

Human Capital Management Service Agreement

_____ (“Company”) owns and operates a corporation designed to assist employers with their human capital management needs, including, but not limited to, the following:

- Payroll
- Human Resources
- COBRA
- Benefits Enrollment & Eligibility Administration
- Time & Attendance

The above services are offered through a system known as iSolved® Human Capital Management (HCM) system or other similar system offered by the Company.

In consideration of the mutual promises set forth herein, it is agreed by and between Company and Employer (the “parties”) as follows:

Section 1: General Terms and Conditions of the Agreement

A. Commencement of Agreement and Duration

This Agreement (“Agreement”) shall commence on the effective date assigned by Company (the “Effective Date”); to be communicated to Employer in writing, and it shall continue until terminated in accordance with this Agreement. Employer acknowledges that Company’s acceptance of this Agreement is conditioned on its approval of Employer’s credit.

B. Scope of Agreement; Relationship of Parties

This Agreement sets forth certain rights and obligations of Employer and Company, and the terms of this Agreement shall apply to any assignee or successor of Employer and/or Company. The parties intend that this Agreement will establish an independent contractor relationship. Company is not an agent or employee of Employer (for purposes of establishing Principal-Agent relationships), and the employees of Employer are not entitled to any of the benefits of employment granted by Company to its own employees. Company is not the Plan Administrator or a Plan Fiduciary of the Benefit Plans, as those terms are defined in ERISA. It is understood that Company is free to perform similar services for other employers while this Agreement is effective. It is Employer’s sole responsibility and duty to ensure compliance with all applicable laws and regulations, and Company’s provision of services under this Agreement does not relieve Employer of this obligation. Company is responsible for providing services that comply with applicable law and regulations and that assist Employers with its obligations to the extent set forth herein. Subject to Company’s responsibilities under subsection L, Employer understands that it is Employer’s responsibility to pay any fee or penalty assessed by the Internal Revenue Service or other state or federal regulatory agency. Employer acknowledges that Company is not an accounting or law firm and no services provided by Company in accordance with this Agreement will be construed by Employer as tax, accounting or legal advice as a result of providing such services.

All duties performed by Company will be non-discretionary in nature and will be performed in accordance with Company’s standard operating procedures.

It is specifically acknowledged and agreed that the Company shall have no liability with respect to any information provided to Employer from any third party vendors that is provided with the assistance of or facilitated by the Company.

C. Services

Company agrees to provide to Employer the services set forth in Section 2, which Employer has selected as indicated by Employer’s initials on the Fees and Consideration Appendix. The services shall commence on the Effective Date, unless otherwise indicated for a service selected on a later date, as agreed by the parties.

D. Fees

1. Employer agrees to pay Company for its services in the amounts specified in the Fees and Consideration Appendix. Employer authorizes Company to collect its fees from Employer’s bank account by means of an electronic funds transfer (EFT) on a monthly basis following the month that the system is available (the month of the live date). PEPM fees are based on the number of employees on record at the start of a given month. Employer must pay all of the monthly Fees on the first pay date of each month. If any EFT is rejected for insufficient funds or any other reason at any time, Employer agrees to pay an additional \$75 fee. Failure to pay fees by the due date may result in the imposition of interest and penalties and/or termination of the Agreement. Company may change the fees for any reason at the beginning of each 12-month period beginning with the Effective Date provided that notice of such changes is provided at least 30 days before the beginning of such 12-month period. In addition, Company may revise the fees during any 12-month period if changes to Employer’s requirements or applicable law are made (regardless of the reason) that materially revise the nature or scope of the services contemplated by this Agreement. Such changes will be effective no earlier than 30 days after Company provides written notice to Employer.
2. Company will initiate a funds transfer for fees or charges, payroll taxes, direct deposit, or any other amounts due under this Agreement. At the agreed upon payroll processing time, Employer authorizes Company to originate Automated Clearing House (ACH) debit payment orders against Employer’s bank account for the amount of liabilities and fees of all services agreed to by Employer, including PEPM, payroll tax, direct deposit, implementation fees, and other service-related liabilities or processing fees due Company. Services performed under the Agreement and funding authorization begin upon the effective live date and will continue until revoked by the Employer with 15 days advance written notice or until this Agreement is terminated. Initiation of the funding authorization is subject to Company’s approval of Employer’s credit. Notwithstanding, Employer shall pay fees related to Flexible Benefit Administration as invoiced by Company.
3. In the event Company provides Employer with any equipment in connection with the services Company provides hereunder, Employer shall promptly notify Company of any damage or related service issues with the equipment, and Company shall compensate Employer for any and all fees or expenses incurred to repair or replace the damaged equipment.
4. All payroll information must be provided by Employer to Company by no later than 2:00 pm two business days prior to a payment/check date. To the extent this deadline is not adhered to, Company reserves the right to assess Employer a fee in the amount of \$_50_____.

