



## AGREEMENT FOR NONDISCRIMINATION TESTING SERVICES

THIS SERVICE AGREEMENT (“Agreement”) is between PrimePay, LLC (“Company”) and the employer listed below (“Client”). This Agreement governs the provision of the Company’s administrative services to Client that Client chooses below (the “Services”) that assist Client in performing certain nondiscrimination testing for tax-qualified employee benefit plans as required under the Internal Revenue Code.

The Service Agreement will have an effective date as indicated in the signature box below.

By initialing the service levels below and signing this Agreement, I am stating that I have read and understand the nature of the services selected below and the fees for them (explained below and in Schedule A, that I have read and understand the full Agreement and agree to all of its terms and conditions, and that I have the authority to sign this Agreement on behalf of Client and its sponsored group health plan(s) (“Plan(s)”). By signing this document the parties agree to the terms and conditions in this Service Agreement and intend for this page to serve as the signature page for the Agreement.

		Standard Fees		Selected Test(s)
		Base Price Per Test Run	Additional Per Employee Fee	
1	<b>Cafeteria Plans (Section 125) Tests</b> <i>(Are contributions taken pre-tax?)</i>	<b>\$135</b>	<b>\$0.20</b>	
2	<b>Health FSA (Section 105(h)) Tests</b>	<b>\$135</b>	<b>\$0.20</b>	
3	<b>Dependent Care (Section 129) Tests</b>	<b>\$135</b>	<b>\$0.20</b>	
4	<b>HRA (Section 105(h)) Tests</b>	<b>\$135</b>	<b>\$0.20</b>	
<b>CHARGES ARE INCURRED UPON COMPLETION OF EACH SELECTED TEST</b>		<b>PER EMPLOYEE FEE WAIVED FOR FIRST 500 EMPLOYEES</b>		

\*Additional test(s) run in the same plan year will incur a reduced fee of \$105 per base price per test run.

Wherefore, the parties, intending to be bound, have executed this Agreement:

Company Contact Information			Client Contact Information		
PrimePay, LLC			Name of Employer:		
1487 Dunwoody Drive			Tax Identification #:		
West Chester, PA 19380			Address:		
<b>Principal Contact:</b>			City, State, Zip:		
Name: Brooke Lanier			<b>Authorized Representative:</b>		
Phone: (877) 972-6272			Name:		
Fax: (484) 323-1501			Phone:		
Email: <a href="mailto:compliance@primepay.com">compliance@primepay.com</a>			Email:		
<William J. Pellicano> <i>Authorized Signature</i> CEO					
<i>PrimePay Acceptance</i>	<i>Title</i>	<i>Date</i>	<i>Authorized Signature</i>	<i>Title</i>	<i>Effective Date</i>
Plan Information			Client Testing Portal User		
Plan Year: From     /     to     /			Name:		
Tax Filing Status:			Email:		

**Once complete, please return this Agreement and all related forms by e-mail or fax to the PrimePay contact above.**



**SCHEDULE A – SERVICES & FEES**

**ALL PLANS MUST PASS NONDISCRIMINATION TESTS AS OF THE LAST DAY OF A PLAN YEAR.  
NO PLAN IS EXEMPT FROM TESTING**

It is recommended that employers do one test mid plan year in order to determine whether additional steps must be taken before the end of the plan year so that the plan passes the nondiscrimination tests and the key and highly compensated participants' continue to enjoy pre-tax payment for plan benefits. A second and final test should then be conducted as of the last day of the plan year.

WHEN A TEST IS PERFORMED BEFORE THE END OF THE YEAR, ALL CLIENT DATA ARE PRESUMED TO BE STABLE THROUGH THE END OF THE YEAR AND ONLY A PROJECTED TEST RESULT IS CALCULATED.

