

## **SUPPLIER SERVICES AGREEMENT**

THIS SUPPLIER SERVICES AGREEMENT is entered into as of the 1<sup>st</sup> day of May, 2020 (*"Effective Date"*) by and between **Douglas Corporation** ("Douglas") and **Employer Solutions Staffing Group, LLC** ("Supplier"), in association with **Corporate Management Group**.

WHEREAS, Supplier is in the business of providing temporary placement of personnel trained in performing various services; and

WHEREAS, Douglas and Supplier desire to enter into this Agreement to govern the provision of temporary staffing service; and

WHEREAS, Douglas and Supplier intend to be the beneficiary under this Agreement with full authority to seek enforcement of any Supplier obligation hereunder.

NOW THEREFORE, in consideration of the promises and mutual agreements herein, Supplier and Douglas agree to the following terms and conditions:

### **1. IDENTIFICATION OF SERVICES**

At the request of Douglas, and in accordance with Exhibit A attached hereto, Supplier, by and through the services of Corporate Management Group, shall recruit, screen, interview, and assign its employees to perform work, under the Douglas's supervision, for the benefit of Douglas (*"Services"*). Any person Supplier assigns to Douglas pursuant to this Agreement shall be deemed a Supplier employee for purposes of this Agreement (*"Supplier Employee"*). In response to any request from Douglas for Supplier Employees, Supplier shall make good faith efforts to identify and assign qualified personnel to perform such Services under this Agreement, each such assigned Supplier Employee being subject to Douglas's approval. Supplier Employees will be assigned to perform work at a location determined solely by Douglas and based upon Douglas's needs.

Douglas shall not request, or require, or permit Supplier Employees to (i) operate any motorized vehicle or equipment or (ii) handle or be entrusted with (a) unattended premises, cash, negotiable instruments, or other valuables or (b) sensitive financial information, protected health information or personally identifiable information regulated by law, without Supplier's express prior written approval.

Douglas will supervise Supplier Employees performing its work and be responsible for its business operations, products, services, and intellectual property.

Douglas will provide Supplier Employees with a safe work site and provide appropriate information, training, and safety equipment with respect to any hazardous substances or conditions to which they may be exposed at the work site. Douglas agrees that it has primary responsibility for compliance with state and federal OSHA laws and regulations to the extent those laws apply to Supplier Employees placed through this Agreement on Douglas's worksite. Douglas further agrees to provide Supplier Employees the proper specific safety training needed to do the assigned jobs and tasks as well as to provide properly fitted and necessary personal protective equipment required to provide adequate protection to such Personnel.

Douglas will Not change Supplier Employees' job duties without Supplier's express prior written approval. Exclude Supplier Employees from Douglas's benefit plans and not make any offer or promise relating to Supplier Employees' compensation or benefits.

## **2. SERVICES GENERALLY**

Unless otherwise specifically agreed to by the parties hereto, the contemplated term of service of any particular Supplier Employee and the general nature of worked to be performed by the Supplier Employees and the qualifications shall be set forth in accordance with the requirements set forth in Exhibit A.

## **3. RATE OF COMPENSATION; CONDITIONS**

3.1 Subject to the conditions precedent set forth in Sections 3.2 and 5.1, Douglas shall compensate Supplier for the provision of such Supplier Employees at the [mark-up] agreed to by Douglas and Supplier as set forth in Exhibit A.

3.2 Except as set forth in Exhibit A, 9.0, the mark-ups for Supplier Employees set forth in this Agreement are inclusive of all Supplier costs and expenses related to personnel management, contract management, administrative support and all other costs and expenses incurred by Supplier in the performance of this Agreement, except for those costs that are to be billed separately (such as drug screening and background check costs). Unless otherwise expressly agreed in writing, Douglas shall not be obligated to pay any amounts to Supplier other than those rates as described in this Section 3, including amounts determined in any manner other than the manner set forth above.

3.3 Douglas shall be responsible for releasing payment to Supplier as set forth in Exhibit A.

## **4. COSTS AND EXPENSES**

4.1 Subject to the condition set forth in Section 5.1, Douglas shall reimburse Supplier for all actual, authorized and pre-approved out-of-pocket costs or expenses incurred by Supplier Employees arising out of or relating to the performance of the services by Supplier Employees for Douglas as set forth in Exhibit A.

4.2 Supplier shall maintain records and receipts relating to expenses incurred in connection with the Supplier Employees' services provided hereunder and shall provide Supplier access to such records upon reasonable request during normal business hours.

## **5. TERMS OF PAYMENT**

5.1 Supplier agrees that (i) approval of Supplier Employees' time and/or expenses by Douglas, and (ii) Douglas's actual payment to Supplier, are each conditions precedent to Douglas's obligation to compensate Supplier.

5.2 Douglas agrees that it will engage in commercially reasonable efforts to approve Supplier Employees' time and/or expenses within forty-eight (48) hours of such time and/or expenses being submitted and that payments for such are not unreasonably withheld. Douglas further agrees that any payments made to Supplier's invoices, less the Service Fee described in Exhibit A.

5.3 Supplier will comply with, and cause each of its Supplier Employees to comply with, Douglas's time submittal procedures for all Services performed hereunder. Supplier Employees' time will be submitted using the process described in Exhibit A.

## 6. OPTION TO HIRE SUPPLIER EMPLOYEES

Supplier hereby consents to allow Douglas to hire any Supplier Employee in accordance with the conversion provisions of Exhibit A, and in such instance shall waive any rights it may have pursuant to any restrictive covenant or non-competition agreement it may have with such Supplier Employee.