E. Information From Employer

Company will establish various methods for transferring information to and from Company. Employer must use one of the methods

established by Company. Employer will furnish the information determined by Company to be necessary to satisfy its responsibilities under this Agreement. Such information will be provided to Company in the time and in the manner agreed to by Employer and Company. Employer understands that Company cannot accurately perform its duties under this Agreement without accurate and timely information and that Company shall have no liability to Employer or any of Employer's employees as a consequence of inaccurate and/or untimely information provided to Company by Employer, its designee, or another existing or former service provider, including, but not limited to any and all liabilities relating to any federal tax deposits made through the EFTPS or any other deposits made pursuant to State or Federal law on behalf of Employer or its employees, and Employer shall be solely responsible for same. Employer is solely responsible for ensuring that the deposits and withholdings made by the Company on behalf of Employer and its employees are accurate and in compliance with state and federal law. Company will have no obligation to credit Employer for any fees incurred or paid to Company as a consequence of Company receiving inaccurate or untimely information. Company will assume that all such information provided to Company by Employer, its designee or another existing or former service provider is complete and accurate and is under no duty to question on the completeness or accuracy of such information. Employer will review any information and/or reports provided by Company in accordance with this Agreement as soon as possible after Employer has received such information and Employer will notify Company of any errors in such information and/or reports as soon as possible after its review. Employer hereby consents to Company using any funds or proceeds held by Company to resolve any damages or penalties incurred by Company resulting from liabilities arising from Employer's obligations hereunder.

F. Confidentiality and Disclosure

1 All information, whether printed, written or oral, in answer to an inquiry or voluntarily furnished by Employer or its agents or employees to Company shall be held in confidence by Company and used and disclosed solely for the purposes of fulfillment of the terms of this Agreement. Employer and Company each acknowledge that as a result of entering into this Agreement, each party has, and will continue to reveal and disclose to the other, information that is proprietary and/or confidential to such party. Employer and Company agree that each party will (a) keep such proprietary and/or Confidential Information of the other party in strict confidence; (b) not disclose Confidential Information of the other party to any third parties or to any of its employees not having a legitimate need to know such information; and (c) will not use Confidential Information of the other party for any purpose not directly related to and necessary for the performance of its obligations under this Agreement (unless required to do so by a court of competent jurisdiction or a regulatory body having authority to require such disclosure).

2 Information revealed or disclosed by a party for any purpose not directly related to and necessary for the performance of such party's obligations under this Agreement shall not be considered Confidential Information for purposes hereof (a) if, when, and to the extent such information is or becomes generally available to the public without the fault or negligence of the party receiving or disclosing the information; or (b) if the unrestricted use of such information by the party receiving or disclosing the information has been expressly authorized in writing and in advance by an authorized representative of the other party. For purposes of this Agreement, Confidential Information is defined as any information in written, human-readable, machine-readable, or electronically recorded form (and identified as confidential and/or proprietary or words of similar import) and information disclosed orally in connection with this Agreement and identified as confidential and/or proprietary (or words of similar import); and programs, policies, practices, procedures, files, records and correspondence concerning the parties' respective businesses or finances. The terms and conditions related to confidentiality in this Agreement shall survive the termination of this Agreement. Employer agrees that it shall not disclose to any other party, nor shall Employer use for its own benefit, the details or written evidence of services provided by Company hereunder without the express prior written consent of Company.

G. Force Majeure

Company shall not be deemed in default of this Agreement, nor held responsible for any cessation, interruption or delay in the performance of its obligations to provide such services hereunder due to causes beyond its reasonable control, including, but not limited to, natural disaster, act of god, labor controversy, civil disturbance, disruption of the public markets, terrorism, war or armed conflict, or the inability to obtain sufficient materials or services required in the conduct of its business, including internet access, or any change in or the adoption of any law, judgment or decree.