Test	Test Bundle	Base Price Per Test Run	Additional Per Employee Fee
<b>1</b>	<b>Cafeteria Plans (Section 125) Nondiscrimination Tests</b>	<b>\$135</b>	<b>\$0.20</b>
1.1	Cafeteria Plan 25% Key Employee Concentration Test		PER EMPLOYEE FEE WAIVED FOR FIRST 500 EMPLOYEES
1.2	Cafeteria Plan Eligibility Test		
1.3	Cafeteria Plan Safe Harbor Percentage (Eligibility Test)		
1.4	Cafeteria Plan Contributions and Benefits Test – Availability & Utilization		
<b>2</b>	<b>Health FSA (Section 105(h))Nondiscrimination Tests</b>	<b>\$135</b>	<b>\$0.20</b>
2.1	Health FSA Eligibility Test – 3 Sub-Tests		PER EMPLOYEE FEE WAIVED FOR FIRST 500 EMPLOYEES
A	Non-Discrimination Classification Test		
B	70% Test		
C	70%/80% Test		
2.2	Health FSA Benefits Test		
<b>3</b>	<b>Dependent Care (Section 129) Nondiscrimination Tests</b>	<b>\$135</b>	<b>\$0.20</b>
3.1	Dependent Care More-Than-5% Owners Concentration Test		PER EMPLOYEE FEE WAIVED FOR FIRST 500 EMPLOYEES
3.2	Dependent Care 55% Average Benefits Test		
3.3	Dependent Care Eligibility		
3.4	Dependent Care Safe Harbor Percentage Test (Eligibility Test)		
3.5	Dependent Care Contributions and Benefits		
<b>4</b>	<b>HRA (Section 105(h)) Nondiscrimination Tests</b>	<b>\$135</b>	<b>\$0.20</b>
4.1	HRA Eligibility Test – 3 Sub-Tests		PER EMPLOYEE FEE WAIVED FOR FIRST 500 EMPLOYEES
A	Nondiscriminatory Classification Test		
B	70% Test		
C	70%/80% Test		
4.2	HRA Benefits Test		
	<b>Documentation of testing with analysis of each test performed</b>	<b>Included with all tests</b>	
	<b>In the event of a nondiscrimination test failure:</b>		
	<b>Consultation to assist in any necessary Plan compliance corrections</b>	<b>Included with all tests</b>	
	<b>If an error or discrepancy is discovered in Client Data and reported within 6 business days of initial test run, then the following reduced fee is charged for successive tests.</b>	<b>30% of standard fee</b>	

**CHARGES ARE INCURRED UPON COMPLETION OF EACH SELECTED TEST**

**DEFINITIONS.** Capitalized terms used but not otherwise defined in this Agreement have the following meanings:

- 1.1 **"Authorized Users"** means persons and entities authorized by Client to use NDX and who have been supplied user identifications and passwords by Company to access NDX.
- 1.2 **"Business Day"** means any day other than a Saturday, Sunday or federal holiday.
- 1.3 **"NDX"** means the online software application made available by Company as part of this Agreement.
- 1.4 **"NDX Products"** means NDX, the Documentation and the Company Technology.
- 1.5 **"Customer Data"** means the electronic and other data and information provided, uploaded and/or inputted by Client or an Authorized User for the purpose of using NDX or facilitating the use of NDX by Client.
- 1.6 **"Documentation"** means the user documents and/or reference manuals, if any, made available by Company in either digital or hard copy format from time to time for NDX which describes NDX and the user instructions for NDX.
- 1.7 **"Virus"** means any thing or device (including any software, code, file or program) that may: (i) prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network, or any other service or device; (ii) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or in part or otherwise); or (iii) adversely affect the user experience, including malicious codes, worms, Trojan horses, viruses and other similar things or devices.
- 1.8 **"Website"** means the website through which NDX is accessed by Client via the Internet.

1. **Duties of Company.** Commencing on the date this agreement is executed as set forth above in the recitals of this Agreement, Company shall provide the following services with respect to the Plan(s).
  - a. Company shall perform annual nondiscrimination testing for the Client plans as indicated in Schedule A, pursuant to all conditions and responsibilities in this Agreement
  - b. Company will provide Client with documentation of nondiscrimination testing results and, as appropriate, interpretation and consulting related to any testing failures. Results will be provided to Client in electronic form.
  - c. Company shall comply with all applicable federal laws with respect to the services expressly agreed to be performed on behalf of Client.
  - d. Company shall hold in strict confidence all Confidential Information of Client as provided in section 7 of this Agreement.

**Duties of Client.** Commencing on the date this agreement is executed as set forth above in the Recitals to this Agreement, Client accepts the following responsibilities with respect to the Plan(s):

- a. Provide Company with all such information required, as Company determines in its sole discretion, to fulfill its obligations under this Agreement in a timely and efficient manner.