## 7. WARRANTIES AND INDEMNIFICATION

7.1 Supplier represents and warrants that (i) it has the full power and right to enter into this Agreement; (ii) it and the Services shall strictly comply with all federal, state and local laws, rules, regulations, ordinances, orders and directions (as they may be amended from time to time); (iii) it will perform all Services with qualified personnel in a high quality and workmanlike manner in accordance with this Agreement and the highest industry standards; (iv) there are no prior commitments with any third party that might interfere with its obligations hereunder; (v) Supplier and the Services will not violate, infringe, or misappropriate any right or legally protected interest of any person or entity, including any patent, copyright, trademark, trade secret or other proprietary or intellectual property right of any third party; and (vi) it has obtained all releases, permissions, and licenses necessary for Supplier to perform the Services.

7.2 Supplier shall hold harmless, indemnify and defend Douglas, their officers, directors, agents and employees ("*indemnities*") from and against all liabilities, losses, interest, damages, costs, fines, penalties, and expenses (including, without limitation, reasonable attorneys' fees awarded) threatened or claimed by any third party against, levied upon, or collected from Douglas arising out of, from, or in any way related to any (a) Supplier's breach of this Agreement (b) violation of the applicable law by Supplier or its officers, directors, employees or agents or (c) injury to persons or damage to tangible personal property caused by the negligence or willful misconduct of Supplier in its performance of the Services. In no event shall the obligations set forth herein extend to the acts or omissions of any Supplier Employees supervised by Douglas

7.3 Douglas has also agreed to hold harmless, indemnify and defend Supplier and its officers, directors, and employees from and against all liabilities, losses, interest, damages, costs, fines, penalties, and expenses (including without limitation, reasonable attorneys' fees awarded) threatened or assessed against, levied upon, or collected from Supplier arising out of, from, or in any way related to, any (a) breach of this Agreement; (b) any violations of applicable law by Douglas or its officers, directors, employees or agents; (c) injury to persons or damage to tangible personal property caused by any grossly negligent acts or omissions or willful misconduct of Douglas, its officers, directors, employees or agents; (d) the acts or omissions of Supplier Employees who are supervised by Douglas; and (e) any risks that are inherent in Douglas's business.

7.4. Neither Party shall be liable to the other in contract, tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise for any of the following losses, cost, expenses or damages, whether direct or indirect, whether caused by negligence of the other Party, its employees, agents or contractors, or otherwise, which are incurred or suffered by the other Party and which arise out of, or in connection with, the supply, non-supply or delay in supplying the services under this Agreement or otherwise arising in connection with this Agreement (including under indemnities contained in this Agreement):

- a) loss, costs, expenses or damages incurred by the other Party as a result of third party claims;
- b) loss of actual or anticipated profits;
- c) loss of business opportunity;
- d) loss of anticipated savings;
- e) loss of goodwill;
- f) loss of data;
- g) injury to reputation; or
- h) any indirect, special or consequential loss or damage, cost or expenses howsoever caused even if the other Party was advised of the possibility of them in advance.

7.5 The Indemnifying Party under this Section 7 shall have the right to select counsel subject to the reasonable consent of the Indemnified Party, which shall not be unreasonably withheld. Further, during any period of time required by the Parties to determine a Party's indemnification obligations, each Party shall bear their own costs associated with such determination and such costs shall not be subject to reimbursement.

7.6 The provisions of this section shall survive the expiration or termination of this Agreement.

## **8. REPORTS AND RECORD KEEPING**

Supplier shall keep accurate, complete and reasonably detailed records in accordance with generally accepted accounting principles in connection with its obligations arising out of this Agreement, the Services rendered hereunder, and any expenses, costs, fees or other charges invoiced to or paid by Douglas. In addition, Supplier shall use its best efforts to comply with any reporting reasonably requested by Douglas.

## **9. AUDIT RIGHTS**

Subject to Section 11, during the term of this Agreement and subject to applicable law, Douglas, or their duly authorized representative shall have access, at all reasonable times, to all of Supplier's books, documents and records (whether in hard copy, electronic or other form) associated with the Services rendered hereunder including documents detailing all amounts billed to Douglas, and Supplier Employee-related documents such as payroll documentation and any tax forms. The audit may be conducted by Douglas employees or by an external auditing firm selected by Douglas and shall be conducted at Supplier's offices. At the reasonable request and expense of Douglas, the requested records, to the extent they are available in electronic form, shall be provided to Douglas in such form at the offices of Douglas. The cost of the audit, including the cost of the auditors and other related costs, shall be paid by Douglas. However, Douglas shall have no obligation to pay any other costs incurred by Supplier in cooperating with Douglas in such audit (e.g., the wage cost of Supplier's internal employees). In the event that Douglas determines during an audit that Supplier has exceeded the agreed-upon rates for the services of any Supplier Employee who provided services to Douglas ("*Overcharged*"), Supplier shall credit or refund to Douglas the amount of such Overcharge(s) within thirty (30) days. Douglas right to audit such records shall extend beyond the term of this Agreement for a period of five (5) years (or such longer time period as may be required by law), during which period Supplier shall, at no cost to Douglas, preserve all such records.

## **10. SUPPLIER'S COVENANTS**

Supplier covenants to Douglas as follows:

Supplier shall at all times in rendering the Services comply with all applicable laws and regulations of (including the Fair Labor Standards Act, the Immigration Reform and Control Act, and all equal employment opportunity, non-discrimination, non-harassment and accommodation laws and regulations), and shall procure and maintain all licenses, permits and regulations necessary to furnish the Services.