H. Communications

All communications provided for herein between the parties shall be sent by confirmed facsimile; by guaranteed overnight mail, with tracing capability; by first class United States mail, with postage prepaid; or by e-mail addressed to the other party at their respective addresses as set forth herein. All communications between the parties are deemed provided when sent except as otherwise set forth in this Agreement. Employer agrees that Company may communicate confidential, protected, privileged or otherwise sensitive information to Employer through a named contact designated by Employer ("Designated Person"), either below or as otherwise indicated by Employer in writing, and specifically agrees to indemnify Company and hold it harmless for any such damages or costs arising from communication to such Designated Person attempted via facsimile, mail, telephone, e-mail or any other media to the extent that Company did not breach its Standard of Care in sending the information.

I. Entire Agreement

This instrument (including documents specifically incorporated into and made a part of this Agreement by reference) embodies the whole agreement of the parties. There are no promises, terms, conditions or obligations other than those contained herein; and this Agreement shall supersede all previous communications, representations or agreements, either verbal or written, between the parties hereto. Failure by Employer or Company to insist upon strict performance of any provision of this Agreement will not modify such provision, render it unenforceable, or waive any subsequent breach. This Agreement and its subject matter shall be construed under the laws of the state of North Carolina. If any part, section, clause, or provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other part, section, clause, or provision thereof.

J. Amendments, Waivers and Modifications

This agreement may be amended only by written agreement of the duly authorized officials of Employer and Company except as otherwise set forth herein. In addition, any failure by Company to enforce a right provided for in this Agreement shall not be considered a waiver of that right unless expressly set forth as such in writing.

K. Assignment

Neither party can assign this Agreement without prior written consent from the other party.

L. Indemnification and Liability

1. Company will exercise the same reasonable care and due diligence in performing its obligations under this Agreement that a prudent administrator in the same industry would exercise (herein after, the "Standard of Care"). It shall not be a breach of the Standard of Care set forth herein if Company acts in accordance with Employer's written instructions. Furthermore, Company shall not be liable as a result of any misdelivery of any payments made hereunder so long as Company acted with ordinary care.
2. Except as otherwise provided in this Agreement, Company will indemnify and hold Employer, its officers and employees harmless against all direct monetary damages of a compensatory nature to the extent such damages are reasonably ascertainable and only to the extent that such damages are the direct and proximate result of Company's breach of the Standard of Care set forth herein.
3. Employer agrees to indemnify and hold Company, its officers, and employees harmless from and against all direct monetary damages of a compensatory nature, in connection with any action, suit, administrative proceeding or settlement related to the Company's administrative services to Employer to the extent such damages arising from or related to services provided under this Agreement are not the direct and proximate result of Company's breach of the Standard of Care set forth herein.
4. Under no circumstance will either party be liable to the other in a breach of contract claim for any incidental, consequential and/or punitive damages.

M. Termination of Agreement

1. Either party may terminate this Agreement for any reason effective no earlier than 30 days after written notice is provided to the other party. This Agreement will automatically terminate if the reason for termination is the failure by Employer to pay a fee by the due date (including any grace period), retroactively effective as of the last day of the period for which a fee was properly made in accordance with this Agreement, except as otherwise provided in writing by Company. Upon termination of the Agreement, Employer's access to Company's proprietary, web-based system shall be terminated immediately, unless the parties agree otherwise.
2. On the date the Agreement is terminated (the "Termination Date"), Company shall return to Employer all of Employer's funds held by it, less all fees and expenses due Company. If Employer's funds held by Company are not sufficient to pay all fees and expenses through the Termination Date, Employer shall pay on the Termination Date all remaining sums owed to Company. All services under this Agreement shall cease on the Termination Date. Notwithstanding the foregoing, if Employer is terminating this Agreement, termination shall not be effective until Company and Employer have each had reasonably sufficient time to act on the notice. All other services shall be deemed terminated on the Termination Date and all fees to be paid and funds to be returned with respect to the other services shall be paid or returned after a final audit.
3. If Employer breaches any of its obligations in this Agreement, or if Company's transactions on Employer's behalf are returned for any reason (including insufficient funds), then Company may terminate this Agreement and recover from Employer, in addition to all amounts owed by Employer to Company, all damages caused by Employer's breach. Employer shall promptly reimburse Company for all collection costs, including reasonable attorney's fees, which Company may incur as a result of Employer's default.