- b. **Client shall be exclusively responsible for the reliability, integrity, accuracy, quality and lawfulness of the Customer Data provided to Company. Client understands and agrees that Company has no duty or responsibility to review, verify or otherwise inquire into any data provided to Company by Client.** Client shall be responsible for examining all worksheets produced by the Company and posted on NDX and Client shall notify Company of any discrepancies between Customer Data and Client records as soon as reasonably possible after Client becomes aware of such discrepancy. If Company is informed of a discrepancy between Customer Data and Client records within 6 business days of Client's initial test run, successive tests will be charged at a reduced rate indicated on Schedule A. The Plan Year being tested and the test bundle must be the same as the initial test to receive the reduced fee. Client shall be responsible for all damages that result or could have been avoided had Client timely reviewed its reports and advised the appropriate parties of any discrepancies, and Company shall have no responsibility or liability in connection with any discrepancies not timely reported by Client.
- c. Client shall follow security procedures that are reasonably sufficient to assure all login and password information is kept secure and that all document transmissions are authorized and all data is protected from unauthorized access. Client shall be responsible for all activity occurring under Client's user accounts. Client shall be responsible, and shall keep, all user passwords used to access Company's System confidential and secure. Client shall prohibit all of its users from impersonating another user, providing false user information or passwords, or otherwise attempting to gain unauthorized access to the System. Client shall ensure that each Authorized User maintains the secure password for its use of NDX and the Documentation, and that each Authorized User keeps its password confidential. Client shall immediately notify Company of any compromise of any secured password of any Authorized User, and shall cooperate with Company in any manner deemed reasonably necessary by Company to protect its rights. Client shall not make NDX available to any person or entity other than its Authorized Users, and Client is solely responsible for use of NDX, and for any breach of this Agreement, by its Authorized Users.
- d. Client represents that the Plan(s) will be maintained during the Term of this Agreement in accordance the Internal Revenue Code, ERISA, and other applicable Federal and state law. Client, the Plan's administrator and/or the Plan(s) (and their agents or assigns), and not Company, shall be responsible for any actions required to maintain compliance and tax-qualified status of the Plan(s).
- e. Client agrees that Company may share information provided pursuant to this Agreement with Client's insurance broker or representative, unless Client provides Company written instructions to the contrary.
- f. Client shall not access, store, distribute, upload, or transmit any Viruses, or any material during the course of its use of NDX that: (i) is unlawful, harmful, threatening, defamatory, libelous, obscene, infringing, harassing or racially or ethnically offensive; (ii) promotes or facilitates any unlawful activity; (iii) depicts sexually explicit images; (iv) discriminates on the basis of nationality, race, gender, color, religious belief or other characteristic protected by applicable

law; or (v) causes damage or injury to any person or property.

- g. Client is solely responsible for (i) procuring and maintaining its network connections and telecommunications links from its systems to Company's data center, and (ii) all problems, conditions, delays, delivery failures, and all other loss or damage arising from or relating to Client's network connections or telecommunications links or that are caused by the Internet, and (iii) shall be responsible for all facilities, hardware and software necessary to access and use of NDX.

2 Fees and Charges. As compensation for the services provided by Company under this Agreement, Client shall pay Company in accordance with the fees and charges set forth on Page 1 of this Agreement. Company shall invoice Client monthly for such fees and charges and Client shall pay all amounts due under such invoice within thirty (30) days of receipt of such monthly invoice. If any invoiced amounts are not paid when due, a late charge of 1½ percent per month or the highest late charge allowed by law, whichever is less, shall apply to such unpaid amounts from the due date until paid in full. Company may adjust its pricing from time to time and shall give Client thirty (30) days advance notice of any such changes.

3 Term and Termination.

- 3.1 This Agreement shall commence on the date this agreement is executed and shall continue for an Initial Term of one year. Following the Initial Term, this agreement shall automatically renew for successive additional terms of one year each (each a Renewal Term) unless either party gives notice of termination to the other party.
- 3.2 Client agrees that it shall have no right to withhold any payment due as a set-off against claims against Company and waives any such claim as a defense to termination by Company.
- 3.3 Notwithstanding any provision to the contrary, Company may terminate this Agreement and Service hereunder without penalty or liability upon thirty (30) days' written notice if in Company's sole discretion regulatory or legal developments or other factors beyond the reasonable control of Company render its performance hereunder impracticable or impossible.

