

**Updated: October 12, 2022**

These Client Service Agreement Terms & Conditions, together with all Annexes, are incorporated into, and form a part of, your Client Service Agreement and are referred to as the “**Terms & Conditions**”. We refer to the combination of the Client Service Agreement, the Specific Terms Addressing Applicable Laws (“**Applicable Law Terms**”), these Terms & Conditions, and any Exhibits and Schedules as this “**Agreement**”. Terms used and not defined in these Terms & Conditions shall have the meanings ascribed to such terms in the Client Service Agreement. We will be an employer of Staff for the purposes of our employer-related responsibilities that we have specifically described in Section 2.A. below.

**1. Personnel and Client Profile.** You acknowledge that we are relying on the information provided in your Confidential Business Profile, New Client Risk Review Questionnaire, and other client profile documents requested by us, and you represent and warrant to us that the information contained in those materials was complete, true, and accurate when made and will be complete, true, and accurate as of the Effective Date. Further, you represent and warrant to us that the information contained in your Schedule A is complete, true and accurate when made and will be complete, true, and accurate as of the Effective Date and you agree to amend your Schedule A by reporting to us each change in pay rate, addition or deletion of Staff, material change in employment status, change in Staff residence, change in Staff workers’ compensation codes, or correction of any inaccuracy within five (5) business days of such change, addition, deletion or correction. The submission or approval of your periodic payroll reports containing such changes, if any, automatically updates your Schedule A.

**2. Responsibilities for Staff Administration and Your Business.**

**A.** In addition to providing the Services set forth in the Client Service Agreement, we are also responsible for the following in connection with Staff administration:

- i. Maintenance of our records and documents;
- ii. Our own compliance with all employment Laws, including Title VII of the 1964 Civil Rights Act; Age Discrimination in Employment Act (“**ADEA**”); Title I of the Americans with Disabilities Act (“**ADA**”); 42 U.S.C. § 1981; and § 503 of the Rehabilitation Act of 1973;
- iii. Our own compliance with the Immigration Reform and Control Act of 1986 (“**IRCA**”), including obtaining and maintaining Form I-9 for Staff;
- iv. Our own compliance with all personnel management policies and procedures that we maintain; and
- v. Compliance with Laws governing the licensure, registration or certification of a professional employer organization (“**PEO**”).

**B.** Your responsibilities and obligations in operating your business are not changed by your relationship with us or this Agreement. As such, you agree that you will control, determine, and remain solely responsible for all duties not specifically allocated to us in this Agreement and all other aspects of your business and Staff, including:

- i. The operation of your business and websites; services provided or products produced by you; operation of any equipment or motor vehicles; compliance with all business licensure and other Laws for your business; any professional licensing, fidelity bonding, and/or professional liability insurance requirements; and development of policies and practices related to your business operations;

ii. Your direction and control over Staff, including a right to hire or terminate as to your employment relationship;

iii. The National Labor Relations Act (“**NLRA**”) and any related Laws as well as liability for all obligations of either party, including organizing efforts and expenses related to the formation of collective bargaining agreements (“**CBA**”) and issues or grievances arising under the CBA covering Staff and any benefits arising from such agreements;

iv. Your own compliance with all employment-related Laws, including Title VII of the 1964 Civil Rights Act; ADEA; ADA; Consumer Credit Protection Act, Title III; Fair Credit Reporting Act (“**FCRA**”) (including Laws governing criminal background inquiries and use of credit checks); 42 U.S.C. § 1981; § 503 of the Rehabilitation Act of 1973; Family and Medical Leave Act (“**FMLA**”); the Consumer Product Safety Improvement Act; and updating employment notices to Staff upon permanent change in work location;

v. Your own compliance with all immigration Laws including IRCA; cooperation with us in obtaining and maintaining Form I-9 for Staff; and obtaining work-visas for Staff, if necessary;

vi. Compliance with all wage, hour, payday, paid leave, and related Laws governing the payment of your employees, including regarding Owed Wages (as defined in Section 10.A. below), the Worker Adjustment and Retraining Notification Act (“**WARN**”), Fair Labor Standards Act (“**FLSA**”) (including overtime exemption classification and accurate tracking and reporting of hours worked by non-exempt employees for payroll purposes), Equal Pay Act, the Uniformed Services Employment and Reemployment Rights Act, and local and municipal tax laws and obligations that are not collected or funded through withholding of wages or payments processed through us; and ensuring that paid sick leave balances and usage are reported to Staff in compliance with Laws governing employee paycheck statements;

vii. Payment and reporting of any non-qualified deferred compensation or excess parachute payments of any type, whether actual or imputed for tax purposes, and compliance with Laws governing such compensation;

viii. Payment, delivery, transfer, and reporting of equity-based compensation of any type, whether actual or imputed for tax purposes, and compliance with all Laws governing such compensation, provided that, following our review and consent, we may agree to pay, process and report such compensation;

ix. Compliance with all Laws governing benefits plans sponsored by you, including the Health Insurance Portability and Accountability Act (“**HIPAA**”), Health Information Technology for Economic and Clinical Health Act, and Employee Retirement Income Security Act (“**ERISA**”);

x. Compliance with governmental contracting Laws and reporting requirements applicable to your business;

xi. Compliance with personnel management and benefit plan administrative policies and procedures that are maintained by us and have been made available to you;

xii. Payment of commission-based pay, bonuses (including retention bonuses), vacation or paid time off, paid leave of absence, sick pay, incentive pay, separation pay, severance payment and similar compensation or reimbursement of work- or business-related expenses (“**Additional Payments**”), which may be processed through us subject to our review and approval; and

xiii. Compliance with all requirements of a tax credit, economic business status or certificate, or economic incentive program (“**Governmental Incentive**”) in which you participate or for which you apply.

### 3. **Employment Relationships & Supervision.**

A. Any rights we have with respect to Staff do not affect your separate and independent right of direction and control over Staff or your right to terminate Staff from your employment. You will direct and control the job-functions of Staff.

B. In addition, our separate employment agreement with Staff, and the status of our co-employment relationship with Staff, will not amend, replace or otherwise affect any current or future employment contract or other relationship any Staff may have with you.

C. Only as to our separate employment relationship with Staff, we reserve a right of direction and control over Staff, including a right to hire, refuse to hire, or terminate, after notice or consultation with you. We reserve a right to resolve Staff complaints reported to us that are not subject to resolution under a CBA.

D. Employment of any Staff by us is contingent on their current status as your employee. Our separate employment relationship with Staff terminates automatically if (i) his or her employment with you terminates for any reason; (ii) we or Staff exercise our respective rights to terminate our separate employment relationship; or (iii) this Agreement terminates for any reason.

E. Upon termination of this Agreement, we will send Staff employment termination notices terminating our relationship with Staff, which will not affect your employment of Staff. You will retain sole responsibility and liability, if any, for all accumulated unpaid wages, sick leave, paid time off, vacation or similar liabilities for Staff.

F. After consulting with you, we may designate at least one on-site supervisor from among Staff. If we fail to designate any onsite supervisor or if for any reason an onsite supervisor is no longer associated with you, your chief executive officer shall serve as the on-site supervisor until a replacement is designated. On-site supervisors can serve as our primary contact for facilitating our Services.

G. You agree that, although we are establishing a limited and separate “co-employment” relationship with Staff, we are not “joint employers,” “dual employers,” or “correcting, creating, controlling or exposing employers” with you as those terms are used by Occupational Safety and Health Administration (“**OSHA**”) or other various governmental agencies, courts, and Laws.

H. We agree and acknowledge that you retain exclusive ownership of your preexisting, later developed, or enhanced intellectual property created by you or Staff. We will not acquire any right, title, or interest to such intellectual property and no transfer or assignment of your intellectual property or rights will occur by virtue of entering into the co-employment relationship. To the extent any such intellectual property right is considered to vest in us by operation of law, we will acknowledge, execute, and deliver to you sufficient instruments of assignment and transfer as may reasonably be requested in writing by you, your successors, or your assigns to vest in you (or your successors or assigns) all rights, title, and interest in and to such intellectual property. For the avoidance of doubt, this [Section 3.H.](#) does not apply to the extent we enter into a separate agreement with you under which you provide services to us.

I. You agree and acknowledge that Staff may enter into a Mutual Arbitration Agreement with you and us, and you expressly agree and authorize us to promulgate the Mutual Arbitration Agreement to Staff.

### 4. **Safety & Work Environment.**

A. This Agreement does not alter your responsibilities and obligations with regards to the safety of your premises, equipment (including motor vehicles), worksites, or operations. Although we may provide loss prevention services to help reduce workplace injuries and illnesses to Staff in connection with our workers’ compensation program for Staff, you agree, at your sole expense and as your sole responsibility, to (i) comply with all health and safety Laws applicable to your premises, equipment, worksites, and operations, including OSHA, Environmental Protection Agency regulations, and any state or local equivalent Laws of the foregoing; (ii) ensure use of all necessary personal protective equipment; and (iii) follow all recommendations concerning a safe work environment for Staff suggested to you by us or our workers’ compensation insurance carrier. Given that we have no control over your worksite operations, any loss prevention services provided by us are only advisory and no result is guaranteed or assured. We assume no obligations or responsibilities with regard to the safety of your premises, equipment, worksites, or operations with respect to anyone else, including your vendors, contractors, employees who are not Staff, business invitees, or any other third party.

Any and all loss prevention services we provide in connection with our workers’ compensation program are for your benefit with respect to Staff only and not with respect to non-Staff or other third parties. To the extent that any loss prevention services we provide become accessible to non-Staff or other third parties, we assume no obligation or duty, express or implied, related to non-Staff or other third parties.

B. You agree to promptly report to us, or our designee, all work-related accidents and injuries involving Staff, and report accidents, injuries, and deaths to the applicable regulating agencies to the extent required by Law.

C. You agree to provide us and our workers’ compensation insurance carrier access to the sites at which Staff work for the purpose of reviewing compliance with this Agreement and not for the purpose of controlling or directing any aspect of the workplace. If possible, access will be scheduled at convenient times. You are solely responsible for identifying and eliminating all workplace threats to Staff’s health and safety.

**5. Your Contractors, Subcontractors, and Independent Contractors.**

You agree that all of your contractors (including subcontractors and independent contractors) will maintain workers' compensation insurance coverage, or you agree to obtain separate workers' compensation coverage for such contractors. You agree to keep certificates of insurance documenting this coverage on file and provide them to us upon request. You acknowledge and agree that our workers' compensation insurance maintained for Staff is not intended to provide coverage to your contractors. You agree that you are solely responsible for complying with all Laws regarding your contractors.

**6. Insurance.**

**A. Workers' Compensation Insurance for Staff.** We will maintain workers' compensation insurance covering Staff which will include coverage for all your officers, executives, and any of your equity owners co-employed by us, and such coverage will conform to applicable Laws. You will be named as an alternate employer on the policy. Upon request, we will furnish a certificate of insurance verifying the coverage. The policy will include a waiver of subrogation.

**B. Employment Practices Liability Insurance ("EPLI").** We will maintain EPLI with coverage for you, subject to the terms and conditions as set forth in the policy.

i. The EPLI policy provides for a deductible and a maximum coverage amount. You agree to pay all costs, fees, and expenses, including costs related to arbitration, within the deductible for covered claims, and agree to reimburse us for any amounts paid by us within your deductible. Coverage will be determined by the insurance carrier upon notice of a claim. In the event that we determine, in our sole discretion, that you may be unable to pay the entire amount of the policy deductible and/or this Agreement terminates for any reason during the pendency of a covered claim, we may request, and you agree to pay, the entire amount of your remaining deductible balance within ten (10) days of the request. In the event the covered claim is resolved for amounts that total less than your deductible amount paid, we will refund to you the difference between the paid deductible amount and the total fees and expenses.

ii. In order for us to provide our Services to you and notify the carrier of a potential claim, you must give us prompt written notice (but no later than within five (5) days) after you become aware of any charge, litigation, request for arbitration, demand letter or oral or written complaint involving Staff, former Staff, or an applicant that could give rise to an EPLI claim. The notice must be sent by facsimile transmission to 281-348-3118 Attn: EEO Compliance, emailed to [eeoteam@insperity.com](mailto:eeoteam@insperity.com), or sent via overnight courier to the notice address specified in this Agreement.

iii. You agree to cooperate fully with the EPLI carrier, its representatives, and/or us in any investigation and/or defense of any employment-related claim involving current or former Staff or an applicant.

iv. Your EPLI coverage will terminate upon termination of this Agreement.

**C. Insperity Insurance Policies.**

i. We agree to maintain at least the following minimum insurance coverage and limits for us, at our expense, with an

insurance company rated by A.M. Best Company at A- or better:

a. Commercial General Liability in standard form on occurrence basis covering our operations with minimum limits of:

\$2,000,000	General Aggregate
\$1,000,000	Products/Completed Operations Aggregate
\$1,000,000	Personal and Advertising Injury
\$1,000,000	Each Occurrence

b. Comprehensive automobile liability insurance covering all owned, hired and non-owned vehicles operated by our corporate employees, with minimum limits of \$1,000,000 combined single limits per occurrence for Bodily Injury and Property Damage Liability.

c. Professional Liability/Errors and Omissions (including coverages for information security and privacy, data protection liability, regulatory defense and penalties related solely to Staff data in our systems) with limits of \$5,000,000.

