

TEMPORARY LABOR SERVICES AGREEMENT

THIS TEMPORARY LABOR SERVICES AGREEMENT (this "**Agreement**") is entered into as of _____, 20____ (the "**Effective Date**") by and between GoodTemps, a division of Goodwill Industries of Greater New York and Northern New Jersey, Inc. ("**Vendor**") and _____ ("**Customer**"). Vendor and Customer are referred to herein individually as a "**Party**" and collectively as the "**Parties**." In consideration of the representations, warranties and covenants herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. **SERVICES.** Customer hereby engages Vendor to provide temporary labor (the "**Workers**") to work at Vendor's _____ location located at _____ (the "**Premises**"), in the positions described on Exhibit A hereto or as otherwise communicated by Customer to Vendor from time to time. The services to be performed by such Workers at the Premises are referred to herein as the "**Services**." Vendor will provide candidates who meet or exceed the qualifications provided by Customer. Customer will not be obligated to accept any candidate and may accept or reject candidates in its sole discretion. Vendor will be responsible for ensuring transportation of any Worker to the Premises. Customer may terminate the services of any Worker upon written notice to Vendor. Vendor agrees that it and its Workers shall perform the Services with the highest level of professional skill, in accordance with industry standards and the terms of this Agreement. Vendor shall be fully licensed, certified and bonded as customary or required by Customer or applicable law.

2. **TERM.** Unless earlier terminated under this Agreement, this Agreement begins on the Effective Date and shall continue through the last "Guaranteed Thru" date specified on Exhibit A, unless earlier terminated in accordance with terms hereof. After the last "Guaranteed Thru" date set forth on Exhibit A, this Agreement will automatically renew on a month to month basis until terminated in accordance with the terms of this Agreement.

3. **FEES & EXPENSES.** In accordance with the terms and conditions hereof, Customer will pay Vendor the hourly rates set forth on Exhibit A hereto (the "**Rates**"). The Parties may revise the Rates upon written agreement by an authorized officer of Customer and Vendor. Straight time rates are billed for all hours worked up to 40 hours per week. Customer shall pay Vendor 1.5 times the rates set forth on Exhibit A for all hours worked by a Worker in excess of 40 hours per week. Rates are

inclusive of (i) all payroll costs, including employer overhead and fringe costs, (ii) all screenings and background checks and (iii) all other costs of Vendor associated with the Workers. Rates are exclusive of any applicable sales taxes, which, if any, will show as a separate line item on the invoice. For the avoidance of doubt, any payments made under this Agreement shall be owed to Vendor, and in no event shall Customer have any payment obligation whatsoever to any Worker. Vendor will bear the cost of all expenses incurred by Vendor or its Workers in connection with providing the Services or otherwise.

4. PAYMENT TERMS.

A. Vendor will provide Customer with a weekly invoice (in writing or electronically as the parties may agree), with specificity and details as Customer may reasonably require. Customer will pay charges from the invoice within twenty eight (28) days of its receipt of the invoice. A monthly finance charge of one and one half percent (1.5%), which equals eighteen percent (18%) per annum (or, to the extent such amount exceeds the maximum amount allowed by law, the maximum amount allowed by law), will be charged to all due amounts which have not been received within twenty-eight (28) days of the billing date.

B. Customer agrees to provide Vendor, by 3:00 PM Eastern on the Monday following the week worked, with an accurate time record of the hours worked by all Workers for such previous week.

5. **STATUS OF VENDOR AND WORKERS.** Vendor will provide the Services exclusively as an independent contractor. Neither Vendor nor any of its Workers shall hold itself, himself or herself out as an employee, agent, officer, director, or representative of Customer or any of their respective affiliates. The Workers shall be and remain at all times employees and agents of Vendor for all purposes under this Agreement and shall not be deemed or construed to be employees, joint employees, agents or servants of Customer or any of their respective affiliates for any purpose whatsoever. The Workers shall not be deemed or construed to be "loaned employees" working for or at the direction of Customer or any of their respective affiliates or "fellow servants" of the employees of Customer or any of their respective affiliates. Vendor will be responsible for all aspects of employing the Workers and will ensure that the Workers acknowledge that they are employees of the Vendor and not of Customer or any of their respective affiliates. Vendor is solely responsible for compliance with all laws with respect to, and for all other aspects of, its business and the employment of the Workers. Without limiting the foregoing, Vendor's responsibilities include: (i) recruiting, screening, interviewing, selecting and hiring