4 Rights and Obligations after Expiration or Termination.

- 4.1 Upon expiration or termination of this Agreement, Company shall have no further obligation to provide any Services listed in Schedule A of this Agreement to Client or its users.
- 4.2 Upon termination of this Agreement for any reason or upon expiration of this Agreement, Client shall immediately discontinue all use of the NDX Products. In no event will any termination by either party or any expiration of the Term relieve or release Client from any obligation to pay any Fee or any other amounts owed to Company for the services performed prior to termination or expiration.
- 4.3 Client acknowledges that Company has no obligation to maintain or provide any Customer Data and that, accordingly, Company will not return any such Customer Data to Client or make any such Customer Data available for download by Client after the termination or expiration of this Agreement.
- 4.4 The provisions of this Agreement regarding payment, confidentiality, indemnity, limitations of liability, and all others that by their sense and context are intended to survive the expiration or termination of this Agreement survive and continue in effect.

5 Limitation of Liability; No Warranty. EXCEPT FOR A BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS UNDER

SECTION 7 OF THIS AGREEMENT AND A BREACH OF ANY PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT, WHETHER IN CONTRACT OR IN TORT (INCLUDING BREACH OF WARRANTY, NEGLIGENCE AND STRICT LIABILITY), WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, INDIRECT OR PUNITIVE DAMAGES ARISING IN ANY WAY OUT OF THE USE OF THE SERVICES OR THIS AGREEMENT, INCLUDING, WITHOUT LIMITATION, DAMAGES FOR LOST PROFITS, LOST REVENUE, LOSS OF USE, LOSS OF DATA, COSTS OF RECREATING DATA, THE COST OF ANY SUBSTITUTE EQUIPMENT, PROGRAM, OR DATA, OR CLAIMS BY ANY THIRD PARTY. EXCEPT FOR A BREACH OF ITS CONFIDENTIALITY OBLIGATIONS UNDER SECTION 7 OF THIS AGREEMENT AND A BREACH OF ANY PAYMENT OBLIGATIONS HEREUNDER, IN NO EVENT WILL A PARTY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT EXCEED THE TOTAL AMOUNT OF ALL FEES PAID OR PAYABLE TO COMPANY UNDER THIS AGREEMENT. THE EXISTENCE OF MORE THAN ONE CLAIM WILL NOT ENLARGE OR EXTEND THESE LIMITS.

ALL SERVICES ARE PROVIDED BY COMPANY "AS IS" AND WITHOUT WARRANTY. COMPANY SPECIFICALLY DISCLAIMS, ANY AND ALL WARRANTIES, WHETHER WRITTEN OR ORAL, STATUTORY, EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, THE WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY, OR ARISING FROM A COURSE OF DEALING, TITLE, NONINFRINGEMENT, USAGE OR TRADE PRACTICE.

Company does not warrant, and specifically disclaims that Client's access to or use of NDX and the Company technology will be uninterrupted or error-free, or that NDX, the Documentation and/or the information obtained by Client through NDX will meet Client's requirements. Further, Company is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of Customer Data or any other data or information over communications networks and facilities, including the Internet, and Client acknowledges that NDX and the Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities. Upon any interruption, delay or failure of access to the services, NDX and the Company technology, Company's sole obligation is to use commercially reasonable efforts to correct the problem and/or resume such access as soon as practicable.

**No Reliance.** Client acknowledges that: (i) any reports, test results, and any and all other information that Client obtains as a result of using NDX is based solely on the data, including Customer Data, and all rules, specifications, criteria, notices, consents, instructions, papers and documents of Client and/or its Authorized Users provided by or on behalf of Client (collectively, "Client Data"); (ii) Company is not liable for any inaccuracies or invalid results or reports based on such Client Data; and (iii) Client expressly assumes all risk and liability with respect to its use and interpretation of such reports, results and other information obtained from Client's use of NDX. All regulatory and administrative matters related in any way to Client, any Authorized Users, the Client Data, the products, services, operations and employee benefits plans of Client and the Authorized Users, and the compliance of any of the foregoing with applicable law, are the sole responsibility of Client, and Company has no liability or responsibility therefor. Client further acknowledges and agrees that Company does not provide legal or tax advice with respect to these matters and that Client must obtain its own legal and tax advice pertaining in any way to such matters.

6 Indemnification.

- 6.1 Client shall indemnify, defend and hold Company and its affiliates, and their respective investors, officers, directors,

employees, agents, licensors, successors, and assigns (both parties and such additional persons are referred to as "Indemnified Parties") harmless from and against any and all costs, expenses, damages or losses, including, without limitation, reasonable attorney's fees (collectively "Losses") arising out of, relating to, in connection with or resulting from, any claim, demand, charge, action, cause of action or proceeding (collectively "Claims") that arise out of, relate to, are connected with or result from any actual or alleged act or omission of Client that is in any way related to this Agreement.