**D. Client Insurance Policies.** You agree to maintain at least the following insurance coverage and limits, at your expense, with an insurance company rated by A.M. Best Company at A- or better:

i. Commercial General Liability coverage in standard form on an occurrence basis covering your operations with minimum limits of:

\$1,000,000	Each Occurrence
\$2,000,000	General Aggregate

Additional coverage may be required for special operations.

ii. Comprehensive automobile liability insurance covering all of your owned, hired, and non-owned vehicles, with minimum limits of \$1,000,000 combined single limit per occurrence for bodily injury and property damage liability. You warrant that all persons operating your vehicles are duly licensed and covered under your automobile liability insurance policy without exception. You agree to furnish to us a list of drivers upon request. This policy shall be endorsed to include, at no additional cost to us, Staff who shall be operating motor vehicles for you.

iii. All your above-required insurance policies and any excess or umbrella coverages that we deem necessary related to these policies that you have obtained for your operations will:

a. provide for written notice to us prior to cancellation or non-renewal of the coverage, per the terms of the policies;

b. be endorsed to waive any and all rights of subrogation against us;

c. name us as an additional insured with limits you have obtained for yourself (even if your limits exceed the minimums described in this Section 6.D.) at no additional cost to us; and

d. be primary insurance and not excess over or contributory with any other valid, existing and applicable insurance carried by us.

iv. Upon our reasonable request, you agree to submit certificates of insurance to us properly evidencing all insurance required above within thirty (30) days of execution of the Client Service Agreement and at any renewal or replacement of those policies.

## 7. Invoices & Reports.

A. Payroll & Hour Reports. Each payroll period, you agree to fully and accurately report to us (i) all time worked by Staff, overtime worked by non-exempt Staff, and days worked by exempt-salaried and commissioned Staff; and (ii) all wages, salaries, amounts earned by Staff, and any other amounts due to Staff for that pay period. You are solely responsible for accurately and timely reporting to us the pay rates and overtime exemptions and classifications for the Staff under FLSA or state wage Laws.

You must promptly report to us changes or inaccuracy in any payroll, payroll report, Schedule A, Schedule B, or material changes in employment status, but no later than within five (5) business days of such change or inaccuracy. In addition, you agree to notify us at least thirty (30) days in advance of an anticipated change in your Schedule A, Schedule B, or a material change in employment status if (i) such change may occur upon your completion of any merger, divestiture, or acquisition; (ii) you engage in any new line of business; or (iii) the number of Staff is expected to increase by more than 25 or to exceed 120% of the number of Staff on your most recent Schedule B, whichever is greater. Further, you agree to provide information requested by us relating to any such anticipated change.

B. Direct Deposit. Unless otherwise expressly agreed to in writing by us, direct deposit with ePayStub will be offered to all Staff. You acknowledge and agree that:

i. You are responsible for direct deposit payroll verification, including notifying us if any Staff is terminated and should not be receiving direct deposit; and

ii. In the case of direct deposit failure, we will issue physical, negotiable payroll checks. We will notify you of direct deposit failure of which we are aware before we issue physical, negotiable paychecks. You agree to timely notify all Staff that physical, negotiable payroll checks will be sent to you for distribution to the applicable Staff. You are responsible for any fees, claims or liabilities that may arise due to your failure to give timely notice to Staff or your failure to timely distribute all physical, negotiable paychecks to applicable Staff.

C. Service Fee Percentages. Any changes in your Schedule A, Staff benefit elections, workers' compensation codes, workers' locations, tax requirements, and costs associated with changes required by Law will be reflected in the Service Fee Percentage for each Staff, including any that are retroactive, and may change Staff Service Fee Percentages and/or the Composite Service Fee Percentage.

D. All invoices will be due and payable in full upon receipt. You must use a method of payment approved in advance by us. Our invoices are our Confidential Information and may not be disclosed to third parties without our written consent except as expressly permitted under this Agreement.

E. MidMarket Packages, Invoices and Financial Information. If you have executed a MidMarket Client Service Agreement with us, you further agree as follows:

i. You agree to send our Credit Services Group: (a) by the thirtieth (30<sup>th</sup>) day after the end of each fiscal or calendar quarter, bank statements and unaudited financial statements, including balance sheets, income statements, and cash flow statements, in conformity with generally accepted accounting principles and certified as to their accuracy in all material aspects by your chief financial officer; and (b) by the ninetieth (90<sup>th</sup>) day after the close of your fiscal year or calendar year, copies of your annual audited, compiled or reviewed financial statements.

ii. Workforce Synchronization. If you select a Workforce Synchronization™ service package, you agree and acknowledge that your Service Fee Percentages do not include the following: background screens; drug testing; employee and pre-employment testing; performance management support (including compensation services, rewards and recognition development, and incentive plans); instructor-led training and courses (including virtual or online) except those required by us; culture development services and surveys; leadership development services (including executive team coaching, executive strategic planning, succession planning and team building); recruiting services; human resource projects (including customized job descriptions, customized handbooks, workforce analytics, supervisor coaching development and compliance audits); employee performance, competency and reward services and development; advertisements; ten (10) hour OSHA training, and on-site safety training and claims reviews; and customized claims reports, each of which is considered an Additional Service.

F. Additional Services. You may be offered Additional Services not included in our Service Fee Percentages for no cost or for an additional fee and that may be subject to execution of a separate agreement or statement of work, which will govern such Additional Service. To the extent an Additional Service is a technology solution or is advisory, no result is assured or guaranteed. You agree that no fiduciary or attorney-client relationship shall be created through or as a result of an Additional Service. **We expressly disclaim all other representations or warranties under this Agreement regarding an Additional Service, whether express, implied or statutory (by any jurisdiction), including any warranty of fitness for a particular purpose or merchantability, to the fullest extent permitted by law. You agree that our total liability, and your exclusive remedy, for any and all damages, claims, expenses, costs suffered or incurred by you in connection with an Additional Service shall be limited to a return of the amount paid by you for such Additional Service.**

Unless expressly agreed in writing by both parties, any expression or result of an Additional Service, or the work, ideas, techniques, know-how, designs, programs, tools, applications, software, or other technical information created or transmitted by us, our affiliates, licensors, or our service providers to you in the course of performing an Additional Service (collectively "**Work Product**") is the sole property of us, our affiliates, licensors, or service providers (as applicable) and is licensed to you on a non-exclusive and non-transferable basis during the Term of this Agreement in exchange for the applicable fees. You agree not to sublicense, transfer, assign, convey or permit any third party to use or copy any such Work Product.

8. Credit Policy. We reserve the right to impose any terms of our then-current Credit Policy ("**Credit Policy**") as set forth in our Credit Policy Annex.

9. **Default.** The occurrence of any of the following will constitute a default (“**Default**”) under this Agreement:

A. Acts of Default by us are:

- i. our failure to pay salaries and wages to Staff in the manner reported by you to us on the established payday after your payment of the related Comprehensive Service Fee;
- ii. our failure to pay payroll taxes included in the Comprehensive Service Fee for Staff after your payment of the related invoice;
- iii. our failure to make available to eligible Staff the group health plan benefits as agreed to in Schedule B;
- iv. our failure to maintain the workers’ compensation insurance coverage for Staff as provided in this Agreement;
- v. our failure to maintain EPLI coverage as provided in this Agreement;
- vi. our breach or threatened breach of the confidentiality obligations contained in this Agreement; or
- vii. a material breach by us of any provision of this Agreement applicable to us, not otherwise addressed in this Section 9.A., when due to no fault of yours, and after having received ten (10) days’ prior written notice and opportunity to cure such breach, if curable.

B. Acts of Default by you are:

- i. your failure to pay an invoice when due;
- ii. filing by or against you for bankruptcy, reorganization or appointment of a receiver, supervisor, assignee, trustee, or liquidator over your assets or property, the occurrence of an event that (with the giving of notice or passage of time) would constitute a default under any agreement governing indebtedness or other agreement material to you, or our reasonable belief that you are insolvent;
- iii. your failure to follow our Credit Policy;
- iv. your breach or threatened breach of the confidentiality obligations contained in this Agreement;
- v. your failure to correctly disclose to us the total number of Eligible COBRA Takeover Participants or Eligible Cobra Acquisition Participants (as both terms are defined in Section 1.M. of the Health & Welfare Benefit Plan Annex);
- vi. your failure to comply with a directive of ours related to Staff when we reasonably believe that such directive: (1) is reasonably necessary for you or Staff to comply with federal, state or local laws or regulations; (2) is in response to or promulgated by an insurance carrier providing coverage to us or Staff; or (3) is in response to circumstances in which Staff rights have been or are reasonably likely to be affected;
- vii. your failure to reasonably cooperate with us in any investigation or defense of any employment-related matter involving current or former Staff or an applicant;
- viii. the failure to report or the underreporting of time worked by Staff or any other actions to avoid or defer the timely payment of wages that are owed Staff;
- ix. a material money judgment, as determined by us in our sole discretion, against you that remains unsatisfied for more than thirty (30) days;

x. any default under a client service agreement between us (or any of our affiliates) and any of your affiliates that provides us (or any of our affiliates) the right to terminate such client service agreement; or

xi. a material breach by you of any provision of this Agreement not otherwise addressed in this Section 9.B., after having received ten (10) days’ prior written notice and opportunity to cure such breach, if curable.

C. The parties acknowledge that an event may constitute a Default under more than one of the above provisions. Upon a Default, the non-defaulting party may, in its sole and absolute discretion, terminate this Agreement immediately or, if applicable, after any cure period provided, by giving written notice of termination as provided in Section 17.M. of this Agreement. If this Agreement is terminated by us upon your Default, such termination shall be effective as specified in the termination notice; *provided, however*, that the workers’ compensation coverage and group health plan coverage provided by us, if any, shall terminate on the date such Staff employment is terminated with us, unless otherwise required by Law.

10. **Indemnity.**

A. We will indemnify, defend and hold you, all of your subsidiaries and affiliates, and your and their former and current officers, directors, equity-holders, employees and agents (“**Client Indemnified Parties**”) harmless from and against any and all liabilities, expenses (including costs of investigation, court costs and reasonable attorneys’ fees) and claims for damage of any nature whatsoever (including first party claims), whether known or unknown and whether direct or indirect, as though expressly set forth and described in this Agreement (collectively, “**Claims**”) that Client Indemnified Parties may incur, suffer, become liable for, or which may be asserted or claimed against Client Indemnified Parties as a result of us:

- i. failing to pay salaries, wages or Additional Payments (collectively, “**Owed Wages**”) to current or former Staff, in the manner reported by you to us;
- ii. failing to report and pay federal, state, and local payroll taxes for Staff, if any, provided wages were accurately reported to us;
- iii. failing to pay or remit contributions received by us in accordance with the Laws governing our employee benefit plans for participating Staff;
- iv. failing to maintain workers’ compensation insurance coverage for Staff as provided in this Agreement;
- v. failing to maintain the EPLI coverage as provided in this Agreement; or
- vi. infringing or misappropriating (or our alleged infringement or misappropriation of) U.S. intellectual property rights of any third party;

except in each case to the extent that such Claims result from or relate to your breach of an obligation under this Agreement. Further, and notwithstanding the foregoing, we have no obligation to you under this Section 10 for any Claims relating to Owed Wages due to current or former Staff unless you previously paid a Comprehensive Service Fee to us that specifically included the amount of such Owed Wages.

B. You agree to indemnify, defend and hold us, Insperty, Inc. and all subsidiaries of or companies affiliated with Insperty, Inc., our

and their current and/or former officers, directors, equity-holders, employees and agents (“**Insperty Indemnified Parties**”), harmless from and against any and all Claims that Insperty Indemnified Parties may incur, suffer, become liable for or that may be asserted or claimed against Insperty Indemnified Parties arising from or relating to:

- i. your non-payment (or allegations of non-payment) of Owed Wages, except to the extent you previously paid a Comprehensive Service Fee to us that specifically included the amount of such Owed Wages;
- ii. any employment agreement or offer letter you have with Staff, or any policy or plan you have regarding paid time off or other payment plans such as vacation, expense-reimbursement, paid leave, severance, bonus, commissions, non-qualified deferred compensation, and excess parachute payments, of any type;
- iii. any employment agreement or offer letter you have with Staff, or any policy or plan you or any of your affiliates have regarding equity compensation of any type with Staff, including failure to properly value equity, improper grant practices (e.g., stock option backdating), and any federal, state or local taxes and any related penalties and accrued interest arising out of failure to (1) report related wages or to timely deposit withheld taxes related to such wages unless such failure is solely due to our failure to timely report (in accordance with information you provide) and deposit such taxes; (2) report income that is subject to Internal Revenue Code (“**Code**”) section 409A; and/or (3) withhold penalty taxes under Code section 409A;
- iv. your actions or omissions (or alleged actions or omissions) toward current or former Staff, including delays in submission or processing employee forms, violations under FLSA, OSHA, WARN or NLRA or any state or local equivalent Laws of the foregoing, and state or local pay-related Laws;
- v. actions or omissions of Staff, your employees that are not Staff, or your contractors, whether (in each case) based on contract, tort or statutory violation;
- vi. your business, or any product produced and/or services provided by you, or operations of any form of motor vehicle or business equipment by you, your employees, contractors or Staff;
- vii. any failure by Client Indemnified Parties or third parties (other than us or our subcontractors) to comply and/or fulfill all obligations or duties under the attached Health & Welfare Benefit Plan Annex or Retirement Plan Annex, and any failure by you, your affiliates or employees to provide timely information requested by us to perform nondiscrimination, top-heavy and similar testing with respect to our benefit plans;
- viii. your violation or alleged violation of Laws relating to your inquiry of an applicant’s criminal history or request of a criminal history search, credit check, or background check;
- ix. your failure to provide new hire information or any other employment status changes in a timely manner, or in any other way failing to cooperate in complying with E-Verify requirements;
- x. the provision of any Staff-related information to you or to any third party by you or by us at your request, including

after the Term, or Staff’s performance of services outside of the United States and transfer of personal data to us from outside of the United States;

- xi. any infringement or misappropriation (or alleged infringement or misappropriation) of any intellectual property right by Staff, you, your affiliates, or any of your or your affiliates’ employees, contractors, consultants or agents;
- xii. any failure (or alleged failure) by you or your agents to properly maintain and operate any employee benefit plan(s) sponsored by you; and any payroll deductions or imputed income reported by us pursuant to the Health & Welfare Benefit Plan Annex or Retirement Plan Annex for any employee benefit plan(s) sponsored by you or for any state-sponsored payroll deduction IRA retirement program;
- xiii. any obligations arising from union representation of Staff or any of your other employees, including obligations under any CBAs, letters or memoranda of understanding, or other agreements with applicable unions relating to Staff or any of your other employees; organizing or unionization activity; defense, compromise or settlement of alleged or actual unfair labor practices arising under the NLRA and relating to Staff; a decision or compliance proceeding of the National Labor Relations Board (“**NLRB**”); union-initiated labor stoppages, interruptions, or demonstrations relating to you or any of your employees (including Staff); and “withdrawal liability”, as defined under the Multiemployer Pension Plan Act; or
- xiv. any Governmental Incentive, including any claims related to Staff Information (as defined below) that we may provide in accordance with this Agreement.