10.1 Douglas shall use its best efforts to advise Supplier of all applicable policies and standards. Supplier and Supplier Employees shall comply with all applicable Douglas policies and standards (such as dress code) and shall carry out the Agreement and any Assignment in a manner consistent with the ethical and professional standards of Douglas.

10.2 All Supplier Employees assigned to Douglas hereunder shall be W-2 employees of Supplier and Supplier shall treat them as employees for all purposes, including employment taxes and insurance purposes, and Supplier shall provide to Douglas such Supplier Employee documents as requested by Douglas and as allowed by law to verify the employment relationship, including but not limited to Forms W-2, W-4 and/or other tax forms. Supplier may not assign any worker classified as an independent contractor on any Assignment.

10.3 Supplier does not and shall not discriminate in the referral or hiring of Supplier Employees on the basis of race, color, religion, sex, age, national origin, marital status, sexual orientation, disability or any other protected category as required by applicable federal, state and local laws.

10.4 Supplier shall be responsible at all times for compliance with all applicable immigration, labor and employment laws and regulations relating to Supplier Employees providing services to Douglas. In the event that a Supplier Employee is found to be ineligible to work in the United States, Supplier shall immediately (i) notify Douglas in writing and (ii) terminate such Supplier Employee's assignment. Supplier expressly agrees that it shall defend, indemnify and hold harmless Douglas against any and all liability incurred as a result of the unauthorized work status of any Supplier Employee. Supplier shall, from time to time and upon the request of Douglas, furnish Douglas with attestations as to the work authorization of any Supplier Employee supplied hereunder.

## 11. CONFIDENTIAL INFORMATION

During the course of performing under this Agreement, Douglas, Supplier and/or Supplier Employees may have access to information that (i) relates to Douglas's past, present, or future research, development, or business activities and any proprietary products, materials, services or technical knowledge, and (ii) is regarded as confidential by Douglas or Supplier, as applicable ("*Confidential Information*").

11.1 The Confidential Information belonging to Douglas may be used by Supplier only to assist Supplier Employees in connection with this Agreement.

11.2 The Confidential Information of Supplier, which includes personal information regarding Supplier Employees, pay rates to Supplier Employees or agreed upon bill rates/mark-ups for the services provided by Supplier's Employees, may only be used by Douglas in connection with this agreement. Douglas will protect the confidentiality of Supplier's Confidential Information in the same manner that Douglas protect their own confidential information. Access to Supplier's Confidential Information shall be restricted to Douglas. Douglas or their employees with a need to know and they shall not use on their own behalf or disclose Supplier's Confidential Information to any third party nor may Confidential Information be copied or reproduced without Supplier's prior written consent. Nothing in this Agreement shall be construed to grant to Douglas any rights or licenses to use Supplier's Confidential Information.

11.3 Supplier will protect the confidentiality of the Confidential Information in the same manner that Supplier protects its own confidential information. Access to the Confidential Information shall be restricted to Supplier and Supplier's employees with a need to know and Supplier shall not use on its own behalf or disclose Confidential Information to any third party nor may Confidential Information be copied or reproduced without Douglas's prior written consent. Nothing In this Agreement shall be construed to grant to Supplier any rights or licenses to use the Confidential Information.

11.4 Unless otherwise expressly authorized in writing by Douglas, all Confidential Information made available to Supplier including all copies thereof shall be returned to Douglas or destroyed by Supplier upon the request by Douglas and/or upon termination of this Agreement. Unless otherwise expressly authorized in writing by Supplier, all Confidential Information made available to Douglas, including all copies thereof, shall be returned to Supplier or destroyed by Douglas upon the request of Supplier and/or upon termination of this Agreement.

- a. Upon termination of this Agreement, Douglas agrees to return to Douglas, within ten (10) business days of the termination date all proprietary information belonging to Douglas including, without limitation, all materials and documentation evidencing Douglas's policies and procedures.

11.5 Supplier obligations hereunder with respect to Supplier Employees shall be to inform Supplier Employees of the terms of this provision and to require that each Supplier Employee sign a copy of the confidentiality agreement attached hereto as Exhibit B.

11.6 Douglas and Supplier shall not disclose to Supplier Employees or any third party, directly or through another party, any Information regarding the rate(s) or other terms of remuneration agreed to between Douglas and Supplier. Each party shall inform their employees that rates paid by Douglas to Supplier and rates paid by Supplier to Supplier Employees are Confidential Information for purposes of this Agreement except as provided by applicable law.

11.7 The obligations of this Section 11 shall not restrict any disclosure pursuant to any applicable law or by order of any court or government agency; provided that (i) prompt notice (and in any event prior to disclosure) is provided to the owner of the Confidential Information, (ii) the party subject to such law or order shall cooperate with the owner of the Confidential Information in lawfully resisting such disclosure or seeking suitable protections prior to such disclosure and (iii) the party subject to such law or order shall disclose only such Confidential Information as it is compelled to disclose.

11.8 Supplier shall execute any confidentiality or non-disclosure agreement required by Douglas, the provisions of which shall be in addition to, and not in place of, the provisions of this Section 11. Notwithstanding anything to the contrary contained in this Agreement, the terms and conditions of this Section 11 shall survive any termination or expiration of this Agreement and shall continue until such Confidential Information ceases to be confidential.