6.2 In cases in which indemnification is sought, the Indemnified Party shall promptly notify the other party of any matters in respect of which the foregoing indemnity may apply and of which the Indemnified Party has knowledge, and give the other party the opportunity to control the response thereto and the defense thereof; provided however, that the Indemnified Party shall have the right to participate in any legal proceeding to contest and defend a claim for indemnification involving a third party and to be represented by its own attorneys, all at the Indemnified Party's cost and expense.

## 7 Confidential Information.

7.1 **Definition.** As used herein, "Confidential Information" means all confidential or proprietary information belonging to either party hereto and disclosed, made available to or learned by the other party during the Term of this Agreement, including, without limitation, technical, business, financial and marketing information, customer information, third party confidential information, the terms and conditions of this Agreement and, with respect to Client, Customer Data. Confidential Information does not include any information that (i) is or becomes generally available to the public without breach of this Agreement by the receiving party; (ii) the receiving party was demonstrably in possession of prior to first receiving it from the disclosing party hereunder; (iii) the receiving party can demonstrate was developed by it independently and without use of or reference to the disclosing party's Confidential Information; or (iv) the receiving party receives from a third party without restriction on disclosure and which the receiving party knows or should know is not in breach of a nondisclosure obligation to the disclosing party.

7.2 **Information Security.** Each party agrees to use industry standard current firewall and virus-protection software.

7.3 **Confidentiality Obligation.** Subject to the terms of this Agreement, each party shall (a) hold in strict confidence all Confidential Information of the other party, (b) use the Confidential Information solely to perform its obligations or exercise its rights under this Agreement, and (c) not transfer, display, convey or otherwise disclose or make available all or any part of such Confidential Information to any person or entity other than to its directors, officers, employees, consultants, auditors, and legal and financial advisors of such party (collectively, "Representatives") who need to know such Confidential Information, who are under confidentiality obligations at least as restrictive as the terms of this Agreement, and whose handling and treatment of such Confidential Information in accordance with this Agreement is the responsibility of such party. Except as otherwise expressly provided in this Agreement, neither party shall use or disclose the Confidential Information of the other party without the prior written consent of the disclosing party. Each party shall use the same degree of care to protect the disclosing party's Confidential Information as it uses to protect its own Confidential Information, but in no circumstances less than reasonable care.

7.4 **Permitted Disclosures.** The receiving party may disclose the Confidential Information of the other party in response to a valid court order, subpoena, civil investigative demand, law, rule, regulation (including, without limitation, any securities exchange regulation), or other governmental action, provided that (i) to the extent permitted by applicable law or regulation, the disclosing party is notified in writing prior to disclosure of the information,

and (b) the receiving party reasonably cooperates with the disclosing party, at the disclosing party's expense, in any attempt by the disclosing party to limit or prevent the disclosure of the Confidential Information.

7.5 **Remedies Upon Breach.** Each party agrees that the other party may have no adequate remedy at law if there is a breach or threatened breach of this Section and, accordingly, that either party is entitled (in addition to any legal or equitable remedies available to such party) to seek injunctive or other equitable relief to prevent or remedy such breach.

7.6 **Ownership.** As between the parties, the parties agree that the Confidential Information of the other party is, and will remain, the property of such other party. The receiving party obtains no right, title, interest, or license in or to any of the Confidential Information of the disclosing party except for the rights expressly set forth in this Agreement.

7.7 **Subcontractors.** Company may engage the services of subcontractors to perform any of its obligations under this Agreement. In each instance, Company shall ensure that its subcontractors are bound to confidentiality obligations at least as restrictive as Company's confidentiality obligations under section 7, and Company will be responsible for any breaches of this Agreement by its subcontractors.

8 **Ownership Rights in Materials.** All products, forms, procedures and other materials (the "Materials") utilized or made available by Company to Client in connection with any service performed under this Agreement are the sole property of Company and/or its licensors, and Client shall not acquire any right, title or interest in the Materials by use thereof in accordance with this Agreement. Client shall not license, market, copy, modify, sell or transfer any of the Materials, in whole or in part. Client acknowledges and recognizes that any breach of this section would result in irreparable harm to Company, and, accordingly, agrees that in addition to and not in lieu of all remedies available to Company by reason of such breach (at law or equity), Company shall be entitled to equitable relief (including, without limitation, specific performance and injunctive relief) to enjoin the occurrence or continuation of such breach. Upon Company's request, Client shall promptly return all Materials to Company following the termination of this Agreement.