the Workers and assigning them to the Premises; (ii) paying wages, overtime and benefits to Workers; (iii) handling all related employment law disclosures and maintenance of payroll records; (iv) withholding, remitting and reporting payroll taxes and workers' compensation relating to the Workers; (v) obtaining and administering the Workers' I-9 documentation and verification of employment eligibility under applicable legal requirements and restrictions (including the Immigration Reform and Control Act of 1986, as amended); and (vi) conducting initial and periodic criminal background checks as agreed in writing by the parties. Neither Vendor nor any of its subcontractors, agents, servants, licensees, invitees or employees, including the Workers, or any other person claiming by, under or through Vendor, shall be entitled to receive and shall not be eligible for any benefits of employment generally available to employees, agents, or their family members, of Customer or any of their respective affiliates, including without limitation, group health, life and disability insurance benefits, workers' compensation, annual vacation and sick pay benefits, pensions plans, thrift savings plans, or the like, as such benefits may be modified from time to time.

6. **CONDUCT OF WORKERS.** Vendor will ensure that the Workers shall comply at all times with Customer's rules and regulations, which may be changed from time to time. Vendor will ensure Workers appear and conduct themselves while on the Premises in a professional manner. Vendor, as employer of record, will be responsible for the hiring, disciplinary action including termination, or reward of all Workers. Customer will have the right to demand that any Worker(s) cease any conduct Customer deems inappropriate and/or be removed from the Premises.

7. **NON-EXCLUSIVITY.** Vendor (on its own behalf and for its contractors, agents and employees, including the Workers) acknowledges and agrees that this Agreement is a non-exclusive agreement and that Customer may deal with any other persons or entities with respect to the subject matter of this Agreement at any time. This Agreement does not require Customer to use the services of Vendor, and Vendor shall have no requirement as to the number of hours of service requested.

8. **NON-SOLICITATION.** During the term of this Agreement and for a period of one (1) year thereafter, Vendor will not, directly or indirectly, solicit, divert or hire away (or attempt to solicit, divert, or hire away) to or for itself or any third party, any employee of Customer whether or not such employee is full-time, part-time, or temporary, whether or not such employment is pursuant to a written agreement and whether or not such

employment is for a determined period or terminable at will.

9. **CONVERSION.** After a Worker works five-hundred (500) hours for Customer as a temp assigned by Vendor, Customer may hire that Worker without fee. Should Customer hire a temp assigned by Vendor prior to his/her completion of five-hundred (500) hours of work, Customer agrees to pay Vendor a one-time fee equal to twenty percent (20%) of the annual wage to be paid by Customer to the Worker.

10. **REPRESENTATIONS, WARRANTIES, COVENANTS.** Vendor hereby represents, warrants and covenants that: (i) Vendor is duly organized, validly existing, in good standing and qualified to do business under applicable laws where Vendor is formed and in any jurisdiction in which Vendor operates; (ii) Vendor has all requisite corporate power and authority to own and operate its assets, carry on its business and sign this Agreement; (iii) the individual signing has the necessary authority and legal capacity to bind Vendor; and (iv) Vendor has and will maintain throughout the Term all qualifications required to perform the Services. Customer hereby represents, warrants and covenants that: (i) Customer is duly organized, validly existing, in good standing and qualified to do business under applicable laws where Customer is formed and in any jurisdiction in which Customer operates; (ii) Customer has all requisite corporate power and authority to own and operate its assets, carry on its business and sign this Agreement; (iii) the individual signing has the necessary authority and legal capacity to bind Customer.

11. **CONFIDENTIALITY.** Vendor will treat all information and materials provided to Vendor, or learned or obtained by Vendor in the performance of this Agreement ("**Confidential Information**") as confidential and with at least the same degree of care that Vendor uses to protect its own most valuable confidential and proprietary information. Customer will treat all information and materials provided to Customer or learned or obtained by Customer in the performance of this Agreement ("**Confidential Information**") as confidential and with at least the same degree of care that Customer uses to protect its own most valuable confidential and proprietary information.