**C. Notwithstanding anything in this Agreement to the contrary, both parties expressly agree that neither party shall under any circumstances be liable for any punitive, special, incidental or consequential damages of any nature whatsoever arising under or relating to this Agreement.** For purposes of this paragraph, all Claims requiring indemnification hereunder shall be considered “direct damages”.

**D.** The indemnities in this Section 10 shall survive termination of this Agreement.

#### **11. Additional Agreements.**

**A.** We are not licensed to provide legal, financial, investment, insurance, privacy, or tax advice. Accordingly, you acknowledge and agree that none of our services or anything provided by us under this Agreement constitutes legal, financial, investment, insurance, privacy, or tax advice. To the extent any Service or Additional Service provided by us is advisory or is based upon best practices, no result is guaranteed or assured.

**B.** You agree that we will have no responsibility or liability for any losses or claims that arise as a result of Staff’s or former Staff’s negligence, theft, embezzlement, or other unlawful or willful acts committed by Staff or former Staff.

**C.** You agree to promptly report to us (as well as providing to us a copy of) any notice, complaint or charge of any government or quasi-governmental agency and/or legal action or threatened action (including charge, litigation, request for arbitration, or demand letter) concerning (i) your worksites, which are employment or safety-related; (ii) your compliance with Laws applicable to your worksites, which are employment or safety-related; (iii) benefit plans sponsored by us that are provided to

Staff; (iv) any Staff that could reasonably relate to our provision of Services; (v) any event that could have a material adverse effect on your business or financial position; or (vi) any event that could otherwise give rise to a claim under EPLI.

D. You authorize us to represent you before, and/or file any forms with, any governmental workers' compensation department, state unemployment insurance department and/or any other state or local governmental organization, where such representation is reasonably necessary or appropriate in order for us to furnish the Services to you, Staff, or former Staff.

E. You agree to provide us with Staff email addresses to allow us to communicate with Staff in connection with our role as co-employer or as otherwise reasonably related to the Services.

F. Client Staff Records Service. We may make available to you the ability to utilize our InSperty Premier™ human capital management solution or any successor cloud-based solution to upload, access, display, delete, and store on our servers during the Term, certain types of human resources-related Client Staff Records (defined below) created by you concerning Staff that you maintain for your own purposes and that are not related to the Staff Records that we maintain (the "**Client Staff Records Service**"). Staff Records (as defined in the Data Privacy & Security Annex) comprised of resumes/applications/offer letters; job descriptions; employment counseling statements; letters of recognition; exit interview notes/ termination notes; certificates; business certifications/licenses; training certificates; education transcripts; time off request forms; attendance records; and such other types of human resources-related documents regarding Staff that are created by you that we may authorize from time to time are permitted document types and that you store in the Client Staff Records Service are collectively referred to as the "**Client Staff Records**". We may modify or discontinue the Client Staff Records Service, or any permitted type of Client Staff Records, at any time without any liability or obligation to you by informing you of such modification or discontinuance and complying with obligations under this provision. You represent and warrant that you will store in the Client Staff Records Service only the permitted types of Client Staff Records and that, in no event, will you include in any Client Staff Records any information that is not related to Staff, may violate any Law or any rights of any third party, may be considered infringing, may be considered protected health information under HIPAA or any comparable Law, or may otherwise be considered confidential under the ADA, FMLA, workers' compensation Laws or any comparable Laws; provided, however, that any of your documents that may be considered confidential under the ADA, FMLA, workers' compensation Laws or any comparable Law may be submitted to us independent of the Client Staff Records Service and accessed or stored in accordance with our standard policies and practices for such matters and document types. You further agree that you will be solely responsible for uploading Client Staff Records to the Client Staff Records Service; complying with all Laws, including Data Protection Laws (as defined in the Data Privacy & Security Annex) regarding the Client Staff Records, including regarding data subject (or similar) rights related thereto; obtaining any required consents for the storage of permitted types of Client Staff Records; and complying with any rule-based access controls that may be implemented by us to restrict access to the Client Staff Records Service to authorized users. You grant us a non-exclusive, limited license to collect, store, process, use and disclose the Client Staff Records and the data therein to perform the applicable services for you during the Term, and during the Term and thereafter in accordance with this Agreement, to comply with Law or legal process, for fraud prevention and security

purposes, and to create Aggregate Data for our own purposes (e.g., improving the platform and providing analytics). If you request, we will make commercially reasonable efforts to assist you to retrieve, copy and delete such information, subject to our need to retain a copy for legally permissible purposes (e.g., compliance with Law or legal process) and, if such activities for which you are requesting assistance could be performed by you without our assistance, then we will inform you in advance of any additional fees that may apply. You represent and warrant to us that you have all necessary rights and consents to use the Client Staff Records Service, including to store or provide us with the authority to store Client Staff Records. Your and your users' limited rights of access and use of the Client Staff Records Service are non-exclusive, non-transferable, non-sublicensable, and revocable. **The Client Staff Records Service is provided "as is" and "as available." We make no representation or warranty of any kind, whether implied, statutory or otherwise: (i) as to the suitability of the Client Staff Records Service for your business purposes, (ii) that the Client Staff Records Service will be error-free, or (iii) that the Client Staff Records are truthful or accurate.** You agree that following termination of this Agreement or, with respect to a particular Staff, following termination of such Staff, we may delete Client Staff Records in connection with our deletion of our own employee records concerning such Staff as allowed by Law. You acknowledge and understand that any deletion of any Client Staff Records, whether by you or by us, may be irrevocable and such information may not be recoverable. You further agree that we will not bear any liability for deletion by us of any Client Staff Records made in response to direct request or system instruction provided by or on behalf of you or Staff. You hereby authorize us to include any Client Staff Records in our response to any request from a governmental authority, other legal authority or Staff (or Staff's representative) concerning us, you, or any Staff or Staff's personnel file. At your request within ninety (90) days following termination of the Agreement and provided that you have paid all amounts owing to us, we will make available to you in a commercially reasonable electronic format all Client Staff Records then in our possession via download or otherwise, and each party will bear its own out-of-pocket expenses, if any, in facilitating this transfer of Client Staff Records.

G. Unions.

i. You represent and warrant that, as of the Effective Date, all CBAs to which you are a party or that you are currently negotiating have been disclosed to us in writing. You further represent and warrant that you are not in breach of any CBA.

ii. You agree to report to us promptly, but in no event more than five (5) business days, after you begin the process of negotiating a CBA, or after you received either a request for recognition from a labor union or a petition for an election from the NLRB, and no more than five (5) business days before you acquire a business that had employees who previously were represented by a union and may continue to be represented by a union if hired by you and may be subject to a CBA. You will also give us prompt notice of, but in no event more than five (5) business days after, any violation or alleged violation by you of any CBA.

iii. You acknowledge and agree that you are solely responsible for complying with the terms of any CBAs, including processing, investigating, and responding to any grievances pursuant to a grievance and arbitration provision; maintaining the wages and any benefits; submitting any union dues (including any reflected by us as a payroll deduction, which funds we do not receive); complying with other terms

and conditions of employment as set forth in the CBA or any applicable appendices, letters or memoranda of understanding with any applicable labor union(s); and satisfying any union bargaining obligations.

iv. You acknowledge and agree that we have made no determination and have made no representation or warranty that our Services, including any benefits offerings or wage payments and processes, satisfy any of your obligations to a labor union, to any union-represented employees (“**Bargaining Unit Employees**”) or arising from any CBA, and that that any variation or shortfall between your obligations under any applicable CBA or other written agreement with a labor union to Bargaining Unit Employees and our Services, including our benefits offerings, are your sole responsibility.

iv. With respect to any Bargaining Unit Employees, we will only provide services in connection with payroll preparations, workers’ compensation insurance coverage and loss prevention assistance, online training, unemployment claims administration, and regulatory EEO claims. See the Health & Welfare Benefit Plan Annex for additional information regarding Bargaining Unit Employees. We will not be obligated to negotiate, process grievances, arbitrate or participate in any negotiations, grievance procedure, dispute, arbitration case, or labor law litigation between you and any representative labor union.

v. You acknowledge and agree that (1) Insperity Indemnified Parties are not a party to or bound by any CBA, and nothing in this Agreement shall make us a party to any agreement with, or obligated to, any union representing Bargaining Unit Employees; (2) you have the sole responsibility to direct and participate in, and we shall not direct or participate in, any collective bargaining, negotiation, grievance, arbitration, or dispute with any union or bargaining unit representing Staff; (3) we are not a “joint employer” with regard to any Staff under the NLRA or related labor Laws; (4) the Services may not satisfy your obligations under a CBA; and (5) Client agrees that it will not, and will cause the Client Indemnified Parties not to make any representation to any Staff or union inconsistent with, or contrary to, anything in this Section 11.G.

H. If a voluntary or involuntary petition is filed under Title 11 of the United States Code, subject to bankruptcy court approval, all debts that you may owe to us shall be considered “administrative expenses” within the meaning of 11 U.S.C. § 503(b)(1)(A) and our claim or claims for those administrative expenses shall be entitled to the priority specified in 11 U.S.C. § 507(a)(1). You further agree to use every effort, and cooperate with our actions, to classify those claims as administrative.

I. You agree to cooperate fully with us in posting any required notices and developing and implementing any related policies or training required by employment-related Laws.

J. You agree to cooperate fully with us in any investigation or defense of any employment-related matter involving you, Staff, former Staff or an applicant whether such matter is initiated by Staff, former Staff, an applicant, a government agency or us.

K. You agree that all of your employees shall be Staff and subject to the Services, except as set forth in Sections 11.G, 11.L, and 11.R, and subject to Section 3 of your Client Service Agreement.

L. You agree and acknowledge that all Services provided under this Agreement shall only be provided for, and only available in connection with, Staff permanently residing in the District of Columbia or any state of the United States. Such Services shall not be provided to, or in connection with, your employees residing in any United States territory, including Guam, Puerto Rico, U.S. Virgin Islands, Northern Mariana Islands, and American Samoa (each, a “**U.S. Territory**”), or any other country. You agree that you are solely responsible for your compliance with all foreign and U.S. Territory Laws, including those applicable to wages, benefits, working conditions, transfers of personal data, and your employment of your employees. You agree and acknowledge that all Staff shall be treated by us as United States citizens for purposes of calculating taxes and withholdings on any wages paid to Staff under this Agreement.

M. Each party will treat as confidential any non-public information received from the other (“**Confidential Information**”). However, the receiving party may disclose Confidential Information (i) to the extent necessary to provide the Services; (ii) to comply with any Law; (iii) on an anonymous, non-personally identifiable and aggregated basis with such party’s affiliates, service providers, or employees (including other worksite employees of ours); (iv) to subcontractors or service providers as requested by the disclosing party; and (v) to its affiliates, attorneys, accountants, and other representatives with a need-to-know, provided that the receiving party will be responsible for such third party complying with these confidentiality obligations. This Agreement (other than these Terms & Conditions and the Applicable Law Terms), our invoices, any reports, and all our non-public materials, as well as your non-public financial statements and information are also Confidential Information. Each party agrees to implement and maintain commercially reasonable measures and policies designed to prevent disclosure of Confidential Information except as permitted by this Agreement. Upon any actual or threatened breach of this subsection by a receiving party, the disclosing party will be entitled to seek specific performance of this subsection through injunctive or equitable relief. This provision replaces and supersedes in all respects all prior agreements or understandings, whether written or oral, regarding confidentiality between you and us or any of our affiliates. The confidentiality terms of this Agreement shall survive termination of this Agreement for any Confidential Information (i) exchanged between the parties during the Term, or (ii) comprised of Staff Records created or maintained by us and stored in our systems or environment that we provide to you or to a third party at your request after the Term.

N. You represent and warrant to us that prior to entering into this Agreement, you have not engaged in any material violations of Laws including wage and hour, unfair labor practices, discrimination, violations of any CBAs or benefit plans and that you are current on the payment of all wages, payroll taxes, and workers’ compensation assessments and penalties, if applicable.

O. You represent and warrant that you have previously informed us in writing, and will inform us in the future, of all pension or retirement plans that you currently provide or previously provided for any of your owners, partners, shareholders or employees. You acknowledge that rules under the Code and ERISA may apply to these plans, as well as to plans maintained by us, and that we have advised you to seek advice from a qualified professional regarding the effect of this Agreement on those plans.



**P.** You represent and warrant to us that you have fully completed and timely filed (and will fully complete and timely file) any and all necessary state and federal income and unemployment tax forms, and filings, including Form W-2, SUTA, and FUTA filings for any compensation not processed by us.