## **12. OWNERSHIP**

Douglas shall retain all rights in any samples, data, works, materials and intellectual and other property provided by Douglas to Supplier ("*Douglas Materials*"). All deliverables and other data, reports, works, inventions, know-how, software, improvements, designs, devices, apparatus, practices, processes, methods, products and other work product produced or acquired by Supplier, Supplier Employees, or Supplier's agents for Douglas under this Agreement (the *Work Product*) shall be deemed "works made for hire." To the extent that any of the Work Product may not, as a matter of law, be deemed a "work made for hire," Supplier hereby assigns to Douglas all right, title and interests in the Work Product. Supplier shall execute and deliver any documents and do such things as may be necessary or desirable in order to carry into effect the provisions of this Section. All Work Product shall be deemed Douglas's Confidential Information.

## **13. INSURANCE**

During the term of this Agreement, Supplier shall maintain all insurance required by law or by this Agreement and Exhibit A.

## **14. TERM**

This Agreement shall be effective as of May 24, 2020, and all of the terms and conditions of this Agreement shall remain in full force and effect unless otherwise terminated in accordance with the provisions of Section 15 of this Agreement.

## **15. TERMINATION**

15.1 Breach. Either party may, upon giving thirty (30) days' written notice identifying specifically the basis for such notice, terminate the applicable Assignment (and not any other Assignment) issued under this Agreement for breach of a material term or condition of this Agreement, provided the other party has not cured such breach within the thirty (30) day notice period.

15.2 Convenience of Douglas. Douglas may at any time and without cause terminate this Agreement or any Assignment issued under this Agreement upon written notice to Supplier, and such termination shall become effective immediately upon receipt of such notice or at such other time as Douglas may specify in such notice. Notice of such termination via e-mail shall be considered an acceptable form of written notice to Supplier.

15.3 Convenience of Supplier. Supplier may at any time and without cause terminate this Agreement or any Assignment issued under this Agreement upon giving thirty (30) days' written notice to Douglas. Notice of such termination via e-mail shall be considered an acceptable form of written notice.

15.4 Termination of Douglas's Agreement with Douglas. Unless this Supplier Services Agreement is assigned to Douglas, this Supplier Services Agreement will automatically terminate, in the event Douglas's Agreement with the Douglas terminates.

15.4 Effect of Termination. In the event any Assignment is terminated, and subject to Section 5.1 above, Supplier shall be entitled to payment of all fees and reimbursement of expenses owed to Supplier for Services performed under the applicable Assignment that were incurred prior to the effective date of such termination. Upon receipt of notice of termination of any Assignment for any reason, Supplier will promptly curtail all Services provided under the applicable Assignment in an orderly fashion and Supplier Employees shall promptly provide to Douglas, without cost, all Work Product and other deliverables developed by Supplier Employees under this Agreement, all materials provided to Supplier by Douglas in connection with this Agreement, and all other Confidential Information of Douglas.

15.5 Transition of Supplier Employees. In the event that this Agreement is terminated under Sections 15.1 or 15.3, Douglas shall have the right to transition any or all of Supplier's Employees to another provider without charge to either Douglas. Such transition shall occur over a period of not less than thirty (30) days from the date the Agreement is terminated. Should Douglas terminate this Agreement pursuant to Section 15.2, no transition of Supplier's Employees shall be permitted unless Douglas pays to Supplier a transition fee.

## **16. SUPPLIER EMPLOYEES**

16.1. Supplier Employees shall be employees of Supplier. During the term of this Agreement, Supplier shall be responsible for: (i) paying all wages and other compensation to Supplier Employees; (ii) withholding and payment of federal and state individual income tax, FICA, FUTA, and other taxes and applicable amounts with respect to payments made to Supplier Employees; (iii) providing all insurance and other employment related benefits to Supplier Employees; (iv) complying with all applicable provisions of the Patient Protection and Affordable Care Act; (v) making overtime payments to supplier Employees as required by applicable law; (vi) negotiation of pay rates and other terms and conditions of employment with Supplier Employees; and (vii) any discipline, termination or promotion of Supplier Employees. Supplier Employees shall be instructed that all problems, concerns or complaints that a Supplier Employee may have about an Assignment should be directed to Supplier and not to Douglas.

16.2 Supplier agrees that neither it nor Supplier Employees shall have the any right, power or authority to create any obligation, express or implied, or to make representations on behalf of Douglas and Supplier and Supplier Employees shall not hold themselves out as having any right, power or authority to create any obligation, express or Implied, or to make representations on behalf of Douglas.

## **17. LIABILITY LIMITS**

17.1 In no event shall Douglas be liable for consequential, special, indirect, incidental or punitive losses, damages or expenses of Douglas or Supplier, as the case may be, resulting from use of any Services or otherwise arising under or in connection with this Agreement, regardless of how such losses, damages or expenses arise and irrespective of whether or not it has been advised of the possibility of such losses, damages or expenses.

17.2 Douglas shall not be liable to the other for non-performance or delay in performance caused by any events or matters beyond its reasonable control, including without limitation, acts of God, Acts of government, war, strikes, lockouts or embargoes.

## **18. GENERAL**

18.1 Notices. Any notice expressly required pursuant to the provisions of this Agreement shall be in writing and shall be effective either when delivered personally to the party for whom it is intended, or five (5) days following deposit of same into the United States mail (certified mail, return receipt requested, or first class postage prepaid), addressed to such party at the address set forth below. Either party may designate a different address or contact by notice to the other given in accordance herewith.