12. **BOOKS AND RECORDS.** Until the later of three (3) years after expiration or termination of this Agreement or such period of time necessary to comply with applicable law and regulation, Vendor and Customer will maintain and provide access to the records, data, documents and other information required to fully and completely enable and permit the other Party to, among other things, verify the accuracy of charges and invoices and audit the performance of Services and hours worked.

13. **LAWS, LICENSES AND REGULATIONS.** Each Party will comply with all applicable laws, regulations, codes, ordinances and rules (the “**Applicable Laws**”) in connection with this Agreement.

14. **ASSIGNMENT, SUBCONTRACTING.** Vendor and Customer will not assign nor subcontract its obligations under this Agreement without the other Part’s prior written consent.

15. **INDEMNIFICATION.** Vendor will defend, indemnify and hold harmless Customer and its respective affiliates, subsidiaries, parents and its respective officers, directors, partners, members, shareholders, agents, contractors, employees, customers, guests, residents, visitors, licensees and permittees (collectively referred to as the “**Indemnitees**”), against and from any and all allegations, demands, claims, causes of action, liabilities, excise taxes, penalties, damages, costs or expenses of any kind (including reasonable attorneys’ fees), whether or not occurring during the Term (“**Claims**”), arising out of or in any way connected with (A) Vendor’s breach of this Agreement, (B) Vendor’s and any Worker’s acts or omissions, (C) Vendor’s or any Worker’s negligence, or (D) claims asserting that any of Vendor’s employees, independent contractors or agents, including the Workers, are actually employees, joint employees or common law employees of Customer or any of its respective subsidiary, affiliated or related companies, including but not limited to excise taxes or penalties imposed on any such party pursuant to Code §§ 4980H, 6055 or 6056. Vendor expressly acknowledges and agrees that it will be responsible for any Claims made by any of its employees, independent contractors or agents, including the Workers. Vendor’s obligation to indemnify and defend will not be affected or excused by any alleged contributing fault or negligence of Customer; provided however that Vendor will not be liable for that portion of the damage, loss or expense finally determined (through arbitration, litigation or agreement of the Parties, as applicable) to have been caused by the negligence, gross negligence or willful misconduct of a party indemnified hereunder. Following a final determination, the Parties shall share all defense costs from the date of tender according to their proportionate share of liability as finally determined. Any Indemnitees against whom a Claim has been made may, by notice to Vendor, require Vendor to defend the Claim at Vendor’s expense and to reimburse the Indemnitees any amounts paid or payable, including reasonable attorney fees and costs. Vendor’s obligations under this Section 15 shall survive the expiration or earlier termination of this Agreement. Customer will defend, indemnify and hold harmless Vendor and its affiliates, subsidiaries, parents and their respective officers, directors, partners, members, shareholders, agents, contractors, employees, (collectively referred to as the “**Indemnitees**”), against and from any and all allegations,

demands, claims, causes of action, liabilities, excise taxes, penalties, damages, costs or expenses of any kind (including reasonable attorneys’ fees), whether or not occurring during the Term (“**Claims**”), arising out of or in any way connected with (A) Customer’s breach of this Agreement, (B) Customer’s acts or omissions, (C) Customer’s negligence. Customer’s obligation to indemnify and defend will not be affected or excused by any alleged contributing fault or negligence of Vendor; provided however that Customer will not be liable for that portion of the damage, loss or expense finally determined (through arbitration, litigation or agreement of the Parties, as applicable) to have been caused by the negligence, gross negligence or willful misconduct of a party indemnified hereunder. Following a final determination, the Parties shall share all defense costs from the date of tender according to their proportionate share of liability as finally determined. Any Indemnitees against whom a Claim has been made may, by notice to Customer, require Customer to defend the Claim at Customer’s expense and to reimburse the Indemnitees any amounts paid or payable, including reasonable attorney fees and costs. Customer’s obligations under this Section 15 shall survive the expiration or earlier termination of this Agreement

16. **INSURANCE.** Vendor will maintain, at Vendor’s sole cost and expense, Workers’ Compensation Insurance as required by state and applicable federal statutes and regulations continuously throughout the Term and during any period in which Vendor performs the Services.

