



EMPLOYEE LEASING AGREEMENT

This Agreement made this ____ day of _____, 2011 by and between _____ whose address is _____ (hereafter referred to as "*Subscriber*") and CONVERGENCE EMPLOYEE LEASING, INC., a Florida corporation, with offices at 3951 Baymeadows Road, Jacksonville, Florida 32217 (hereafter referred to as "*Convergence*").

1. SERVICES PROVIDED

A. *Subscriber* hereby contracts with *Convergence* pursuant to the terms of this Agreement, to provide those services required for the Job Function Positions specified in Exhibit A attached hereto. *Subscriber* warrants that the list of Workers' Compensation Classifications specified in Exhibit A is accurate and complete; that employees performing these job functions do so only at the location specified in this agreement as *Subscriber's* address. *Subscriber* understands and agrees that prior written approval from *Convergence's* Worker's Compensation carrier must be obtained prior to adding any classification or location to this agreement. *Subscriber* acknowledges that this Agreement has been shown to all of its officers and directors and *Subscriber*, on behalf of its officers and directors, agrees that if *Subscriber* violates this provision and fails to obtain this prior written approval, the officers and directors of *Subscriber* shall indemnify *Convergence* and all subsidiary, affiliate and parent companies, their shareholders, non-leased employees, attorneys, officers, directors, agents and representatives from and against any and all liability incurred, including but not limited to attorney's fees, costs, expenses, awards and settlements, for injuries occurring to any individual performing work at said locations and within such classifications as may have been added without prior written approval.

B. *Convergence* shall supply leased employees to *Subscriber*. *Convergence* reserves a right of direction and control over leased employees assigned to the *Subscriber's* location, including authority to hire, terminate, discipline, and reassign the leased employees. However, the *Subscriber* shall retain such sufficient direction and control over the leased employees as is necessary to conduct the *Subscriber's* business (including the right to accept or cancel the assignment of any leased employee) and without which the *Subscriber* would be unable to conduct its business, discharge any fiduciary responsibility that it may have, or comply with any

applicable licensure, regulatory, or statutory requirement of the *Subscriber*. *Convergence* shall be responsible to pay leased employees wages for services performed as leased employees without regard to payments to Convergence by the Subscriber (based upon information confirmed by *Subscriber*), and shall be responsible for the payment of unemployment insurance premiums, and the collection and payment of payroll taxes, on such employees deemed *Convergence's* employees for services which they have performed as leased employees.

- C. *Convergence* shall secure workers' compensation coverage in such amounts as is required by applicable law and shall be responsible for the management of workers' compensation claims, claims filings and related procedures for its leased employees for services which they perform as leased employees. It is acknowledged that this function requires compliance with Florida Statutes and rules governing drug-free work place program requirements. The *Subscriber* shall comply at its expense with any specific directives from *Convergence* or *Convergence's* workers' compensation carrier, or any government agency having jurisdiction over the work place, health and safety, including without limitation, complying with any light duty work requirements with respect to injured leased employees seeking workers' compensation benefits.
- D. *Convergence* shall retain a right of direction and control over management of safety, risk and hazard control at the worksite or sites affecting its leased employees, including the promulgation and administration of employment and safety policies, and the performance of safety inspections of Subscriber's equipment and premises. Subscriber understands and agrees that, notwithstanding Convergence's retention of rights as hereinabove set forth, compliance with all applicable laws relating to such matters will be the Subscriber's responsibility. Subscriber further understands and agrees that Convergence in either inspecting or not inspecting the Subscriber's equipment and premises for safety purposes assumes neither liability nor responsibility for any unsafe working condition which may exist. Should Subscriber fail to comply with any directives or recommendations pertaining to job safety made by Convergence, this failure shall constitute grounds for immediate termination of this Agreement by Convergence.
- E. *Subscriber* acknowledges that it is responsible to maintain a safe working environment which is in compliance with Florida Division of Safety and Federal OSHA standards. Environmental factors, equipment, machinery and all other matters which affect employee safety shall be maintained in compliance with Florida Division of Safety And Federal OSHA standards. *Subscriber* represents that its working environment, equipment, machinery, supplies and training for existing employees currently meets all Florida Division of Safety and Federal OSHA standards and that they will be maintained in compliance with such standards during the duration of this Agreement. *Subscriber* agrees that it shall be solely responsible for implementing and complying with Florida Division of Safety and federal OSHA laws and regulations and shall be solely