If to Douglas:

Douglas Corporation  
9650 Valley View Road  
Eden Prairie, MN 55344  
[Tim.olson@douglascorp.com](mailto:Tim.olson@douglascorp.com)  
[Ron.anderson@douglascorp.com](mailto:Ron.anderson@douglascorp.com)  
952-941-2944

If to Supplier:

Corporate Management Group  
Matt Forss, President  
Office 303-920-1425  
Toll Free 866-920-1425  
Cell 303-748-4651  
Fax 303-736-7767

18.2 Waiver. No waiver or modification of any right or remedy under this Agreement or any provision hereof shall be effective unless it is stated in writing and signed by the party against whom enforcement is sought. Failure, neglect, or delay by a party to enforce the provisions of this Agreement or its rights or remedies at any time will not be construed or deemed to be a waiver or release and will not in any way affect the validity of the whole or any part of this Agreement or prejudice such party's right to take subsequent action. No effective waiver of any right, remedy or provision of this Agreement shall be deemed a waiver of any other.

18.3 Severability. If any term or provision of this Agreement shall be found by a court of competent jurisdiction to be invalid, illegal or otherwise unenforceable, the same shall not affect the other terms or provisions hereof or the whole of this Agreement, but such term or provision shall be deemed modified to the extent necessary in the court's opinion to render such term or provision enforceable, and the rights and obligations of the parties shall be construed and enforced accordingly, preserving to the fullest permissible extent the intent and agreements of the parties herein set forth.

18.4 Publicity. Supplier shall not issue or sponsor any advertising or publicity that states or implies, either directly or indirectly that Douglas endorses, recommends or prefers Supplier's services. Supplier shall not use Douglas's logos in any fashion without Douglas's (as applicable) prior written approval which Douglas may withhold in its sole discretion.

18.5 Disputes. The parties agree that in the event of a dispute or alleged breach of this Agreement or any obligation hereunder they will work together in good faith to resolve the matter internally by escalating it to higher levels of management and, if necessary, to use a mutually agreed upon alternative dispute resolution mechanism (other than arbitration) prior to resort to litigation.

The parties agree that in the event of a dispute or alleged breach of this Agreement or any obligation hereunder they will work together in good faith to resolve the matter internally by escalating it to higher levels of management and, if necessary, to use a mutually agreed upon dispute resolution mechanism. In the event that the dispute remains unresolved, either party may make a demand for arbitration to [arbitration service] and such arbitration shall be governed by [arbitration service's commercial dispute rules and procedures].

18.6 Non-assignability. This Agreement is not assignable by Supplier without the prior written consent of Douglas.

18.7 Governing Law and Forum Selection. All questions arising under or in connection with this Agreement shall be determined by the substantive law of the State of Minnesota. Any disputes arising under this Agreement that must be resolved through litigation must be brought in the state or federal courts located in Minnesota and the parties hereby waive any defense to the jurisdiction of such courts based upon lack of personal jurisdiction or inconvenient forum.

18.8 **Non-Exclusive Arrangement and No Guarantee.** Supplier acknowledges and agrees that this is a non-exclusive arrangement and Douglas shall be free to contract with other parties for the provision of services to Douglas. Supplier further acknowledges and agrees that Douglas makes no representation or promise to Supplier regarding the amount of business or profits Supplier can expect under this Agreement or that its services will be used at all.

18.9 **Complete Agreement.** This Agreement and Exhibits set forth the final and entire intent and understanding of the parties hereto on the subject matter hereof and supersedes any other agreements or understandings regarding the Services. This Agreement may not be modified or amended except by the mutual written agreement of the parties.

18.10 **Enforcement.** The parties hereto acknowledge that a party hereto ("**Injured Party**") may suffer irreparable damage resulting from the other party's breach of its obligations hereunder and that such damage cannot be adequately compensated in monetary damages alone. Accordingly, an Injured Party shall be entitled, in addition to all other remedies which may be available to it (including monetary damages), to specific performance, injunctive relief and other available equitable relief in any state or federal court located in Minnesota to prevent or otherwise restrain or terminate any actual or threatened breach, default or violation by the other party of any provision of this Agreement or to enforce any such provision.

18.11 **Intended Third Party Beneficiary.** Douglas is an intended third-party beneficiary under this Agreement. No person, other than the parties hereto and Douglas, has any rights or remedies hereunder. The parties hereto reserve the power to modify or terminate this Agreement without the consent of Douglas; provided, however, that the parties shall provide Douglas with at least sixty (60) days' prior written notice of any modification that may reasonably be expected to materially and adversely affect Douglas's interests hereunder.

Each intending to be bound to the other, Douglas and Supplier have caused this Agreement to be executed by their duly authorized representatives as of the Effective Date.