**Q.** You agree and acknowledge that our state and federal tax withholdings are based on Staff withholding elections and the locations of Staff as provided by you. You agree and acknowledge that you are solely responsible for all additional federal, state or local taxes, assessments, interest, or penalties which result from such Staff elections or location information being incorrect, or alleged to be incorrect, by a governmental authority.

**R.** You agree to report to us in advance any Staff who work or travel for business outside of the United States for thirty (30) or more consecutive days. If you fail to do so, we may consider such employees as no longer being Staff. Additionally, you agree to report to us in advance any group of five (5) or more Staff who work or travel for business outside of the United States as a group regardless of the travel time. You further agree that in no event shall Staff include individuals who work or travel for business to one country outside the United States in excess of one hundred twenty (120) days in any consecutive twelve (12) month period. Any Staff residing outside of the United States are ineligible to participate in our benefit plans. Furthermore, our insurance carriers may deny or limit coverage to Staff while traveling or working outside of the United States.

**S.** Each party agrees it will not, without the prior written consent of the other, make any announcement or disclosure to the public regarding this Agreement or the parties' relationship except as required by law.

**T.** Certain Services or Additional Services may be provided by us or our affiliates via our Internet-based Insperty Premier™ human capital management platform and/or our mobile app, which may include access to learning and development resources, time tracking and entry, organizational directory and charting, analytics, performance management, benefits enrollment and selection, applicant tracking, and other functionality or features offered by us ("**Insperty Internet Services**"). The use of the Insperty Internet Services is subject to the applicable online terms of use and privacy policy, which may be updated from time to time. You are responsible for the accuracy, quality, integrity, legality, reliability, appropriateness, timeliness, or completeness of information submitted by or on behalf of you or Staff to us through the Insperty Internet Services. You acknowledge and agree that the right to use Insperty Internet Services is not subject to, or contingent upon, the delivery of any future modules, features, functionalities, upgrades, or enhancements, or contingent on any representations by us. We and/or our service providers own and retain all right, title and interest in and to each Insperty Internet Service and the related intellectual property rights. You do not acquire any right, title or interest in or to any Insperty Internet Service or any intellectual property rights contained therein. In addition, certain Insperty Internet Services, such as Insperty Time and Attendance or Insperty Performance Management, require configuration to meet the specific needs of your organization. We will provide you with up to twelve (12) professional service hours for such configuration as set forth in our current configuration guidelines as of the scheduled configuration date. All such configuration services will be conducted by us via remote communication and will not occur onsite at your facilities. Any additional configuration hours or onsite assistance would be provided as an Additional Service. You agree to cooperate with us in connection with any configuration

and to promptly provide us with information and assistance as we may reasonably request, including timely and accurately completing our configuration requirements and approval documentation. You must notify us of any failure of the configuration to meet the approved configuration within ten (10) business days of our completion of the configuration and we will then use our reasonable efforts to promptly correct any such discrepancies. The terms of this Section 11.T. shall survive termination of this Agreement.

**U.** When you use the background screening services of our affiliate, you become a joint user with us of consumer reports and investigative consumer reports. You agree to abide by all Laws in your notification, inquiry, and use of the reports, and you are solely responsible for the failure to do so. You agree to use any reports procured solely for employment purposes. For the sole purpose of allowing us to assist you with your obligation to provide timely notification under the FCRA to applicants in connection with pre- and post-adverse actions letters, you agree to contact our Background Check Team as directed by them before deciding not to hire an applicant or rescinding a conditional offer of employment based, in whole or in part, on information contained in a background report.

**V.** We may also grant you access to our Insperty® People Analytics solution powered and hosted by our service provider Visier, Inc. and its affiliates and licensors (collectively, "**Visier**"). You acknowledge and agree that: (i) the solution is accessible from our Insperty Premier™ platform as an Insperty Internet Service and contains the proprietary software and confidential information of Visier, including any benchmarking data and associated documentation made available to you (the "**Visier Solution**"); (ii) only your authorized users of the Insperty Premier platform that you specify to us in accordance with our specified procedures will have access to the Visier Solution; (iii) data about you as well as data of Staff and former employees (including former Staff) that are collected from you and shared by us with Visier (collectively, "**Subject Data**") will be processed by the Visier Solution and you authorize us to grant Visier the access and rights set forth in this Agreement; (iv) you and your authorized users' right and license to use the Visier Solution does not include any license or right to use Visier products or services independently or separately from the Insperty Premier platform and your use of the Visier Solution and Insperty Premier platform must comply with instructions provided by us; (v) you authorize us to provide Visier access to the Subject Data to produce Aggregate Data (as defined below) for statistical purposes or other permitted purposes ("**Anonymized Data Generation and Usage**") unless you opt-out by notifying us of your election in writing by using the opt-out mechanism provided to you by your account executive upon request, in which case, your access to certain benchmarking data will be limited; (vi) we and Visier may also collect or share with each other data derived from automatic system collection about your usage of the Visier Solution and services being provided to you. **Aggregate Data** means Subject Data that, through anonymization, de-identification, and other effective methods, does not permit a natural person to be identified, directly or indirectly, from that data, which methods shall at least meet the standards under the California Consumer Privacy Act and related regulations for aggregation or de-identification of personal data. Visier has agreed with us that it will not sell, publish, display or transmit Aggregate Data to a third party in any form, in whole or in part, where you or any individual could be identified as the source or subject of such data and that it will not sell, publish or transmit to a third party any Subject Data used

to generate the Aggregate Data, unless otherwise agreed by you or us in writing and in accordance with privacy Laws. **Notwithstanding anything to the contrary stated in this Agreement, in no event shall we or Visier be liable to you, your authorized users or any third party for damages arising out of or related to the Visier Solution or the sharing and processing of the Subject Data for the purposes stated in this Agreement, or any action taken in reliance on the Visier Solution or the Subject Data, whether in contract or tort or under any other theory of liability, in excess of one hundred dollars (\$100).**

**W.** No document, amendment, modification, order, work-product, or other deliverable other than this Agreement, whether written or oral, and whether created before or after execution of this Agreement, other than an additional Schedule B, shall constitute a binding contract between the parties unless executed in writing by an authorized representative of both parties.

**X.** If you request us to provide certain information for the purpose of application or to maintain eligibility for or related to a Governmental Incentive, you acknowledge and agree that such information is provided by us in accordance with this Agreement. The information provided may include Staff names, Social Security Numbers, mailing addresses, dates of birth, other relevant information pertaining to training and other information as requested or required by that program (collectively, "**Staff Information**"). We expressly disclaim any and all express or implied warranties regarding Staff Information, including its completeness or its fitness for a particular purpose. You are responsible for the accuracy of Staff Information provided by us on your behalf.

**Y.** If you acquire all or substantially all of the assets and operations of another business, and, in connection with the transaction, individuals employed by the acquired business become Staff ("**Acquisition Staff**") then a non-refundable enrollment fee related to the Acquisition Staff will be payable together with the Comprehensive Service Fee at the first payroll processed by us that includes Acquisition Staff.

## **12. Arbitration.**

**A.** Except for unpaid invoices, other billed obligations owed by you, or any breach or threatened breach of the confidentiality provisions in this Agreement, all claims, disputes and other matters in question between the parties arising out of, or relating to this Agreement or the Services, shall be decided by arbitration in accordance with the Federal Arbitration Act (9 U.S.C. §§ 10 and 11, as amended) ("**FAA**") and the Commercial Arbitration Rules of the American Arbitration Association subject to the limitations of this Section 12. This agreement to arbitrate and any other agreement or consent to arbitrate entered into will be specifically enforceable under the prevailing law of any court having jurisdiction. Unless agreed otherwise, the parties, the parties' attorneys and the arbitrators shall treat the arbitration, any disclosures made during the arbitration and the decision of the arbitrators as confidential, except to the extent necessary in connection with a judicial challenge to, or enforcement of an award, or as otherwise required by Law.

**B.** Notice of the demand for arbitration will be filed in writing with the American Arbitration Association and served contemporaneously on the other party.

**C.** The parties agree that each may bring claims against the other only in its individual capacity and not as a plaintiff or class member in any purported class or representative proceeding. The arbitrators may award compensatory, injunctive or other relief only

in favor of the individual party seeking relief and only to the extent necessary to provide relief warranted by that party's individual claim. Further, the arbitrator may not consolidate more than one person's claims and may not otherwise preside over any form of a representative or class proceeding. No arbitration arising out of, or relating to, this Agreement shall include by consolidation, joinder or in any other manner any other person or entity who is not a party to this contract unless:

i. The inclusion of such other person or entity is necessary if complete relief is to be afforded among those who are already parties to the arbitration, and/or such other person or entity is substantially involved in a question of law or fact which is common to those who are already parties to the arbitration and which will arise in such proceedings; and

ii. The written consent of (a) the other person or entity sought to be included, (b) us, and (c) you, has been obtained for such inclusion, which consent shall make specific reference to this Section 12.C, but no such consent shall constitute consent to arbitration of any dispute not specifically described in such consent or to arbitration with any party not specifically identified in such consent.

**D.** The award rendered by the arbitrators will be final, judgment may be entered upon it in any court having jurisdiction thereof and will not be subject to modification or appeal except to the extent permitted by the FAA.

## **13. Form I-9 & E-Verify.**

**A.** We will include Form I-9 as a part of our new employee hire documents completed by all Staff and assist with issues relating to completion of Form I-9.

**B.** In jurisdictions where all private employers (or all private employers of a specified size, if applicable) are required to use E-Verify for all newly-hired employees, we will submit new hire Staff into the E-Verify System and will communicate with you on any non-confirmation issues. You agree to fully cooperate with us in this process including complying with all of the terms of the then current U.S. Citizenship and Immigration Services ("**USCIS**") Memorandum of Understanding ("**MOU**") required for employers using E-Verify. The MOU can be viewed on the USCIS website. You agree to promptly execute the MOU if requested by us or by USCIS. You will not submit newly hired Staff into E-Verify in jurisdictions where all private employers (or all private employers of a specified size, if applicable) are not required to do so by Law. Notwithstanding the foregoing, where applicable Law only requires private employers that do business with the government to use E-Verify, you, as the entity contracting with the government, are responsible for submitting Staff into E-Verify.

**C.** You agree to promptly report to us all newly hired Staff on or before the start date of employment. You agree to display the required notice to applicants regarding E-Verify and to promptly communicate any non-confirmation issues to employees.

## **14. Data Privacy & Security Annex and Specific Terms & Conditions Addressing Applicable Laws.**

By using our Services you agree to the then-current Data Privacy & Security Annex and Applicable Law Terms available online at [www.insperity.com/terms](http://www.insperity.com/terms) (or any successor site), which may be revised from time to time and are incorporated into this Agreement by reference, as amended or updated, and integrated for all purposes.

**15. Representations and Warranties; Limitations on Liability.**

Notwithstanding any statement to the contrary contained in this Agreement:

- A. Each party represents and warrants to the other party that:
  - i. it is duly organized, validly existing and in good standing under the laws and regulations of its respective jurisdiction of incorporation, organization, or chartering, and is conducting its business in material compliance with Law;
  - ii. 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;
  - iii. the execution of this Agreement by its representative whose signature is set forth at the end the Client Service Agreement has been duly authorized by all necessary action of the party; and
  - iv. 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.
- B. Subject to Section 10.C., we represent and warrant to you that:
  - i. we shall perform the Services using personnel of appropriate skill, in a professional manner consistent with industry standards;
  - ii. we are in compliance with, and shall perform the Services in compliance with, all applicable Laws regulating and licensing PEOs in states where you have informed us that Staff are located; and
  - iii. with respect to any Insuperity Internet Service that is not governed by a separate agreement, such Insuperity Internet Service will perform materially in compliance with the applicable user documentation and we have taken commercially reasonable efforts to ensure that such Insuperity Internet Service does not contain a computer virus, Trojan horse, worm, or other malicious code, although we do not represent or warrant that it will be free from all bugs, errors, or omissions.
- C. With respect to your business operations, you represent and warrant the following to us:
  - i. If you are a contractor, including a contractor for the government, under the terms of all of your contracts with your clients, you retain the complete right to direct and control the daily business activities of the Staff assigned to such contracts;
  - ii. You are not a temporary or staffing agency, including to any government, nor do you require a staffing or temporary agency license in any of the states;
  - iii. Unless we have otherwise consented after being informed in writing, Staff will not engage in: (i) oil or gas production, transportation, refining, or distribution; (ii) chemical or petrochemical manufacturing or distribution; (iii) handling of any type of explosives, munitions, or pyrotechnics; (iv) handling hazardous waste or material; (v) activities on a building or structure higher than three stories; (vi) work on or near railroad operations that could result in Federal Employers Liability Act (FELA) exposures; (vii) work on or near bodies of water requiring United States Longshore and Harbor Workers' Compensation Act (USL&H), Maritime, or Outer Continental Shelf Lands Act coverages; (viii) aviation and

commercial airline operations; (ix) occupational disease exposures, including asbestos; or (x) manufacture, distribution, sale, serving, or furnishings of cannabis, or related products and paraphernalia.

**D. Except as expressly set forth in Section 11 and this Section 15, we make no other representation or warranty, express or implied, with respect to any product or services, including Services, and specifically disclaim all other warranties, including warranties for merchantability, fitness for any particular purpose, and noninfringement, and warranties regarding quality standards.** For any breach by us of the representations and warranties with respect to an Insuperity Internet Service, we will, at our expense, use commercially reasonable efforts to repair or replace the applicable Insuperity Internet Service so that it performs materially in compliance with the applicable user documentation and, to the extent that we cannot repair or replace such Insuperity Internet Service, your sole and exclusive remedy will be to terminate the Agreement for our Default pursuant to Section 9.A.vii. **Except to the extent arising in connection with our indemnification obligations under Section 10, in no event will our aggregate liability to Client Indemnified Parties exceed the administrative portion of our Service Fee Percentage paid by you during the previous twelve (12) months.**

**16. Your Licensed Professional Services.** Matters relating to your or Staff's provision of licensed professional services to the public shall remain solely within your and/or Staff's control. Nothing in this Agreement requires you or any Staff to disclose to us any privileged information or communication associated with the rendering of professional services to third parties. The transfer or disclosure to us of privileged information or communication arising out of or otherwise associated with the rendering of professional services by you or any Staff is specifically prohibited by us.