responsible for any such violations, including the obligation to comply with Florida Division of Safety regulations issued at 381-15, et. seq., Florida Administrative Code. To the extent permitted by state and federal law, all reporting and record-keeping obligations of employers under the Florida Division of Safety or federal OSHA standards shall be the exclusive responsibility of the *Subscriber*. *Convergence* may provide *Subscriber* with technical assistance regarding safety matters, but in so doing *Subscriber* acknowledges that *Convergence* in either providing or not providing such assistance assumes no liability.

- F. Workers' Compensation benefits are provided only to those individuals whose names appear on payroll records of *Convergence* and only for such periods of time as said employees are paid by *Convergence*. The *Subscriber* acknowledges and agrees that Workers' Compensation coverage is not provided by *Convergence* to any other individuals.
- G. *Convergence* shall not be considered an employer for any employee who does not complete a *Convergence* employment application form and all forms required by law or who is not accepted by *Convergence* as a leased employee. In addition, *Convergence* shall not be considered to be an employer of any individual for whom payroll information is not supplied during any payroll period. No individual shall become a leased employee of *Convergence* without *Convergence's* specific approval, made in advance of the employee's first date of employment. *Convergence* shall give written notice of the relationship between *Convergence* and the *Subscriber* to each leased employee *Convergence* assigns to perform services at the *Subscriber's* worksite. *Convergence* shall not be responsible for and it shall not provide Workers' Compensation insurance or any other benefit or term and condition of employment for any individual not deemed by *Convergence* to be one of its leased employees. The *Subscriber* assumes full responsibility for Workers' Compensation claims of other Parties hired by or working for the *Subscriber*. Should *Subscriber* have a period of time in which there is not sufficient work for existing employees to be employed at any *Subscriber* location, *Subscriber* will immediately notify *Convergence* of the interruption in the need for specific named leased employees. Workers' compensation benefits will not be accorded to any individual who is injured while performing work other than as a leased employee.

2. LIMIT OF SERVICES

Convergence will only provide the above listed services and no other services shall be provided or implied, including without limitation, any strategic, operational or other business related decisions with regard to the *Subscriber's* business. Such decisions shall exclusively be the responsibility of the *Subscriber*, and *Convergence* shall bear no responsibility nor liability for any

actions or inactions by the *Subscriber*. When implementing such decisions, whether or not the actions are implemented by leased employees, the *Subscriber* shall be acting solely on its own volition and responsibility. *Convergence* will provide no equipment to the employees. If *Convergence* is leasing any supervisory employees to the *Subscriber*, such supervisory employees' scope of employment is strictly limited. Supervisors' actions which are in violation of law or which result in liability will be outside the scope of their responsibility and in any such event supervisory employees will be acting solely as the agents of the *Subscriber*.

3. INSURANCE

During the term of this Agreement and any subsequent terms, *Subscriber* shall obtain and maintain the following types of insurance:

- A. **Automobile:** *Subscriber* shall obtain, maintain, and furnish proof of, automobile liability insurance for all owned, non-owned, and hired vehicles used in connection with the work performed on its premises or in connection with its business. The policy shall insure against public liability for bodily injury and property damage, with a minimum combined single limit of Five Hundred Thousand Dollars (\$500,000.00) and Uninsured Motorist or PIP equivalent coverage of at least the minimum limits required by the State where such "no fault" law shall apply.
- B. **General Liability:** *Subscriber* shall obtain and maintain general liability insurance, and to cause its insurance carrier to issue a Certificate of Insurance evidencing same to *Convergence* allowing not less than thirty (30) days' notice of cancellation or material change. The minimum requirement shall be Five Hundred Thousand Dollars (\$500,000.00) combined single limit including, but not limited to, where applicable, premises, operations, products, completed operations, contract and broad form property damage, independent contractors, personal injury, host liquor, and full liquor liability. If *Subscriber* renders professional services, it shall obtain and maintain throughout the term, and any succeeding terms of this Agreement, professional liability coverage as applicable. Unless otherwise agreed to, such policy shall have a combine single limit of no less than Five Hundred Thousand Dollars (\$500,000.00).
- C. **Fidelity Bonding:** Any protection against the dishonest or criminal conduct or misappropriation of any funds engaged in by any employee maintained hereunder, such as fidelity bonding, shall be at *Subscriber's* expense.
- D. *Subscriber* agrees, at its own expense, to include *Convergence* as an additional named insured on all of *Subscriber's* insurance policies.

E. *Subscriber's* obligations under this Section shall survive termination of this Agreement.

F. **Subrogation and Indemnification**

Each party hereby waives any claim in its favor against the other party by way of subrogation or indemnification which may arise during the term of this Agreement for any and all loss of, or damage to, any of its property, or for bodily injury, which loss, damage, or bodily injury is covered by insurance to the extent that such loss or damage is recovered under such policies of insurance as required herein.

4. **INDEMNITY**

A. *Subscriber* hereby unconditionally indemnifies, holds harmless, protects and defends *Convergence*, and all subsidiary, affiliate and parent companies, their shareholders, non-leased employees, attorneys, officers, directors, agents and representatives from and against any and all claims, demands, damages, injuries, deaths, actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and other consequences of any sort, including but not limited to:

1. Actions or incidents (whether actual or alleged) by *Subscriber*, or any leased or non-leased employee, of negligence, other tortious conduct, breach of contract, criminal or dishonest activity, those actions or incidents covered by the insurance policies, professional liability policies or fidelity bonds as set forth in Section 3, those costs attendant to the administration of any collective bargaining agreement, and any liabilities or claims against *Convergence* arising out of any non payment or payment to or participation in a labor organization's health and welfare, retirement or other benefit fund, or the cessation of payment thereto or withdrawal from participation therein; and
2. All employment-related matters which shall encompass matters arising under local, state and/or federal right-to-know laws, OSHA, EEOC, ADEA, ADA (including without limitation those relating to employment, public access and public accommodation), WARN (including providing *Convergence* at least 62 days notice prior to a layoff, shutdown, or plant closing as defined in that law), Family and Medical Leave Act, ERISA, Wage and Hour laws, NLRB laws, disclosed and undisclosed benefit plans, all other labor laws; and

3. Any and all other laws, regulations and ordinances, and causes of action, including third party actions, arising out of, occasioned by, or in connection with any obligations of either party arising out of this Agreement, including without limitation those arising from products or services (professional or otherwise) produced or provided by the leased employees; and
4. Any matter relating to *Subscriber's* use of any leased employee or involving the use of the *Subscriber's* (or any employee, if such employee is acting or alleged to be acting on behalf of the *Subscriber* or *Convergence*) machinery, facilities, equipment and/or vehicles, whether leased, rented, borrowed or owned; and
5. Injuries or death occurring to any individual performing work for *Subscriber* while not performing work as a leased employee; injuries or death to any non-leased employee; and for such acts of negligence towards any employee as are beyond the coverage of workers' compensation coverage.

B. *Subscriber* agrees that, notwithstanding any other provision of this Agreement, that access to any property, whether real, appurtenant, or personal, as well as the accommodation of said property to any person who may be handicapped or disabled, or perceived as being handicapped or disabled, over which real or personal property the *Subscriber* has ownership, administration, maintenance or some other control, shall be the sole and exclusive responsibility of the *Subscriber*. *Subscriber* agrees to indemnify, hold harmless and defend *Convergence*, and all subsidiary, affiliate and parent companies, their shareholders, non-leased employees, attorneys, officers, directors, agents and representatives from and against any and all claims, demands, damages, injuries, deaths, actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and other consequences of any sort arising out of the *Subscriber's* obligations set forth herein.