17. **TERMINATION.** Either party may terminate this Agreement for any reason upon thirty (30) days written notice to the other. In addition, either party may terminate this Agreement immediately in the event: (i) a party breaches this Agreement and fails to cure such breach where such breach is capable of being cured within 10 days’ of written notice of such breach from the other; (ii) a party makes an assignment for the benefit of creditors or files a voluntary petition in bankruptcy or adjudicated bankrupt or insolvent or admits in writing its inability to meet obligations as they mature, or if a permanent receiver of all or any portion of its property is appointed in any judicial proceeding, or there shall be entered against a party an order adjudicating a party bankrupt or insolvent or an order appointing a liquidator, receiver or trustee for a party or for all or substantially all of its assets or approving as properly filed against it a petition seeking reorganization, arrangement or other proceeding under any bankruptcy or other law for the relief of debtors; or (iii) a party ceases doing business.

18. **REMEDIES:** Vendor acknowledges that Customer’s remedy at law for breach of this Agreement would be inadequate. Vendor therefore consents to temporary and permanent injunctive relief and/or specific performance in any proceeding brought to enforce this Agreement,

without the necessity of proof of actual damage, in addition to all other remedies under this Agreement or available at law. Customer acknowledges that Vendor's remedy at law for breach of this Agreement would be inadequate. Customer therefore consents to temporary and permanent injunctive relief and/or specific performance in any proceeding brought to enforce this Agreement, without the necessity of proof of actual damage, in addition to all other remedies under this Agreement or available at law.

19. MISCELLANEOUS:

A. Neither Party is the drafter of this Agreement and no provision should be construed against either Party as the drafter.

B. Except as provided below, any provision of this Agreement held unenforceable will be deemed severed from this Agreement. The remainder of the Agreement will remain in full force and effect. If a provision is held unenforceable because it is unreasonable, onerous or unduly restrictive, it will remain effective to the maximum extent permissible within reasonable bounds.

C. Provisions intended to survive (including Sections 5, 8, 10, 11, 12, 15 and 19-22) will survive the expiration or termination of this Agreement and any other provisions hereof which expressly provide that they survive expiration or termination or which must survive expiration or termination in order to be fully operative shall survive the expiration or termination of this Agreement.

D. Each party agrees to cooperate with the other and assist in any investigation of any Worker initiated by Customer or Vendor or by any Federal, State or local government authority.

20. NOTICES: All notices to be given under this Agreement must be in writing and, (A) if to Vendor, sent to 154 Lawrence Street, 4th Floor, Brooklyn, New York 11201, Attn: Shondelle Nicholls, and (B) if to Customer sent to _____. Attn: _____. Notices are effective the earlier of: (i) one business day after being sent by next day delivery service; or (ii) three business days after being sent by certified or registered mail.

21. MODIFICATION; ENTIRETY OF AGREEMENT: This Agreement with all Exhibits is the full and complete understanding of the Parties regarding the Services and supersedes any prior written or oral agreements. This Agreement may only be modified by a subsequent writing executed by duly authorized representatives of both Parties which expressly states that it is a modification of this Agreement.

22. GOVERNING LAW AND VENUE: This Agreement is governed by and interpreted under the laws of the jurisdiction in which the Premises is located. The

Parties unconditionally and irrevocably submit themselves to the exclusive jurisdiction of these courts.

23. COUNTERPARTS: This Agreement may be executed in counterparts and exchanged by facsimile or electronically scanned copy. Each such counterpart will be deemed to be an original and all such counterparts together will constitute one and the same Agreement.

THE PARTIES:

**GoodTemps, a division of Goodwill Industries of
Greater New York and Northern New Jersey,
Inc.,**

Signed: _____

Name(Printed): _____

Title: _____

Signed:

Name (Printed): _____

Title: _____

EXHIBIT A
JOB DESCRIPTIONS AND FEES

<u>Title</u>	<u>Hourly Fee*</u>	<u>Guaranteed Thru</u>	<u>Duties</u>

* Customer shall pay one and one half (1 1/2) times the fee listed for any hours worked over forty (40) hours per week or for hours worked during any of the following holidays: New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day.