You acknowledge the following if you are involved or practice in the following trades or businesses:

- A. *Accounting Firms.* We are not providing any services to anyone as a Certified Public Accountant ("CPA") or as an accounting service provider and nothing in this Agreement is intended, or shall be construed, to alter or interfere with a CPA-client relationship.
- B. *Architectural and Engineering Firms.* We are not providing any services to anyone as a licensed architect, licensed engineer or as a provider of architectural or engineering services and nothing in this Agreement is intended to, or shall be construed to, alter or interfere with the architecture and/or engineering services you provide to your clients.
- C. *Healthcare Practitioners.* You are solely responsible for the rendering of professional health care services, including the diagnosis and treatment of all patients under your care; it being specifically acknowledged and agreed that our duties, responsibilities and functions hereunder shall be administrative and managerial in nature only, and that notwithstanding any other provision of this Agreement to the contrary, we will engage in no activity hereunder that would constitute the practice of health care as defined by applicable Laws. You have the sole responsibility for the coordination and provision of all health care services and we shall not interfere in any way with the exercise of you, your Staff's, or your providers' professional judgment in connection with their health care practice. Whether your policies and procedures relating to the governance of your health care professionals shall be adopted or implemented shall be in your sole discretion.

**D. Legal Practices.** We are not providing any services as a law firm, attorney or legal service provider, and nothing in this Agreement is intended, or shall be construed, to alter or interfere with an attorney-client relationship.

**E. Regulated Investment Advisers.** You are solely responsible for the rendering of Securities and Exchange Commission (“SEC”) and/or Financial Industry Regulatory Authority (“FINRA”) services including investment advisory services, trades and other transactions, and any state equivalent. We are not providing Services as a FINRA or SEC registered investment adviser and nothing in this Agreement is intended, nor shall it be construed, to alter or interfere with the Client’s investment advisory relationship.

**F. Mortgage Lenders.** Notwithstanding anything in this Agreement to the contrary, we shall not exercise any control over Staff as to matters relating to loan origination, mortgage lending, or other matters governed by United States Department of Housing and Urban Development statutes, regulations or policies.

**G. Licensed Customs Brokers.** We have no access to or involvement in your responsibilities or activities related to your customs business, and you may not disclose to us your clients’ records or the information contained in those records.

**17. Miscellaneous.**

**A.** This Agreement contains the entire agreement of the parties and supersedes all prior and contemporaneous agreements or understandings, whether written or oral, with respect to the subject matter hereof. The parties hereto, on behalf of themselves and their respective agents and employees, each expressly warrant and represent that (i) no representation or promise has been made to the other which is not expressly set forth in this Agreement or a written exhibit or schedule herewith; and (ii) neither party is relying upon any statement or representation of the other party or their agents which is not expressly set forth within this Agreement. Each party has been represented by or had the option of being represented by its own legal counsel in connection with the entry into this Agreement and has read and had explained in full the entire contents and legal consequences of this Agreement.

**B.** This Agreement is between the parties and creates no individual rights of Staff or any third parties.

**C.** You may only assign this Agreement with our written consent, which shall not be withheld by us unreasonably.

**D.** The prevailing party, in any action, arbitration, suit, or litigation arising with respect to this Agreement, shall be entitled to recover from the other party all costs of such enforcement action including reasonable attorneys’ fees, court costs and related expenses.

**E. Except for Section 12 of these Terms & Conditions, which shall be governed by the FAA, this Agreement shall be governed by the laws of the State of Texas without reference to the conflicts of laws principles thereof. You agree that any Arbitration or other legal action arising from or related to this Agreement or any Services will be held in the State of Texas, with venue in state court in Harris or Montgomery Counties, Texas or federal court in the United States Southern District of Texas.**

**F.** If any provision of this Agreement is determined by a court of competent jurisdiction to be invalid, the remaining provisions shall remain in effect and be so construed as to effectuate the intent and purposes of such provisions.

**G.** The non-enforcement by either party of a breach of any term or provision of this Agreement is not a waiver of such provision or

any right. The waiver by either party of a breach of any term or provision of this Agreement shall not be a waiver of a subsequent breach of the same provision or of a breach of any other term or provision of this Agreement.

**H.** Excluding any payment obligation to us, neither party will be required to perform any term, condition, or covenant of this Agreement so long as such performance is delayed or prevented by force majeure, which shall mean acts of God, strikes, lockouts, labor or worksite restrictions by any governmental authority, civil riot, floods, and any other cause not reasonably within the control of that party and which by the exercise of due diligence by that party is unable, wholly or in part, to prevent or overcome.

**I.** The term “including” means “including without limitation”. References to any specific laws will be deemed to refer to such laws as in effect from time to time, any regulations thereunder and any successor statutes thereto. The term “Law(s)” means all applicable federal and state statutes, laws, rules, regulations, codes, directives, orders, judgments, decrees or other requirement or rule of law. The term “business day” means any day other than a Saturday, Sunday or a day on which commercial banks are authorized or required by Law to close in Houston, Texas. The term “days” shall mean calendar days. The term “party” or “parties” means you or us, as applicable.

**J.** Under this Agreement, “Insperty-Sponsored”, “sponsored by us”, or terms of similar import, refer to a benefit plan sponsored by a wholly-owned subsidiary of Insperty, Inc., as applicable.

**K.** No termination or expiration of this Agreement affects or impairs any obligations, duties, indemnities or liabilities of either party that, by their nature, continue beyond the termination or expiration of this Agreement, or our rights with respect to your unpaid obligations. Such obligations, duties, indemnities or liabilities shall continue until such time as all such obligations, duties, indemnities or liabilities have been fulfilled or as otherwise provided in this Agreement.

**L.** The section and subsection headings in this Agreement are for convenience only and shall not in any way affect, limit, supplement, or be used to interpret any provision of this Agreement.

**M.** All matters that you must “report” to us under this Agreement must be submitted by you in writing (including electronic format) in accordance with our stated procedures for such matter or, if no procedure has been designated, to your assigned service representative. All other notices (including notices of default or termination), requests and communications in connection with this Agreement, except as otherwise stated in this Agreement, shall be in writing, sent either by (i) email, if sent to email address provided for these purposes and verified by electronic logs as not having bounced back or received an error message for transmittal; (ii) facsimile with written confirmation of successful transmission; (iii) hand-delivered with a signed receipt; (iv) mailed by prepaid United States registered, certified, or express mail, return receipt requested; or (v) overnight courier service by a nationally recognized courier; and addressed to the party’s principal place of business as set forth in this Agreement (or to such other address provided in writing by such party or to any other address regularly used for communication by us to you).

If to us: Insperty  
19001 Crescent Springs Drive  
Kingwood, Texas 77339-3802  
Attn: General Counsel  
Fax: (281) 348-2859  
Email: [legalnotices@insperity.com](mailto:legalnotices@insperity.com)

### 1. Insperity-Sponsored Health & Welfare Benefit Plans.

**A.** You will be permitted to elect a benefits package sponsored by us to be provided to Staff, which shall be reflected in Schedule B. However, you do not sponsor or maintain the benefit plans included in such package. We are the sole plan sponsor and the plan administrator for the Insperity-Sponsored benefit plans and are providing benefits to eligible Staff as an employer.

**B.** Any benefits provided under Insperity-Sponsored benefit plans will be provided in compliance with applicable Laws under the terms and conditions of such plans.

**C.** Any benefit plans sponsored by us may be amended, modified or terminated at any time with notice to affected participants and beneficiaries to the extent required by ERISA, and a copy of such notice shall be furnished to you.

**D.** We are not, and will not become, a party to any merger, acquisition or similar business transaction involving you and you agree not to represent any Insperity-Sponsored plan as being sponsored by you.

**E.** You agree not to modify any materials created by Insperity regarding the Insperity-Sponsored benefit plans or create any materials describing such plans.

**F.** The eligibility waiting period for newly employed Staff to participate in Insperity-Sponsored health and welfare plans is indicated on the Employee Group Health Plan Contribution Report.

**G.** Insperity-Sponsored health and welfare benefits will be made available to Staff on an approved leave of absence in accordance with the terms of the applicable benefits plan, and such plans cannot be amended, modified or terminated by you.

**H.** The Insperity Group Health Plan provides medical coverage options that qualify as "minimum essential" and "minimum value" coverage, as defined under the Affordable Care Act ("**ACA**").

**I.** With respect to the employer shared-responsibility ("**play or pay**") requirements of the ACA, we will perform the following services if you have elected a benefits package that includes Insperity Group Health Plan coverage:

- i.** recording the hours worked by Staff that you report to us, and providing you with reports of hours worked by Staff for ACA purposes;
- ii.** performing an applicable large employer determination on an annual basis;
- iii.** consulting with you regarding the ACA affordability requirement and related Staff contributions;
- iv.** providing you with data to allow you to comply with applicable ACA reporting requirements (to the extent such data is in our systems);
- v.** assisting you with responses to eligibility verifications and appeals, and requests for information from state or federal agencies, relating to coverage under the Insperity Group Health Plan;
- vi.** offering Insperity Group Health Plan coverage to Staff in accordance with the plan's eligibility rules; and
- vii.** providing new Staff with the FLSA-required notice regarding Health Insurance Marketplace coverage.

Notwithstanding the foregoing, you are responsible for compliance with all federal, state and local employer pay or play or other health care mandates, including calculating required expenditures, remitting expenditure shortfalls to government agencies and satisfying applicable reporting, recordkeeping and disclosure requirements, such as those related to IRS Forms 1094-C and 1095-C.

**J.** We are responsible for performing applicable non-discrimination testing under the Code. You agree that: (i) we have the sole discretion and authority to conduct all such testing based on the methodology we deem reasonably appropriate; (ii) test results shall be conclusive and binding on all parties and shall not be subject to review or challenge by you or any third party; and (iii) you will timely provide all information (which you acknowledge is complete and accurate) requested by us to perform such testing and failure to do so may have adverse consequences to you and Staff, including taxation to Staff of employee contributions and suspension of Staff's participation in benefit plans sponsored by us (as determined by us in our sole discretion).

**K.** The Insperity Group Health Plan and the Insperity Health Care Flexible Spending Account Plan are "covered entities," as that term is defined under HIPAA, and any benefits information under such plans (including enrollment information) may be treated by us as Protected Health Information (as determined by us in our sole discretion).

**L.** We will comply with the Consolidated Omnibus Budget Reconciliation Act ("**COBRA**") and any state continuation coverage requirements that apply to an Insperity-Sponsored group health plan or policy under which a participant is enrolled.

**M.** We have no responsibility for compliance with COBRA or state continuation coverage for any group health plan sponsored (or previously sponsored) by you, or any other obligations related to such plan or its predecessor, except as outlined below.

**i.** New Clients at Effective Date. If you elect a benefits package that includes Insperity Group Health Plan coverage and either (A) you previously sponsored a group health plan and such plan is terminated in connection with you entering into this Agreement, or (B) your employees previously participated in a PEO-sponsored group health plan, then we will offer the following individuals COBRA and/or state continuation coverage under the Insperity Group Health Plan: (a) individuals who were enrolled in COBRA or state continuation coverage under your group health plan (or the PEO-sponsored group health plan) immediately prior to the Effective Date, and (b) individuals who are within the election period for COBRA or state continuation coverage under such plans on the Effective Date (collectively "**Eligible COBRA Takeover Participants**"). As of the Effective Date, we will determine a number that equals 10% of your full-time Staff (those regularly scheduled to work 30 or more hours per week). This number will be your "**Allowable COBRA Takeover Participants**". Each Eligible COBRA Takeover Participant who elects coverage (COBRA or state continuation) in excess of the Allowable COBRA Takeover Participants will be subject to the Excess COBRA Participant Fee described below. The Excess COBRA Participation Fee shall also apply to any individuals who were never Staff but who are required by Law to be offered a new COBRA election opportunity after the Effective

Date (these participants shall also be considered Eligible COBRA Takeover Participants).

ii. Reductions in Force During First 90 Days. If you have elected a benefits package that includes Insperty Group Health Plan coverage, you terminate Staff in connection with a layoff or other reduction in force during the ninety (90) day period following the Effective Date, and such terminated Staff elect COBRA coverage (the “**RIF COBRA Participants**”), then you will be subject to the Excess COBRA Participation Fee described below for each RIF COBRA Participant in excess of the remaining Allowable COBRA Takeover Participants (if any).

iii. Acquisitions. With respect to Acquisition Staff (defined in the Terms & Conditions), if you have elected a benefits package that includes Insperty Group Health Plan coverage then we will offer the following individuals COBRA and/or state continuation coverage under the Insperty Group Health Plan: (a) individuals who were enrolled in COBRA or state continuation coverage under the acquired business’s group health plan immediately prior to the closing date of the acquisition (“**Closing Date**”), and (b) individuals who are within the election period for COBRA or state continuation coverage on the Closing Date (collectively, “**Eligible COBRA Acquisition Participants**”). As of the Closing Date, we will determine a number that equals 10% of your full-time Acquisition Staff (those regularly scheduled to work 30 or more hours per week). This number will be your “**Allowable COBRA Acquisition Participants**”. Each Eligible COBRA Acquisition Participant who elects COBRA coverage in excess of the Allowable COBRA Acquisition Participants will be subject to the Excess COBRA Participant Fee described below.

iv. Reductions in Acquisition Staff Within 90 Days Following Closing Date. If you have elected a benefits package that includes Insperty Group Health Plan coverage, you terminate Acquisition Staff in connection with a layoff or other reduction in force during the ninety (90) day period following the Closing Date, and such terminated Acquisition Staff elect COBRA coverage (the “**RIF COBRA Acquisition Participants**”) then you will be subject to the Excess COBRA Participation Fee described below for each RIF COBRA Acquisition Participant who elects COBRA coverage in excess of the remaining Allowable COBRA Acquisition Participants (if any).

v. The “**Excess COBRA Participation Fee**” means an additional fee of \$7,500 for each excess Eligible COBRA Takeover Participant, RIF COBRA Participant, Eligible COBRA Acquisition Participant, and RIF COBRA Acquisition Participant who elects COBRA or state continuation coverage.

vi. Any COBRA or state continuation coverage provided by us in accordance with the above shall match the coverage provided to Staff, as set out on Schedule B, and be provided in accordance with the rules governing the Insperty Group Health Plan and applicable Law. If the benefits package you have elected does not include coverage under the Insperty Group Health Plan, this Section M shall not apply.