C. *Convergence* hereby unconditionally holds harmless, protects and defends *Subscriber*, and all subsidiary, affiliate and parent companies, their shareholders, non-leased employees, attorneys, officers, directors, agents and representatives from and against any and all claims, demands, injuries, deaths, actions, costs and expenses (including attorney's fees and expenses at all levels of proceedings), losses and liabilities of whatever nature (including liability to third parties), and other consequences of any sort, arising out of the negligent or willful failure of any non-leased

employee employed by *Convergence* at its corporate offices to comply with applicable worker's compensation, withholding tax, or ERISA laws, rules and regulations.

- D. All indemnifications shall survive the termination of this Agreement.

5. COMPENSATION

- A. For services to be rendered under this Agreement, *Convergence* shall be entitled to a fee as specified on Exhibit A hereto entitled "Fee Schedule". All funds due *Convergence* (including but not limited to payroll, payroll taxes and administration fees) are payable to *Convergence* prior to issuance of payroll checks each pay period. *Subscriber* hereby agrees to pay to *Convergence*, upon demand, any increases in workers' compensation rates or premiums, unemployment taxes or insurance premiums as set forth in Exhibit A, whether such increases are retrospective or prospective, including without limitation , increases or adjustments resulting from: changes in federal, state or local law; changes in insurance or tax requirements; costs or changes in the *Subscriber's* payroll; miscalculation, misinformation, omission, audit adjustment, error, negligence or mistake, attributable to any party or any other person or entity; or for any other lawful reason.

- B. If for any reason whatsoever payment is not timely submitted to *Convergence* for its services in accordance with this Agreement, or the payment received is unable to be immediately negotiated, it will be considered a material breach of contract and *Convergence* shall have the sole right to immediately terminate this Agreement and shall be entitled to bring suit seeking appropriate damages, including but not limited to, compensatory and punitive damages, and *Convergence* shall be entitled to exercise any and all other remedies available at law or in equity.

C. SECURITY DEPOSIT

Subscriber hereby deposits with *Convergence* a security deposit in the amount of \$ (the "Security Deposit") for the exclusive use by *Convergence* of securing the *Subscriber's* full and faithful performance of its obligations under this Agreement. In addition to the sum stated above, *Subscriber* shall agree to pay to *Convergence*, upon *Convergence's* request, an additional sum of money as may reasonably be required by *Convergence* from time to time and in an amount determined by *Convergence*, for the exclusive use by *Convergence* of further securing *Subscriber's* obligations or liabilities under this Agreement. *Convergence* shall have the right to hold the secured funds for the duration of this Agreement, if it deems necessary. Within thirty (30) days following termination of this Agreement, *Convergence* shall reconcile such

Security Deposit, together with any additional sums deposited by *Subscriber* hereunder, and shall apply the same toward any remaining but unpaid obligations or liabilities of Subscriber under this Agreement. The balance of such proceeds, if any, shall be reimbursed to *Subscriber*, without interest accruing thereon, to *Subscriber's* last known address on file with *Convergence*. In the event *Convergence* retains all or any portion of the secured funds deposited by *Subscriber* hereunder, *Convergence* shall notify *Subscriber* in writing within said thirty (30) day period as to the specific amount of such secured funds it intends to retain and to which particular obligations or liabilities of *Subscriber* such retained funds are intended to satisfy.

D. *Subscriber* agrees to verify all submissions of all *Convergence* employees leased to *Subscriber* upon which compensation is based. *Subscriber* further agrees to be responsible for all liability arising from inaccurate or untimely submissions, and to reimburse *Convergence* for any loss or damage arising there from including excess compensation to employees.

