to its subject matter.

2. 13.4 Neither Party may assign, transfer, or delegate any or all of its rights or obligations under this Agreement, without the prior written consent of the other Party, which consent shall not be unreasonably withheld or delayed. No assignment shall relieve the assigning Party of any of its obligations hereunder. Any attempted assignment, transfer, or other conveyance in violation of the foregoing shall be null and void. This Agreement shall be binding upon and shall inure to the benefit of the Parties hereto and their respective successors and permitted

assigns.

3. 13.5 This Agreement is for the sole benefit of the Parties hereto and their respective successors and permitted assigns and nothing herein, express or implied, is intended to or shall confer upon any other person or entity any legal or equitable right, benefit or remedy of any nature whatsoever, under or by reason of this Agreement.

4. 13.6 The headings in this Agreement are for reference only and shall not affect the interpretation of this Agreement.

5. 13.7 This Agreement may be amended, modified, or supplemented only by an agreement in writing signed by each Party hereto. No waiver by any Party of any of the provisions hereof shall be effective unless explicitly set forth in writing and signed by the waiving Party. Except as otherwise set forth in this Agreement, no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement shall operate or be construed as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power, or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege.

6. 13.8 If any term or provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability shall not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.

7. 13.9 This Agreement shall be governed by and construed in accordance with the laws of the State of North Carolina. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Services provided hereunder shall be instituted exclusively in the United States District Court for the Eastern District of North Carolina or in the superior court division of the North Carolina General Court of Justice situated in Mecklenburg County, North Carolina, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding. Service of process, summons, notice, or other document by mail to such Party's address set forth herein shall be effective service of process for any suit, action, or other proceeding brought in any such court.

1. 13.10 Each Party acknowledges that a breach by a Party of this Agreement may cause the non-breaching Party irreparable damages, for which an award of damages would not be adequate compensation and agrees that, in the event of such breach or threatened breach, the non-breaching Party will be entitled to seek equitable relief, including a restraining order, injunctive relief, specific performance, and any other relief that may be available from any court, in addition to any other remedy to which the non-breaching Party may be entitled at law or in equity. Such remedies shall not be deemed to be exclusive but shall be in addition to all other remedies available at law or in equity.

2. 13.11 If any action, suit, or other legal or administrative proceeding is instituted or commenced by either Party hereto against the other Party arising out of or related to this Agreement, the prevailing Party shall be entitled to recover its reasonable attorneys' fees and court costs from the non-prevailing Party in accordance with Section 6-21.6 of the North Carolina General Statutes, or other applicable law, as amended.

3. 13.12 This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement. A signed copy of this Agreement delivered by facsimile, email, or other means of

electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

IN WITNESS WHEREOF, THE PARTIES HAVE EXECUTED THIS AGREEMENT AS OF THE DATE FIRST ABOVE WRITTEN.

**PLAXCO STAFFING, LLC:**

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

Its: \_\_\_\_\_

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Date \_\_\_\_\_

|

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

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

Its: \_\_\_\_\_

Date \_\_\_\_\_

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