N. With respect to the Insperty Commuter Benefits Program, we are responsible for complying with all federal requirements applicable to qualified transportation fringe benefits (as set out in Code section 132(f)), but you are responsible for compliance with any state or local commuter or transportation mandates and Laws, including any reporting or disclosure requirements, and the

payment of penalties (if any) for the failure to comply with such state or local mandates or Laws.

## 2. Client-Sponsored Health and Welfare Benefit Plans.

A. You are responsible for compliance with all Laws governing any health and welfare or other benefit plans sponsored by you, and for the payment of any penalties, taxes and interest related to your sponsorship of such plan(s). We will have no obligation with respect to such plan(s) unless specifically provided in Sections 2.B and 2.C below.

B. Subject to this Agreement and this Health & Welfare Benefit Plan Annex, upon your request, and contingent on the timely submission of the requested information to us, we will facilitate the following reporting and benefit payments for the benefit plans sponsored by you:

- i. We will report the value of medical coverage in Box 12 of our W-2 if you would be subject to such reporting outside of us.
- ii. We will report the amount of any pre-tax health savings account contributions made by Staff outside of the Insperty Health Savings Account Program in Box 12 of our W-2 (only if you elect a benefits package that does not include Insperty Group Health Plan coverage).
- iii. We will report taxable income on the Insperty W-2 for group term life insurance in excess of \$50,000.00.
- iv. We will report taxable income on the Insperty W-2 for disability premium payments made by you.
- v. We will report the amount contributed to a dependent care flexible spending account in Box 10 of the Insperty W-2.
- vi. We will report taxable income on the Insperty W-2 for non-discrimination testing failures.
- vii. We will include taxable fringe benefit payments for client-sponsored adoption assistance, educational assistance, and transportation assistance plans as part of the compensation paid by us.

C. Subject to this Agreement and this Health & Welfare Benefit Plan Annex, upon your request, and contingent on the timely submission of requested information to us, we will facilitate pre-tax Staff deductions for the following types of benefits provided under Code section 125 cafeteria plans sponsored by you:

- i. Medical, dental and/or vision (only available if such coverage is not included in your package of Insperty-Sponsored health and welfare benefits);
- ii. Health savings account (only available if you elect a benefits package that does not include Insperty Group Health Plan coverage);
- iii. Health care flexible spending account (only available for new clients, and only through the end of the client’s plan year in effect when this Agreement is signed); and
- iv. Dependent care flexible spending account.

D. We will not reflect pre-tax Staff payroll deductions for a health or welfare benefit plan sponsored by you during any period Staff is eligible to participate in an Insperty-Sponsored health or welfare benefit plan providing benefits of a similar type or coverage level. In addition, we will not reflect post-tax Staff payroll deductions for a medical, dental or vision plan for any period Staff is eligible to participate in an Insperty-sponsored medical, dental or vision plan.

E. We will provide the services outlined in Sections 2.B. and 2.C. above subject to the following:

i. Upon execution of this Agreement, and when requested by us, you will furnish us all information or documentation necessary to perform our obligations hereunder, including a copy of the document for the cafeteria plan sponsored by you under which pre-tax deductions are authorized. If you utilize a third-party vendor to administer your benefit plan(s), you authorize such vendor to furnish directly to us upon our request information we indicate is necessary to perform our obligations.

ii. You represent and warrant to us that:

a. You have disclosed to us all plans for which we are being requested to reflect Staff deductions.

b. Any plan sponsored by you for which we are providing services under this Section 2 will satisfy applicable legal requirements at all times during the operation of this Health & Welfare Benefit Plan Annex, including satisfaction of any requirement under Code section 125 for services relating to a cafeteria plan sponsored by you. You will promptly notify us if a plan sponsored by you fails to satisfy legal requirements at any time.

c. You and Staff will be required to submit deduction authorizations in our required format. You are responsible for ensuring that such format complies with the terms of your sponsored plan, and that deduction amounts are not in excess of any applicable limits.

d. You are solely responsible for performing any required non-discrimination testing, and for reporting to us no later than ninety (90) days after the end of the plan year the amount of any taxable adjustments to Staff's wages as a result of such testing. In the event it is necessary to issue an amended Form W-2 as a result of such testing, you agree to compensate us for such service.

e. You are solely responsible for monitoring Staff's eligibility for any plan sponsored by you for which we are providing services under Sections 2.B. and 2.C., including Staff's eligibility to make pre-tax contributions through a cafeteria plan, and will promptly report to us changes in Staff eligibility that impact services being provided. We reserve the right to refuse to reflect pre-tax contributions for any Staff we determine are, or may be, ineligible to participate in a cafeteria plan because such Staff is self-employed, an owner or partner of you, or may be treated as such an ineligible individual for federal income tax purposes.

f. We will not handle or receive Staff contributions (whether pre or post-tax), and instead shall reflect a corresponding amount of credit on your invoice for any such contributions. You are solely responsible for forwarding such contributions to the carrier/vendor of your sponsored plan in accordance with ERISA and the Code.

g. We assume no fiduciary authority and exercise no fiduciary control with respect to any Staff contributions, or your contributions or assets under any of your sponsored plans, and we will not perform any

discretionary services whatsoever with respect to such plans.

h. You are solely responsible for providing plan participants with required notices and documents and for filing any applicable governmental reports for any plans sponsored by you.

### 3. Clients with Bargaining Unit Employees.

A. You are solely responsible for any and all payment obligations under Union-sponsored health and welfare benefit plans. Where applicable, Insperty may reflect deductions from the pay of Staff who are Bargaining Unit Employees as directed by you for any employee contributions required under such plans. You acknowledge that we will not take possession of nor be responsible for remitting such payments and we shall not assume any fiduciary authority or exercise any fiduciary control over such payments.

B. You are solely responsible for complying with the terms of the CBA as it relates to the provision of benefits, including the determination of which benefits must be provided under Union-sponsored plans and which benefits may be offered under Insperty-sponsored plans. If you request that we offer Insperty-sponsored benefits to Staff who are Bargaining Unit Employees, you acknowledge and agree as follows:

i. The Union is aware of and has approved such benefits to be offered.

ii. Insperty-sponsored benefits are subject to the terms and provisions of those plans and may not be changed by you or the Union.

iii. We will not provide the Union with notice of plan changes or seek the Union's approval for such changes.

iv. To the extent special rules apply to the cost that may be charged to Bargaining Unit Employees for Insperty-sponsored coverage, you will make us aware in writing of those rules.

### 4. Termination. Upon termination of your Client Service Agreement, you agree:

A. to provide replacement health insurance for Eligible COBRA Takeover Participants, RIF COBRA Participants, Eligible COBRA Acquisition Participants, RIF COBRA Acquisition Participants, Staff, former Staff and any eligible dependents of such individuals covered under the Insperty Group Health Plan at the time of termination of this Agreement (collectively, "**Client COBRA Participants**");

B. to pay us a one-time administrative fee of \$1,500 for each Client COBRA Participant who remains covered under the Insperty Group Health Plan after termination of this Agreement, such fee to be determined after the effective date of such termination;

C. to pay us a monthly administrative fee of \$250 for each Client COBRA Participant that remains covered under the Insperty Group Health Plan after termination of this Agreement, for each month in which the Client COBRA Participant is covered at least one (1) day, beginning with the month your Agreement terminates; and

D. that the fees listed above shall not be construed as a penalty but are a reasonable estimate of the costs to be incurred by us, which costs are difficult to ascertain prior to their incurrence. These fees are in addition to the premium payments payable by the Client COBRA Participants. Any amounts due hereunder will be billed monthly and you agree to pay such amount promptly. This Section 4 will survive the termination of your Agreement.

Based on your 401(k) plan selection to us, the corresponding section below will apply. For purposes of this Retirement Plan Annex, “**Insperity**”, “**we**”, “**us**” or “**our**” may refer to Insperity PEO Services, L.P., Insperity Holdings, Inc., or its wholly-owned affiliates, as applicable.

### 1. Insperity 401(k) Plan.

**A.** Insperity Holdings, Inc. is the plan sponsor of the Insperity 401(k) Plan (“**Plan**”). The Insperity Benefits Plan Committee is the plan administrator of the Plan (“**Administrator**”) and is responsible for maintaining the Plan in accordance with all applicable Laws, including the Code and ERISA.

**B.** If the Administrator agrees to permit Staff to participate in the Plan, this Section 1 applies and such participation shall be in accordance with the Plan’s terms and conditions, the trust agreement for such Plan (“**Trust**”) and the election agreement under which you have specified various plan features which will apply to Staff (“**Election Agreement**”). Bargaining Unit Employees are not permitted to participate in the Plan.

**C.** In order for the Plan to maintain its tax-qualified status under the Code, the portion of the Plan attributable to each of our clients must satisfy various requirements set forth in the Code and related guidance, including coverage testing, nondiscrimination testing, top-heavy contribution requirements, required minimum distributions and participant loan limits. The Administrator has the sole discretion, and authority to administer the Plan and conduct all testing based on the methodology in accordance with Laws the Administrator deems appropriate, which decisions shall be conclusive and binding on all parties and shall not be subject to your or third party review or challenge. You agree to provide complete, accurate and timely information to us (including when requested by us) in connection with the administration of the Plan.

**D.** We will invoice you and you agree to pay an amount equal to the matching, top-heavy and all other contributions to the Insperity 401(k) Plan, as determined by us in our sole and absolute discretion in accordance with applicable Law (whether or not you are a current client at the time the contribution is due).

**E.** We will invoice you and you agree to pay our fees at the then prevailing charges, and you agree to fulfill all of your obligations set forth in the Plan, Trust and Election Agreement.

**F.** The Implementation Guide for the Plan includes a summary of Plan expenses, participant fees, and an investment disclosure schedule setting forth the annual operating expenses of the underlying investments, expressed as a percentage of average net assets. A portion of the operating expenses may include compensation to the Plan in the form of certain “revenue sharing” payments. We do not retain revenue sharing payments. Revenue sharing payments paid on Plan assets are allocated pro rata to the accounts of Plan participants invested in the applicable investment option at the time of allocation. The underlying investments, expenses, participant fees and revenue sharing amounts may change at any time.

**G.** You may be required, at the discretion of the Administrator of the Plan, to cause a qualified plan to accept a plan-to-plan transfer of the assets held in the Plan attributable to your employees who are current and former Staff (“**Asset Transfer**”). Unless the Administrator agrees otherwise, you agree to have a qualified plan accept an Asset Transfer within one hundred twenty (120) after notice from us. Notwithstanding the foregoing, in the Administrator’s discretion, such assets may be distributed to such current and former Staff in accordance with the applicable

provisions of the Plan. You agree to continue providing complete, accurate, and timely information to us after termination of this Agreement (including when requested by us) in connection with the administration of the Plan, including any termination from employment and the establishment of any other qualified plan.

### 2. Insperity Individual Client-Sponsored 401(k) Plan.

**A.** This Section 2 applies if you elect to sponsor a 401(k) plan in accordance with the terms of the retirement plan document furnished by Insperity Retirement Services, L.P. (“**Retirement Services**”).

**B.** Our obligations under this Section 2 are contingent upon you executing a Recordkeeping and Services Agreement with Retirement Services, the terms of which are incorporated into this Retirement Plan Annex for all purposes.

**C.** We will report and remit on your behalf, elective contributions, loan payments and other payroll period employer contributions for participating Staff, to the trustee of your 401(k) plan. We will invoice you for remittance purposes, and you agree to pay the amount of the payroll period contributions to your 401(K) plan.

**D.** You agree to maintain your 401(k) plan in accordance with all applicable Laws, including the Code and ERISA, at all times during the Term of this Agreement and this Retirement Plan Annex. You agree to promptly notify us of any qualification failure.

**E.** You agree to provide complete, accurate and timely information to us (including when requested by us) and we are entitled to rely on said information.

**F.** The Recordkeeping and Services Agreement includes a schedule of fees and provisions on investment revenue sharing payments and administrative expenses. You agree to pay the fees or cause the fees to be paid as set forth in the Recordkeeping and Services Agreement.

**G.** We will report your 401(k) plan participation for Staff on our Form W-2. In the event it is necessary to issue an amended Form W-2 due to incorrect or incomplete information provided by you, you agree to compensate us for such service.

**H.** Insperity, Retirement Services, our affiliates, and our respective directors, officers and employees, are not fiduciaries of and will not perform any discretionary services whatsoever with respect to your 401(k) plan, the trust or the assets thereof.