E. *Subscriber* agrees and warrants that all wages (including bonuses) paid to any leased employee are to be paid through *Convergence* and that any such leased employee will receive no additional wages in any form from *Subscriber*. *Subscriber* agrees it will be solely responsible for damages of any remuneration for services rendered for *Subscriber*. In addition, *Convergence* shall not be considered to be an employer of any individual for whom required payroll information is not supplied during payroll period (except as may be required by law). *Subscriber* assumes full responsibility for workers compensation claims, benefit claims, tax obligation, employment discrimination claims, general liability claims, third party claims, and any and all other obligations or claims pertaining in any way to any individual for whom payroll information is not supplied during payroll period (except as may be required by law), or who is paid in whole or in part by *Subscriber*, as an independent contractor, or in other capacity. *Convergence* or its carrier will never be responsible to provide workers' compensation benefits to any independent contractor.

6. BENEFIT PLANS.

A. Any employee benefit plans maintained by the *Subscriber*, regardless of whether they provide benefits to the employees or whether *Convergence* assists in payroll deductions or in remitting premiums to benefit providers, shall be the sole responsibility of the *Subscriber*, including the responsibility for complying with provisions of the Internal Revenue Code of 1986 and the Employee Retirement Income Security Act, as amended, relating to such plans.

B. The Subscriber acknowledges that in the event it maintains or contributes to a group health benefits plan, including a self-insured plan, covering any of its leased employees, *Subscriber*

shall be solely responsible for complying with any and all obligations of employers under the federal Medicare-Medicaid Coverage Data Bank Requirements.

- C. *Subscriber* warrants that all Internal Revenue Code s.s. 125 & 129 elections heretofore made are, based upon professional advice, lawful and permitted under said sections. *Subscriber* understands that this contractual relationship entered into with *Convergence* which results in *Convergence* becoming an employer of leased employees does not constitute sufficient justification under the Internal Revenue Code to alter or amend said elections or coverages.

7. EFFECT OF TERMINATION

If for any reason payment is not made when due, the *Subscriber* agrees that *Convergence* will have the right to immediately terminate its performance hereunder and bring suit seeking injunctive relief, compensatory damages, and/or other damages. Such termination shall be effective on the last day for which *Convergence* has received payment in full from the *Subscriber* for all sums due under the terms of this Agreement. Upon termination of this Agreement, should *Subscriber* permit any employees who had been leased pursuant to this Agreement, to perform any services for the *Subscriber*, the *Subscriber* shall immediately assume all federal, state and local obligations of an employer to the employees, including the obligation to provide workers' compensation coverage, and *Convergence* shall be immediately released from such obligations to the extent permitted by state and federal law. If for any reason (whether or not required by applicable law) *Convergence* pays any of the employees after this Agreement has been terminated, *Convergence* shall be entitled to full reimbursement for such expenditures. In the event that it is necessary for *Convergence* to employ an attorney seeking to enforce the rights granted in this Agreement, or to protect its interest herein, the *Subscriber* agrees to pay any and all legal fees, court costs and expenses incurred by such action.

8. PLANT CLOSINGS.

Subscriber agrees that it will comply with the Worker Adjustment and Retraining Notification Act ("WARN") and that it will give *Convergence* at least sixty-two (62) days notice prior to effecting any plant closing, shutdown or mass lay-off as defined in WARN.