Employer Solutions Staffing Group, LLC

By: 

Title: Chris Levine

Date: 5-7-20

Douglas Corporation

By: Tim Olson

Title: Director of Materials

Date: 

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**EXHIBIT A**

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1. Douglas will submit on-line requisitions for services of Supplier Employees ("Requisitions") requesting candidate submissions from all or specific supplier(s). The Requisitions will be distributed to the vendors electronically.
2. Upon receipt of candidate submissions from vendors responsive to the Requisitions, Douglas will review. Douglas may then, at its option, submit orders, which may be issued electronically to a specific vendor for the selected individual Supplier Employee.
3. Supplier shall respond to Requisitions, as It deems appropriate.
4. Supplier shall comply with all of the reasonable requirements and procedures.
5. Without limiting the foregoing, Supplier and Douglas will cooperate so that Douglas may provide the following:
  - (a) Douglas will serve as a resource to the Supplier by, among other things, assisting in the completion and review of Requisitions, posting Requisitions to suppliers, reviewing and evaluating candidate resumes at Douglas's request, forwarding resumes to hiring managers for review, scheduling Interviews at Douglas's request, providing feedback and interfacing with Douglas and suppliers throughout the acquisition process.
  - (b) Upon receipt of a Requisition, Supplier may submit one or more candidate through the Application within a time frame to be specified by Douglas. Prior to the submission of a candidate in response to a Requisition, Supplier shall take reasonable steps to independently confirm: (i) that candidate meets the qualifications as set forth in the Requisition; (ii) that candidate has good references; (iii) that candidate is available; and (iv) that the information provided by Supplier for such candidate is complete, accurate and up- to-date. Supplier shall comply with all background check requirements set forth in the Supplier Services Agreement.

Supplier will comply with the on-boarding procedures communicated to Supplier by Douglas with respect to all Supplier Employees.

- (c) Supplier will develop, in conjunction with Douglas, performance metrics for the Supplier, and will communicate metrics and objectives to Supplier, and track and report to Douglas on Supplier's performance on a regular basis. Douglas will also be conducting periodic reviews at least annually with Supplier on its performance.
- (d) Douglas will coordinate all interactions between Supplier hiring managers concerning Supplier Employees, including but not limited to pay rate issues, time reporting issues, performance issues, terminations and job extensions or completion.
- (e) Douglas also will communicate on a regular basis with Supplier regarding any issues or failures to comply with the requirements in the Supplier Services Agreement and/or this Exhibit A.
- (f) Douglas may cancel, without charge, any request for placement of Personnel by providing written notice (including by e-mail or as agreed upon such, by phone call) to Douglas at least four (4) hours prior to the time at which such Personnel was/were scheduled to begin providing services.

- (j) Douglas cancels a request for Personnel on less than four (4) hours' notice, Douglas agrees that a late-cancellation fee of four (4) hours of service for each Personnel who was cancelled late shall be charged. Douglas shall add the late-cancellation fee to the next invoice following the late cancellation and shall specify on the invoice the date of the late cancellation, the Personnel who was/were cancelled late and the amount of the late- cancellation fee.
- (k) If Douglas cancels a request for Personnel on less than four (4) hours' notice, and the Personnel nevertheless arrives at the assignment location, Douglas may utilize the services of such Personnel for all or part of a shift and be invoiced for the actual hours worked or send the Personnel home and be invoiced for four (4) hours of service as described above, whichever is greater.
- (l) If Douglas cancels a request for Personnel on four (4) hours or more notice, but the Personnel nevertheless arrive(s) at Douglas's location, Douglas shall not be responsible for any charges associated with the cancelled request for such Personnel unless Douglas chooses to utilize the Personnel for all or part of a shift in which case Douglas will be invoiced for actual hours worked.
- (m) Cancellations due to acts of God or facility closings are not subject to cancellation penalties above.
- (n) Douglas will be responsible for documenting all Personnel who have been removed from the Douglas for performance concerns and/or policy violations. Personnel who have been removed will be considered as Do Not Assign (DNA) and should not be assigned to any Douglas location in the future.

#### 6. Time Reporting and Invoicing

- (a) Supplier will require Supplier Employees performing services for Douglas to report their time worked to Douglas through Douglas's timekeeping system. These timecards will be electronically routed to the appropriate hiring manager or other approving authority of Douglas for approval. To be included in the weekly reporting cycle (which is Monday through Sunday), Supplier Employees must input their time into the Douglas's timekeeping system on a daily basis. Time reported for the subject week after noon ET on Monday will not be included in current cycle. Supplier is solely responsible for verifying that Supplier Employees have input complete and accurate information regarding their time into the Application within the required time period. Timecards will not be processed for payment until complete. Supplier acknowledges and agrees that time entered more than ninety (90) days after the services were rendered, for whatever reason, will not be approved by Douglas or paid except when agreed to by Douglas. The approved time record will generate a Supplier invoice to Douglas based on the hours submitted and approved and the bill rates in the Application for Supplier Employees. The Douglas approved time record will serve as Supplier's only invoice to Douglas for services provided hereunder.

#### 7. Payment of Invoices

- (a) Douglas will generate a periodic electronic invoice (the "Periodic invoice") that will consist of: (a) the time records/expenses that have been entered in the Application by Supplier Employees and approved by Douglas; and (b) expense reports that have been manually submitted by Supplier and have been approved by Douglas. Supplier acknowledges and agrees that it will not submit nor will Douglas invoice Douglas for expenses that exceed levels agreed upon in the Supplier Services Agreement. Douglas's agreement with Douglas requires that Periodic Invoices be submitted to Douglas on a weekly basis. Douglas agrees to notify Supplier in the event that Periodic Invoices are submitted to Douglas any less frequently than on a weekly basis.
- (b) Supplier will be paid by Douglas on behalf of Douglas within ten (10) business days of Douglas's receipt of payment from the Douglas for such services.