### 3. Other Client-Sponsored Plan.

**A.** This Section 3 applies if you elect to sponsor or make available a retirement plan (e.g., 401(k) plan, SIMPLE 401(k) plan, 403(b) plan, SIMPLE IRA or SAR-SEP) other than one on a plan document furnished by Retirement Services.

**B.** Our obligations under this Section 3 are contingent upon you executing an outside record keeper authorization form (“**ORK Agreement**”), the terms of which are incorporated into this Retirement Plan Annex for all purposes.

**C.** We will report the amount of elective contributions and loan payments to your retirement plan as directed in writing (or electronically) by you for Staff pursuant to procedures established



by us. We may agree, subject to our review and consent, to report such amounts to your retirement plan as directed in writing (or electronically) by your retirement plan's third party administrator or record keeper pursuant to procedures established by us.

**D.** You represent and warrant that all elective contributions and loan payments made by participating Staff are made in accordance with their affirmative elections under your retirement plan, except that any elective contributions made without an affirmative election by Staff are made pursuant to an automatic contribution arrangement that complies with the notice and all other requirements of all applicable Laws, including ERISA Section 514(e).

**E.** We will not handle or take possession of Staff elective contributions or loan payments or other contributions under your retirement plan. You are solely responsible for remitting all contributions, including Staff and employer, to the trustee, custodian, or insurance company of your retirement plan. You agree to remit all contributions in accordance with ERISA and the Code.

**F.** You agree to provide complete, accurate and timely information, to or when requested by us or Retirement Services, who shall be entitled to rely on said information. You authorize your retirement plan record keeper to furnish directly to us upon request, any information reasonably necessary to perform the obligations under this [Section 3](#).

**G.** Based on the services you select on the ORK Agreement, we will provide you with access to a report each payroll period indicating (i) amounts deferred under your retirement plan during such payroll period by each participating Staff; and (ii) any associated matching and, if agreed by us, nonelective contribution amount under your retirement plan. We will not determine the methodology for calculating any deferral, matching and nonelective contribution amounts reported but will rely solely on your representation regarding the methodology and compensation types to be used under your retirement plan. We may agree, subject to our review and consent, to apply general age and/or service requirements provided by you for purposes of reporting associated matching and nonelective contributions, and you agree that in so doing we are not calculating or determining eligibility for your retirement plan. You are responsible for reviewing the accuracy of the amounts reported.

**H.** You agree to maintain your retirement plan in accordance with all Laws, including the Code and ERISA, at all times during the Term of this Agreement and this [Retirement Plan Annex](#). You agree to promptly notify us of any qualification failure.

**I.** You are responsible for (i) imposing and monitoring benefit limitations; (ii) communicating any changes to Staff deductions, calculation methodologies or the compensation types previously submitted to us; (iii) determining eligibility and all contributions under your retirement plan; (iv) performing qualified plan testing (e.g., coverage, non-discrimination and top-heavy); (v) determining eligibility for distributions and withdrawals; (vi) providing legally-required notices, communications and other documents under your retirement plan; and (vii) filing annual information returns, tax returns and determination letter requests. Notwithstanding the foregoing, we may agree, in our sole discretion and subject to payment of the applicable fee, to prepare a draft annual information return for the final plan year of your retirement plan. You are solely responsible for reviewing, approving, and filing the annual information return with the applicable government agency.

**J.** You represent that all Staff making or receiving contributions under your retirement plan are eligible and you agree to immediately report to us any Staff that are, or become, ineligible to participate in your retirement plan.

**K.** We will report your retirement plan participation for Staff on Form W-2, if your retirement plan is covered by an executed ORK Agreement. If your retirement plan does not permit employee elective contributions and is not covered by an executed ORK Agreement, we will also report your retirement plan participation for Staff on Form W-2 provided you request us to do so in writing prior to the end of the calendar year and you timely provide the information we request. In the event it is necessary to issue an amended Form W-2 for such reporting, you agree to compensate us for such service.

**L.** Insperty, Retirement Services, our affiliates, and our respective directors, officers and employees, are not fiduciaries of and will not perform any discretionary services whatsoever with respect to your retirement plan or any plan under this [Section 3](#), the trust or the assets thereof.

#### **4. [State Retirement Programs](#).**

**A.** This [Section 4](#) applies if you are required or elect to make available to Staff a state-sponsored payroll deduction IRA retirement program ("SRP").

**B.** Our obligations under this [Section 4](#) are contingent upon you appointing Retirement Services as your "payroll provider" in the SRP's online access system and Retirement Services accepting that appointment via the SRP's online access system. You acknowledge that we have no obligation under applicable Law to make the SRP available to Staff but may agree to assist you with your SRP obligations.

**C.** We will (i) provide to the SRP census information of Staff who are required to participate in the SRP based on information in our systems provided by you, (ii) set up payroll groups on the SRP's online access system based on information in our systems provided by you, (iii) receive elective contribution rates for participating Staff via the SRP's online access system, (iv) report on payroll the amount of elective contributions to the SRP as directed by the SRP, and (v) report to the SRP elective contribution amounts for participating Staff.

**D.** We will provide you with access to a report each payroll period indicating amounts deferred under the SRP during such payroll period by each participating Staff.

**E.** We will not handle or take possession of Staff elective contributions under the SRP. You are solely responsible for remitting all contributions, including Staff and employer, to the trustee, custodian, or insurance company of the SRP. You agree to remit all contributions, including those reported by us, in accordance with applicable Law.

**F.** You agree to provide complete, accurate and timely information, to us (including when requested by us) in connection with our services related to the SRP, and you acknowledge and agree that we are entitled to rely on the information you provide. You authorize the SRP to furnish directly to us (including when requested by us) any information reasonably necessary to perform our services related to the SRP.

**G.** You represent and warrant that all elective contributions made by participating Staff are made in accordance with their

affirmative elections or an automatic contribution arrangement under the SRP.

**H.** We will not determine the methodology for calculating any elective contribution amounts reported but will rely solely on your and the SRP's direction regarding the methodology. We will not determine eligibility for the SRP but will rely solely on information provided by you. You are responsible for reviewing and ensuring the accuracy of the census information reported to the SRF and the amounts reported as elective contributions. You represent that all Staff making or receiving contributions under the SRP are eligible and you agree to immediately report to us any Staff that are, or become, ineligible to participate in the SRP.

**I.** You agree that we are not responsible for (i) imposing and monitoring benefit limitations; (ii) collecting Staff deduction elections; (iii) determining eligibility or contributions under the SRP; (iv) performing testing; (v) determining eligibility for or processing distributions and withdrawals; (vi) providing legally-required notices, communications and other documents under the SRP; and (vii) filing any information returns, tax returns and determination letter requests.

**J.** Insperty, Retirement Services, our affiliates, and our respective directors, officers and employees, are not fiduciaries of and will not perform any discretionary services whatsoever with respect to any SRP, the trust or the assets thereof.

**K.** We will invoice you and you agree to pay our fees at the then prevailing charges, and you agree to fulfill all of your obligations under Law regarding the SRP. You agree to promptly notify us of any documentary, operational or administrative failure. We

assume no responsibility for validating the requirements under the SRP or for ensuring that elective contributions for the SRP are made in accordance with Law.

**5. No Retirement Plan.** You may decide to not make a retirement plan available to Staff. In the absence of a retirement plan selection acknowledged by us and in accordance with one of the sections above under this Retirement Plan Annex, this Section 5 applies and your default selection is no retirement plan is available to Staff.

**6. Provisions of General Applicability.**

**A.** This Retirement Plan Annex shall survive the termination of this Agreement.

**B.** You are responsible for any penalties, income taxes, excise taxes and interest related to your sponsorship of a retirement plan or participating in any SRP.

**C.** We reserve the right to terminate or modify our services under this Retirement Plan Annex and referenced documents without cause upon written notice to you.

**D.** We reserve the right to immediately terminate our retirement plan related services if you fail to comply with the applicable provisions of this Retirement Plan Annex and referenced documents.

**E.** You agree to cooperate fully with us in any investigation or defense of any retirement plan-related matter involving Staff whether such matter is initiated by Staff, a government agency or us.

This Annex sets forth our Credit Policy. Notwithstanding any statement to the contrary contained in this Agreement, including [Section 5.D](#) of the Client Service Agreement, we reserve the right to modify, amend, alter, add to or otherwise change this Credit Policy, which revised Credit Policy shall be immediately binding. Failure to comply with any provision of this Credit Policy may constitute a Default and result in immediate termination of this Agreement. Exceptions to this Credit Policy are effective only when in writing signed by us.

**1. Invoice Payment Methods and Timing.**

**A. Payment Methods.** The standard method for payment of our invoices is direct debit. Wire transfer is acceptable only if approved by us. All methods of payment must be initiated from a U.S. bank account in the client company's name. Conditions of payment methods are as follows:

i. *Direct Debit.* You authorize your bank to accept a debit request by us from your designated bank account and will provide your bank with authorization to allow us to debit your designated bank account. You agree to report payroll at least four (4) business days prior to payroll date and you authorize us to debit your designated bank account for payroll one (1) business day prior to payroll date. If all Staff on your payroll participate in both direct deposit and ePayStub, we may debit your designated bank account on the payroll date. Newly hired Staff will have thirty (30) days from their hire date to enroll in direct deposit with ePayStub. Existing Staff that terminate direct deposit with ePayStub will be allowed up to thirty (30) days to re-enroll in direct deposit with ePayStub.

Funds must be available for debit the day payroll is processed. Additional pay such as bonuses, vacation, severance, and commissions processed through us will be handled in the same time frames unless we notify you that we will require wire transfer. During the time period required to set up the direct debit process, you will pay all invoices by wire transfer. You are responsible for all fees charged by your bank. If a direct debit is returned for non-sufficient funds, you may be required to wire transfer thereafter.

In consideration of your bank's compliance with this authorization, you agree that our bank's treatment of any charge, and its rights in respect to it, shall be the same as if the entry were initiated personally by you and that if any charge is dishonored, whether with or without cause, your bank shall be under no liability.

ii. *Wire Transfer.* You may elect to pay invoices by wire transfer with our consent. Under this method, you electronically remit funds from your bank directly to our designated bank account. The funds are available to us on the same day the wire transfer is sent. You agree to wire transfer to our designated bank, no later than 3 p.m. Houston, Texas time, two (2) business days prior to payroll date. You are responsible for all fees charged by your bank. We may require you to pay by wire transfer if you are determined by us in our reasonable discretion to be a credit risk or in other instances where we determine that time is of the essence.

iii. *Other Payment Methods.* No other form of payment (e.g. check, cashier's check, credit card, etc.) is acceptable without our prior written consent.

**B. Timing of Payment.** In general, we will not release a payroll until payment has been received from you. The timing of payments for the direct debit and wire transfer methods are as follows:

i. *Direct Debit.* Direct debits are initiated by us at least one (1) business day prior to the payroll date.

ii. *Wire Transfer.* A wire transfer must be received by our receiving bank at least two (2) business days prior to the payroll effective date.

iii. *Prepayment.* You provide funds for the estimated payroll to us via wire transfer on the first banking business day prior to the start of the payroll period.

**2. Financial Reviews.** We monitor clients who have large dollar invoices and/or who are considered by us to be a credit risk. We reserve the right to request your financial statements and other information in order to evaluate your ability to timely pay invoices. We may require you to comply with the following policies:

**A. Initial Financial Reviews.** If your total monthly payroll invoices exceed \$600,000 as calculated on the [Schedule B](#), we will require you to provide current year-to-date and prior full year financial statements to us. The required financial statements must contain the same information specified in [Section 2.B](#), below. Based on this review, we will determine whether or not security, as described in [Section 3](#) below, will be necessary.

**B. Periodic Financial Reviews.** We will routinely review your financial condition if you have a total monthly payroll invoice exceeding \$600,000 in the aggregate each month. These reviews will be performed quarterly. For these reviews, you agree to provide the following to our Credit Services Group: (i) by the thirtieth (30<sup>th</sup>) day after each fiscal or calendar quarter end, bank statements and unaudited financial statements, including balance sheets, income statements, and cash flow statements, in conformity with generally accepted accounting principles and certified as to their accuracy in all material aspects by your chief financial officer; and (ii) by the ninetieth (90<sup>th</sup>) day after close of your fiscal or calendar year, your annual audited, compiled or reviewed financial statements.

**3. Credit Conditions.** We will monitor your ability to timely meet your financial obligations to us, and we further reserve the right to alter your payment terms, if we determine, through information available from our business relationship with you, or other credible independent third party sources, that you are or have become a credit risk to us. The possible payment/contract terms changes include but are not limited to: (a) requiring you to pay invoices by wire transfer; (b) requiring you to immediately post a security deposit in an amount determined by us to secure your obligations under this Agreement; (c) requiring you to prepay your estimated obligations for each payroll period one (1) banking business day prior to the start of the payroll period; and (d) requiring you to sign a short-term, automatically terminating Client Service Agreement Addendum and prepaying each estimated obligation for each payroll period per clause (c) above.

Any security deposit must remain available to us in the event of your bankruptcy filing or default under this Agreement. The amount provided as security must equal, at a minimum, the invoice amount of one payroll period plus, if the payroll is paid in arrears, the estimated amount represented by the period in arrears. We will calculate the amount required.

#### 4. **Required Approvals.**

**A.** A payroll effective date that is more than seven (7) calendar days beyond the date of the payroll period is considered an exception to policy and must be approved by our Director of Credit Services and/or our Senior Vice President of Finance.

**B. Severance Payments.** If you utilize direct debit, we may require you to pay severance payroll invoices by wire transfer. Additionally, all severance agreements processed through us must be approved by our Insperity Separation Agreements team.