9. *SUBSCRIBER RESPONSIBILITIES*

- A. *Subscriber* acknowledges and agrees that it is essential to provide *Convergence* with complete knowledge concerning all government investigations or inquiries, private adversary actions, pending or threatened litigation, claims or assessments and unasserted claims and assessments involving the *Subscriber*. *Subscriber* makes complete and full disclosure of such information on Exhibit B attached hereto, which includes disclosure for the last five (5) years. *Subscriber* warrants that other than those detailed in Exhibit A and attached to this agreement, there are no pending or threatened governmental investigations or inquiries; no lawsuits or administrative actions, including but not limited to matters involving employees, benefits, products or services of *Subscriber*, no environmental actions or any other type of actual or potential litigation against *Subscriber*, including unasserted claims, and assessments; no unpaid tax liabilities, workers' compensation, unemployment, medical or any other insurance liabilities; or any other type of liability. *Subscriber* hereby releases, indemnifies, and holds harmless *Convergence*, and all subsidiary, affiliate and parent companies, their shareholders, non-leased employees, attorneys, officers, directors, agents and representatives from and against any and all liability in the above referenced areas which has arisen or may arise for any events or occurrences before the execution of this Agreement, including continuing violations which began before but continue into the time period of this Agreement. *Subscriber* further understands, acknowledges, and agrees that upon the termination in any manner of this Agreement, that *Subscriber* shall assume full responsibility and liability for the above-identified areas immediately upon termination.
- B. If any leased employee is injured, *Subscriber* shall immediately report the accident and injury to *Convergence*, and shall cooperate in conducting any investigation related to the accident. In the event *Subscriber* or any leased employee failed to report an injury to *Convergence* within TWENTY-FOUR (24) hours of its occurrence, *Subscriber* shall immediately reimburse *Convergence* for any fees or penalties imposed on *Convergence* by its insurance carrier or any State or Federal agency. If the *Subscriber* fails to accommodate any leased, injured employee released to modified-duty when requested to do so by *Convergence*, the *Subscriber* agrees to any fees set forth in Exhibit A, to compensate *Convergence*.

10. GENERAL.

- A. This Agreement contains the entire agreement of *Convergence* and *Subscriber* with respect to its subject matter and supersedes all existing agreements and all other oral, written or other communications between them concerning its subject matter. This Agreement shall not be modified in any way except by a written agreement signed to by both *Convergence* and the *Subscriber*.
- B. If any provision of the Agreement (or any portion thereof) shall be held to be invalid, illegal or unenforceable, the validity, legality or enforceability of the remainder of the Agreement shall not in any way be effected or impaired thereby.
- C. This Agreement may be immediately terminated by *Convergence* if, at any time, the *Subscriber* breaches any term of this Agreement. *Convergence* may also terminate this Agreement if, at any time, *Convergence*, in its sole discretion, determines that a material adverse change has occurred in the financial condition of the *Subscriber*, or that the *Subscriber* is unable to pay its debts as they become due in the ordinary course of business. This Agreement may also be terminated in the event of any federal or state legislation, regulatory action, workers' compensation policy requirements, or judicial decision which, in the sole discretion of *Convergence*, adversely affects its interest under this Agreement.
- D. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida.
- E. Any action or counterclaim arising out of or related to this Agreement may be brought by the *Subscriber* only in Duval County, Florida or in the United States District Court, Middle District of Florida (Jacksonville Division). Any action brought by *Convergence* arising out of or related to this Agreement may be brought by *Convergence* in any jurisdiction where venue is proper. The *Subscriber* hereby irrevocably consents to be subject to the jurisdiction of the courts of the State of Florida concerning any case or controversy arising out of or related to this Agreement.
- F. This Agreement, if all other terms and conditions are in compliance, shall remain in full force and effect until either party gives thirty (30) days advance written notice of termination to the other party by certified mail, return receipt requested, sent to such party's last known address.

G. The failure by either *Convergence* or the *Subscriber* to insist upon strict performance of any of the provisions contained herein shall in no way constitute a waiver of any of its rights as set forth herein, at law or in equity, or a waiver by either *Convergence* or the *Subscriber* of any other provision or subsequent default by the other in the performance of or compliance with any of the terms and conditions set forth herein.

H. This Agreement shall not be assigned by the Subscriber without prior written consent of *Convergence*, and any attempt by the *Subscriber* to assign any of its rights, duties or obligations which arise under this agreement without such consent will be void and shall constitute cause for *Convergence* to terminate this Agreement, for the purposes of Section 10 (C).

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

Convergence

SUBSCRIBER

BY _____
SIGNATURE

BY _____
SIGNATURE

NAME Jacob K. Nobles
TYPE OR PRINT

NAME _____
TYPE OR PRINT

TITLE President
TYPE OR PRINT

TITLE _____
TYPE OR PRINT