- (c) Supplier acknowledges and agrees that it is entitled to compensation only for services and expenses hereunder to the extent that Douglas has received payment from Douglas for same. Supplier further acknowledges and agrees that if the Douglas refuses or fails to pay Douglas for Supplier's services or expenses, Douglas shall have no liability whatsoever provided that Douglas's refusal or failure is not due to Douglas's negligence, willful misconduct or breach of its obligations under the Douglas's agreement with the Supplier. Upon written demand from Douglas, Supplier will refund to Douglas any payments previously made for the hours or expenses for which: (i) Douglas demands a refund from Douglas based on Supplier's breach of any terms or conditions of the Supplier Services Agreement or this Exhibit A, for which Supplier shall have been provided thirty (30) days' notice and an opportunity to cure, if such breach is curable; and/or (ii) Douglas refunds amounts claimed to be preferential payments made by the Douglas bankruptcy.
- (d) Douglas may set off against any and all amounts otherwise to be paid to Supplier hereunder against any and all amounts claimed in good faith to be owed to Douglas by Supplier under this Exhibit A or under the Supplier Services Agreement provided that Douglas gives Supplier prior written notice, which notice may be via email.
- (e) If Douglas fails to pay Supplier for any services, Supplier may pursue a claim against Douglas for any and all remedies available to it under the law as to such amounts actually paid to Douglas.
- (f) Douglas will assist in resolving any time reporting and billing issues between Supplier.

#### 8. Insurance Requirements.

Supplier shall maintain for itself and on behalf of each of their Personnel providing Services hereunder the insurance detailed in this Section 6.

(a) Workers' Compensation and Employer's Liability Insurance, as prescribed by applicable laws of the state of operation. Supplier shall obtain a legal endorsement on Form WC 22 03 06. Supplier shall provide a copy of this endorsement to Douglas. Douglas and Supplier may maintain employer's liability insurance under to the extent permitted under applicable law. Insurance Service Office (ISO) for CG 20 26 or its equivalent, shall be used to provide additional Insured status.

(b) Commercial General Liability (Bodily Injury and Property Damage) Insurance, including contractual liability covering liabilities assumed under this contract. The policy limits shall be the aggregate limits of Supplier applicable primary, excess and umbrella policies and not be less than One Million USD (\$1,000,000) per occurrence and Two Million USD aggregate (\$2,000,000).

(c) Automobile Bodily Injury and Property Damage Liability Insurance, extending to owned, non-owned and hired automobiles used in the performance of this Agreement. The policy limits of such Insurance shall be the aggregate limits of Suppliers' applicable primary, excess and umbrella policies but not less than those required by applicable law nor less than One Million USD (\$1,000,000) combined single limit per occurrence.

(d) Umbrella or Excess Liability Insurance, with coverage at One Million USD (\$1,000,000).

(d) Policy Endorsements. The insurance required of Suppliers under this Section shall include a requirement that the insurers provide Douglas thirty (30) days' written notice prior to the effective date of any cancellation or material changes of the insurance.

(e) Evidence of Insurance. Before commencing performance of this Agreement, Supplier shall provide Douglas with certificates or other documentary evidence satisfactory to Douglas of insurance and endorsements set forth in this Section. Acceptance of any such certificate shall not constitute a waiver, release, or modification of any of the insurance coverage and endorsements.

(f) Additional Insured. Supplier shall name both Douglas as additional Insured parties on all insurance policies or coverage obtained pursuant to, or required by, this Agreement which permit additional insured endorsements.

9. Affordable care Act.

In accordance with applicable law, Supplier shall be responsible to compensate their Personnel for any wages and benefits and to make any and all deductions required by law and to withhold and remit all mandated taxes. Affiliates and/or Suppliers shall maintain worker's compensation insurance covering all Personnel and will maintain general liability insurance and unemployment insurance, and any other insurance required by law, this Agreement or the SOW, including but not limited to any compliant health care insurance required by the Patient Protection and Affordable Care Act ("ACA"). With respect to the ACA, and to the extent that health care insurance is provided to their Personnel, Affiliates and Suppliers shall be permitted to charge to Douglas \$1.00 per month for each Personnel provided by Affiliates and/or Suppliers that uses the insurance, and such charges will be indicated by a separate line item on Douglas's invoice(s).

9.1 Supplier shall be solely responsible for, and shall reimburse, indemnify, and hold harmless. Douglas (hereafter collectively referred to as "Douglas Indemnity") for, any taxes, penalties, or other liabilities assessed against Affiliates and/or Suppliers under Code §4980H with respect to Assigned Employees due to Supplier's failure to:

- a. Offer "minimum essential coverage" under an "eligible employer- sponsored plan" each within the meaning of Code §SO00A(f)(l)(B); or
- b. Offer coverage that is not "affordable" or fails to provide "minimum value," each within the meaning of Code §36B(c)(2)(C) and §4980H(b) and related regulations.

Provided, however, that in no event shall Douglas Indemnity extend to any taxes, penalties, or other liabilities under the under Code §4980H where such tax, penalty, or other liability results from the imposition of penalties under (i) Code §4980H(a), as a result of the failure by Douglas to make offers of minimum essential coverage to its employees under an eligible employer-sponsored plan, or (ii) Code §4980H(b) as a result of Douglas's making an offer of minimum essential coverage to its employees under an eligible employer-sponsored plan that is either unaffordable or fails to provide minimum value.

9.2 Although the parties intend that Affiliates and/or Suppliers and not Douglas be deemed the common law employer (within the meaning of Treas. Reg. § 31.3401(c)-1(c)) of Personnel and that such employees be deemed the common law employees of Affiliates and/or Suppliers and not Douglas, the parties nevertheless intend to satisfy the requirements of Treas. Reg. § 54.4980H-4(b)(2), under which an offer of group health plan coverage made by Affiliates and/or Suppliers is treated as an offer of coverage by Douglas for all purposes of Code§ 4980H, provided that certain criteria are satisfied. Accordingly, Douglas agrees to pay Supplier, an additional fee as identified in 7.0, a fee per month for every employee placed with Douglas by Affiliates and/or Suppliers, who take the coverage offered, to cover the expense of administering and the group health plan health coverage offered by Affiliates and/or Suppliers.