**C. Bonus Payroll.** If you are a direct debit client, we may require you to pay bonus payroll invoices by wire transfer.

**D. Parachute and Change in Control Payments.** All parachute payments and payments related to a change in control processed through us must be approved by our Finance Department.

**E. Equity-Based Compensation Payments.** We will only pay, process and report (not transfer or deliver) equity-based compensation payments if consented to by our Finance Department. If our Finance Department consents, and subject to the conditions set forth in this Agreement, we will process equity-based compensation payments and will report, withhold and deposit federal and state income and employment taxes with respect to wages for Staff derived from restricted stock (“RS”), incentive stock options (“ISO”), non-qualified stock options (“NQSO”), stock appreciation rights (“SAR”), or restricted stock units that are required to be paid and are paid within 2½ months of the end of the calendar year in which they vest or are no longer subject to a substantial risk of forfeiture (“RSU”). RS, ISO, NQSO, SAR and RSU are collectively referred to as “**Stock-Award Wages.**” You represent and warrant that such Stock-Award Wages are granted under a stock incentive plan sponsored by you or your parent company and do not constitute deferred compensation under Code section 409A. You further agree that you will remain solely responsible for all wage, hour, and related Laws governing the payment of equity-based compensation and/or Stock-Award Wages to your employees except as provided in this Agreement. If we report, withhold, and/or deposit any taxes for Staff in connection with any Stock-Award Wages, you agree that:

i. each transaction requested to be reported as Stock-Award Wages will be separately evaluated by us and only processed after our review and consent;

ii. you or your parent company will remain listed on a recognized and regulated stock exchange or interdealer electronic quotation system, if currently listed or later becoming listed;

iii. you will provide us with an updated schedule of outstanding awards, in a format acceptable to us, at least once

each year and upon any grant of new awards, including at least thirty (30) days prior to any vesting of restricted stock or RSUs not previously provided;

iv. on the date of any reporting, withholding or depositing of taxes for Stock-Award Wages, the applicable Staff must be actively employed by Insperity or a former employee of Insperity entitled to receive Stock-Award Wages;

v. you will furnish a report to us setting forth the amount of Stock-Award Wages by award type no later than the next business day after a stock option or SAR exercise, a Code Section 83(b) election is made, a restricted stock vesting or an RSU vesting or distribution, in order for us to calculate, report, withhold and deposit taxes relating to Stock-Award Wages;

vi. we will provide you with the amount of all federal and state taxes related to Stock-Award Wages that are required to be deposited based on the information you provided, provided that you have timely reported the Stock-Award Wages to us;

vii. prior to the date on which Insperity is required to deposit taxes relating to the Stock-Award Wages under Law, you agree to cause to be funded to us, in a manner acceptable to us, the amount of all federal and state taxes related to Stock-Award Wages;

viii. we shall not calculate the valuation and amount of Stock-Award Wages, but shall rely solely on your written representations regarding the same, including any applicable monetary exchange rate;

ix. if you fail to timely comply with the requirements of this Agreement, we shall be under no obligation to report, withhold, or deposit any amounts related to the proposed Stock-Award Wages;

x. you are solely responsible for preparing and filing all federal, state and local reports and forms regarding any ISOs (including IRS Form 3921);

xi. for purposes of Code section 3401(d), you maintain sole “control” over the payment of Stock-Award Wages; and

xii. you represent and warrant that all Stock-Award Wages have been granted and administered in accordance with all applicable Laws and regulations, as well as in accordance with any related plan and administrative guidelines governing the granting of such equity-based awards.

**5. Guaranty of Related Parties.** You agree to guaranty all obligations of your related companies under any Client Service Agreement or MidMarket Client Service Agreement entered into with us by your related companies.

This Data Privacy & Security Annex, which we refer to as the “Data Annex,” sets forth certain additional terms and conditions regarding data privacy and data security.

**1. Definitions.** The following additional defined terms are used in this Data Annex. To the extent there is any conflict between the definition of a capitalized term in the Agreement or this Data Annex and the definition of that same term under the Data Protection Laws, that conflict shall be resolved in favor of the definition that imposes more restriction on the use of Personal Information.

**A. “Business”** means a sole proprietorship, partnership, limited liability company, corporation, association, or other legal entity that is organized or operated for the profit or financial benefit of its shareholders or other owners, that collects consumers’ Personal Information, or on the behalf of which such information is collected and that alone, or jointly with others, determines the purposes and means of the Processing of consumers’ Personal Information, and as further defined under the CCPA.

**B. “Client Provider”** means your Contractor, Service Provider, or Third Party.

**C. “CCPA”** and “CPRA” have the meanings set forth in the definition of Data Protection Laws below.

**D. “Data Protection Laws”** means Laws relating to privacy, security, or protection of Personal Information, as may be defined in such Laws, including the California Consumer Privacy Act of 2018 (together with any regulations promulgated thereunder, “CCPA”) as amended by the California Privacy Rights Act of 2020 (together with any regulations promulgated thereunder, “CPRA”).

**E. “Exchanged Staff Records”** means Staff Records that are disclosed between us and you, including without limitation personnel records, related to the Staff’s employment, and directed and authorized by such Staff to do so in connection with the parties’ co-employment relationship with respect to Staff.

**F. “Personal Information”** means any information that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household or with a particular individual’s or household’s device; or any inferences drawn therefrom. For the avoidance of doubt, the parties acknowledge that data that has been stripped of identifiers and aggregated will not be deemed Personal Information.

**G. “Processing”** means the collection, receipt, recording, organization, structuring, alteration, use, transmission, access, Sharing, provision, disclosure, distribution, copying, transfer, storage, management, retention, deletion, combination, restriction, summarizing, aggregation, correlation, inferring, derivation, analysis, adaptation, retrieval, consultation, destruction, disposal or other handling of Personal Information. “Process,” “Processes,” and “Processed” will be interpreted accordingly.

**H. “Security Incident”** means an incident, intentional or accidental, where there has been unauthorized access, acquisition, disclosure or use of Personal Information or such Personal Information has been otherwise compromised.

**I. “Sell”** means selling, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a Staff’s Personal Information by the Business to a Third Party for monetary or other valuable consideration. As defined under the

CCPA, a Business does not “sell” Personal Information when a Consumer (as defined in the CCPA), which includes Staff, directs the Business to intentionally (i) disclose Personal Information or (ii) interact with one or more Third Parties.

**J. “Service Provider”** is a person that Processes Personal Information on behalf of a Business, and which receives from or on behalf of the Business a Staff’s Personal Information for a business purpose pursuant to a written contract.

**K. “Share”** or “Sharing” means sharing, renting, releasing, disclosing, disseminating, making available, transferring, or otherwise communicating orally, in writing, or by electronic or other means, a Staff’s Personal Information by the Business to a Third Party for cross-context behavioral advertising, whether or not for monetary or other valuable consideration, including transactions between a Business and a Third Party for cross-context behavioral advertising for the benefit of a Business in which no money is exchanged.

**L. “Staff Records”** means Personal Information of Staff that is collected in connection with the Agreement.

**M. “Third Party”** is defined as a person who is neither: (i) the Business with which Staff intentionally interacts and that collects Personal Information from the Staff; (ii) a Service Provider; nor (iii) a Contractor.

**2. Roles and Responsibilities.**

**A. General.** Each party will comply with its independent obligations as a Business under applicable Data Protection Laws in connection with the Processing of Staff Records.

**B. Insperity as a Business.** The parties acknowledge and agree that we are acting as an independent Business, and are responsible, and have the exclusive authority, for the Processing, storage, security, and transmission of Staff Records that are created, collected, maintained, and stored in our or our affiliates’ systems, in our environment or worksites, or as collected, transmitted, and stored on our behalf by our affiliates, Contractors, Service Providers, or other Third Parties and are related to the Services (including Insperity Internet Services). If and when we disclose Staff Records to you or to a Client Provider at your request, such Staff Records will be designated as part of the Exchanged Staff Records and you assume responsibility for Exchanged Staff Records as a Business, including sole responsibility for the storage and security of Exchanged Staff Records when in the possession of you or a Client Provider.

**C. Client as a Business.** The parties acknowledge and agree that you are acting as an independent Business, and are responsible for, and have the exclusive authority for the Processing, storage, security, and transmission of Staff Records that are created, collected, maintained, and stored on your systems, in your environment or worksites, or as collected, transmitted, and stored on your behalf by your affiliates, Contractors, Service Providers, or other Third Parties. If and when you disclose Staff Records described in the foregoing to us, such Staff Records will be designated as part of the Exchanged Staff Records.

**D. Service Provider Regarding Client Staff Records Service.** The parties acknowledge and agree that in connection with your use of the Client Staff Records Service, we are acting as a Service Provider

to you, and you are acting as a Business in connection with Personal Information Processed pursuant to your use of the Client Staff Records Service.

with reasonably requested information regarding such event to enable you to comply with your obligations under Data Protection Laws.

### **3. Privacy Obligations and Use Restrictions.**

**A. General.** We and you each acknowledge and agree that, as a Business, such party will:

- i. not Sell or Share Exchanged Staff Records;
- ii. not retain, use, or disclose Exchanged Staff Records for any purpose except as permitted under the Agreement, including with respect to us, to provide the Services, as reasonably necessary as employer of such Staff, or as may be consented by such Staff; and
- iii. have commercially reasonable physical, administrative, and technical safeguards in accordance with Data Protection Laws having regard to the sensitivity of the information to protect such Exchanged Staff Records against loss, theft, unauthorized access, disclosure, use, or disposal.

**B. Service Provider Regarding Client Staff Records Service.** With respect our acting as a Service Provider in connection with your use of the Client Staff Records Service, we will:

- i. not Sell or Share Client Staff Records;
- ii. not retain, use, or disclose Client Staff Records for any purpose other than for the business purpose(s) and in accordance with the Agreement;
- iii. not retain, use, or disclose Client Staff Records for a commercial purpose other than providing the Client Staff Records Service to Client;
- iv. not retain, use, or disclose Client Staff Records outside of the direct business relationship between Insperity and Client;
- v. not combine Client Staff Records with Personal Information that it receives from, or on behalf of, another person or persons, or collects from its own interaction with the Staff, except as allowed under Data Protection Laws, including to perform permitted business purposes
- vi. have commercially reasonable physical, administrative, and technical safeguards in accordance with Data Protection Laws having regard to the sensitivity of the information to protect such Client Staff Records against loss, theft, unauthorized access, disclosure, use, or disposal;
- vii. except as otherwise permitted herein, not disclose such Client Staff Records or otherwise permit access to or make such Client Staff Records available to any person or entity except (a) as expressly permitted or instructed in writing by you or (b) as required to comply with Law; provided that in any such case: (1) you are promptly notified of any such requirement (and prior to disclosure of the Client Staff Records) unless not permitted by Law; and (2) we agree, at your expense, to furnish only that portion of the information that we reasonably determine is legally required to be furnished and to use commercially reasonable efforts to request that the information is maintained in confidence by the party to whom it is furnished; and
- viii. promptly upon determining that there has been unauthorized access, acquisition, disclosure or use of Client Staff Records through the Client Staff Records Service or otherwise while in our possession, in either case other than through your fault, notify you of such event and provide you

**4. Subprocessors.** As to our role as a Service Provider in connection with your use of Client Staff Records Service, we may engage any subprocessor or subcontractor to aid us in providing such service. To the extent that such subprocessors or subcontractors Process Client Staff Records, in which case we will impose on the subprocessor or subcontractor the terms as at least as stringent as those set forth in this Data Annex with respect to us.

**5. Service Providers, Contractors, or Third Parties.** As to parties acting as Businesses in connection with Staff Records, including Exchanged Staff Records, each party will comply with its obligations under applicable Data Protection Laws in connection with engaging any Service Providers, Contractors, or Third Parties.

### **6. Consumer Privacy Requests.**

**A. Requests Relating to Client Staff Records Service.** When required by Data Protection Laws, you will inform us of any verifiable consumer request that requires our compliance and will provide us with information necessary for us to comply with the verified request. We will reasonably cooperate with you, and promptly provide any information and documents requested by you to respond to requests under Data Protection Laws. You have the sole responsibility for deleting or correcting any Client Staff Records. We agree to notify you if we directly receive any requests under Data Protection Laws related to Client Staff Records. We will promptly inform the consumer that the request cannot be acted upon because the request has been sent to a Service Provider.

**B. Co-Employers and Businesses.** The parties acknowledge and agree that both parties have independent obligations to respond and fulfill verifiable requests from Staff exercising their rights under Data Protection Laws with respect to Staff Personal Information, including Staff Records and Exchanged Staff Records in such party's possession or control, including with respect to you, Client Providers.

**7. Audit.** Upon written request, and no more than once every 12 months, a party may request a certification from the other party in order to demonstrate compliance with the obligations set forth in this Data Annex.

**8. Severability.** If any single provision of this Data Annex is determined to be invalid, unlawful, or unenforceable by a competent court or regulator, the validity and enforceability of the other provisions in this Data Annex will not be affected. The provision determined to be invalid, unlawful, or unenforceable will continue to be in force in those jurisdictions that do not recognize the competency of the court or regulator making the decision.

**9. Non-Compliance.** Each party agrees to promptly notify (and in any event within five (5) business days) the other party upon determining that it can no longer meet its obligations under this Data Annex or Data Protection Laws. Upon such notice, the other party shall have the right to take reasonable and appropriate steps to stop and remediate any unauthorized use of Personal Information by the notifying party.

**10. Amendments to Data Annex.** The parties understand and agree that existing Data Protection Laws remain subject to change and that other jurisdictions may enact general privacy and data protection laws and regulations. Consequently, the parties acknowledge and agree that we may revise the terms of this Data Annex and they will be binding upon posting in order to comply with Data Protection Laws.