## 10 Douglas's Right to Hire Personnel

10.1 Douglas may hire or transfer Light Industrial Personnel to the payroll of another staffing provider (whether an Affiliate or Supplier under this Agreement or another staffing provider operating outside the Program any Personnel supplied by Affiliates/Suppliers with no additional fee provided the Personnel to be hired has completed at least 480 (four hundred eighty) hours of service with Douglas within any 12 consecutive month period. For each Personnel who has worked less than 480 (four hundred eighty) hours of service within any 12 consecutive month period for Supplier, Douglas shall pay to Supplier a fee of twenty percent (20%) of the starting salary (or its equivalent) if Personnel are hired from 0 through 300 hours worked and invoiced at the amount often percent (10%) of the starting salary if hired from 301-480 hours worked and invoiced.

## 11 Mark-up Rates

1.40 markup on all positions, minus .03 for Douglas administration fees

## 12. Pre-Assignment Screening

12.1 At this time, Douglas does not require any background checks or drug testing.

12.2 Supplier warrants all Personnel have been verified through E-verify.

12.3 Supplier warrants all Personnel are 18 years of age or older.

## 13. Supplier Contact with Douglas

Supplier and Supplier employees including Personnel will be prohibited from contacting Douglas employees unless approved by Douglas or Douglas management in advance. All questions should be directed to Douglas on-site staff.

## 14. Quality Meetings

Douglas will meet with Suppliers in the Program on a regular basis to discuss their performance and feedback of being in the Program.

## 15. Quality Surveys

a. Douglas will survey Suppliers no less than a quarterly basis to measure their satisfaction of the Program.

## 16. Audits

Douglas will be responsible for auditing all Suppliers and their Personnel on a regular basis to ensure all pre-screening has been properly executed and documented. Suppliers that fail to meet the expectations outlined in Attachment A Section 10 will be disciplined up to, and including, suspension from the Program.

## 17. Orientations

Douglas will conduct a structured orientation with all Personnel assigned to perform services under this Agreement, including the following, before they begin their assignment:

- a. Personnel will receive "Right To Know" training and Douglas will have provide appropriate documentation on where to find mandated materials.
- b. Personnel will receive Harassment Training that is made available by Douglas.
- c. Personnel will be required to pass Douglas visiontesting.
- d. Personnel will receive detailed information on parking requirements.
- e. Personnel will be set-up in timekeeping system.
- f. Personnel will review Douglas Code of Conduct.
- g. Personnel will be evaluated for specific jobs assignments at Douglas.
- h. Personnel will be escorted to and introduced to their supervisor.
- i. Personnel will be given a tour of the Douglas plant.
- j. Personnel will review the accountability expectations for the Douglas department they are being assigned to.
- k. Personnel will review all personal protective equipment (PPE) required for the Douglas department they are being assigned to.

## 18. Check-in of Personnel

Douglas will be responsible for checking in all Personnel on a daily basis and ensuring all Personnel entered into Douglas's timekeeping system are present.

EXHIBIT B

**DOUGLAS CORPORATION CONFIDENTIALITY AGREEMENT**

We are pleased to have an opportunity to work with you. However, our uncompleted products, processes and design details disclosed to you or available to you through your review are proprietary to Douglas Corporation ("Douglas") and of a secret and confidential nature (the "Confidential Information"). This Confidential Information, which is of considerable value to us in our business operations, will retain that value only if it remains secret and confidential. You agree that this Confidential Information is disclosed to you as part of our working relationship.

Therefore, you agree that:

1. You will not disclose, discuss, disseminate or use, directly or indirectly, at any time, any of the Confidential Information that you may learn or be exposed to concerning any products produced by Douglas which are in your custody at any stage in their manufacture.
2. You agree not to disclose any of the Confidential Information or show or give anyone our products that come into your possession except for persons employed by \_\_\_\_\_ who have a need to know the information or see the product for the purpose it was given to you, and whom you will cause to agree to the terms of this Agreement. You further agree to return all copies and leftover parts to Douglas upon completion of the work relationship.
3. You acknowledge that the information and material furnished to you may be the subject of patent, trademark, copyright, trade secret or other proprietary protection.
4. The above commitments of secrecy, non-disclosure and non-use, however, shall not extend to any Confidential Information:
  - a. Which was already legally in your possession as established by existing documentation, before receipt from Douglas;
  - b. Which is now or hereafter becomes generally available to the public on a non-confidential basis through no fault or action or failure to act on your part; or
  - c. Which is disclosed to you by a third party having a bona-fide right to make such disclosure.

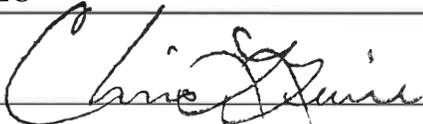
We are willing to allow you access to our Confidential Information only upon condition that and in consideration of your abiding by the provisions set forth above.

I have read, understand, and agree to abide by the above provisions.

COMPANY: Employer Solutions Staffing Group, LLC

PRINT NAME: Chris Levine

TITLE: CEO

SIGNATURE: 

DATE: 5-7-20