**Restriction of Use.** Client shall: (i) not rent, lease, sublicense, distribute, transfer, copy, reproduce, display, modify or timeshare the NDX Products or any portion thereof; (ii) not prepare any derivative work based on the NDX Products or any portion thereof; (iii) not remove the patent, copyright, trademark, trade secret or other proprietary protection legends or notices that appear on or in the NDX Products or any portion thereof; (iv) not distribute, sell or otherwise transfer, in whole or in part, NDX or the Documentation; (v) only allow access to or use of NDX and the Documentation by third parties as permitted under this Agreement, provided that any such third parties are subject to the terms of a signed agreement between Client and such third party(ies) containing appropriate confidentiality and use restriction provisions; (vi) not demonstrate or disclose NDX or the Documentation or the results of any testing or bench-marking of same to any third parties without Company's prior written consent; and (vii) except where such restriction is prohibited by applicable law, not reverse engineer, de-compile, modify in any way, or create derivative works from the NDX Products or any portions thereof. Client agrees that all inventions, improvements, derivative works, and modifications to NDX or any parts thereof made by Company that are based, either in whole or in part, on Client's ideas, feedback, suggestions, or recommended improvements will be and remain the sole and exclusive property of Company.

**Protection of Products.** Client agrees to take all reasonable steps to protect the NDX Products from unauthorized copying, possession, access or use. Upon Client's becoming aware of any such unauthorized copying, possession, access or use, Client





shall promptly notify Company and provide Company with complete details, assist Company in preventing the recurrence thereof, and cooperate with Company in any litigation or proceedings reasonably necessary to protect the rights of Company.

- 9 Ownership of Systems and Software. Company and/or its partners, licensors and vendors shall be the sole and exclusive owner of all right, title and interest (including, without limitation, all intellectual property rights) in and to the System and all software utilized by Company to perform the Services. Client shall not, and shall not permit any third party to, (i) modify, copy or otherwise reproduce the systems or software, (ii) remove, destroy or omit any copyright notices, legends, labels and other notices of proprietary interests appearing in or on any of the software, or (iii) attempt to decompile or reverse engineer the software. Except for the right to use the System as expressly specified in this Agreement, nothing in this Agreement shall be deemed to grant to Client, by implication, estoppel or otherwise, license rights, ownership rights or any other intellectual property rights in any software, literary works, other works of authorship, specifications, designs, and analyses, programs, documentation, reports, and similar work product owned by or provided through Company.
- 10 Relationship of Parties. Client and Company acknowledge and agree that Company is retained under this Agreement to assist Client, the Plan(s) and/or the plan administrator of the Plan(s) with their obligations to comply with the qualified benefit plan nondiscrimination testing provisions of the Internal Revenue Code, that these obligations are Client's obligations and not Company's obligations and that Company is not a fiduciary under ERISA. The parties further acknowledge that Company is an independent contractor and not a joint venturer with or partner, agent or employee of Client, the Plan(s) or the plan administrator of the Plan(s). Nothing contained in this Agreement shall be deemed to permit either party to conduct business in the name of or on account of the other party, or to act on behalf of or bind the other party in any manner whatsoever, except for the taking of actions by Company on behalf of Client, the Plan(s) or the plan administrator of the Plan(s) in the fulfillment of Company's specific duties under this Agreement.
- 11 Reliance by Company. Company shall be fully protected in relying upon representations by Client set forth in this Agreement and communications made by or on behalf of Client in effecting its duties under this Agreement. Client represents that the signatory to this Agreement is authorized to enter into such Agreement on behalf of Client, the Plan(s) administrator(s) and/or the Plan(s).
- 12 Force Majeure. Company shall not be liable for failures or delays in performance which are caused by natural disasters, strikes, war, utility outages, communication outages, or any other circumstances which could not have been reasonably foreseen and avoided by commercially reasonable action, or are beyond the reasonable control of Company. Company shall be excused from performance under this Agreement for the duration of the effects of such circumstances.
- 13 Entire Agreement, Amendments and Modifications. This Agreement represents the entire agreement between the parties with respect of the subject matter hereto, and there are no oral or other written agreements or understandings between the parties affecting this Agreement, or related to the services to be provided by Company or duties undertaken by Client under this Agreement. This Agreement supersedes all previous agreements between the parties relating to nondiscrimination testing services. This Agreement may be amended only by a written agreement executed by Client and Company. Client may not assign this Agreement without the express written consent of Company.
- 14 No Third Party Beneficiaries. The parties do not intend to provide any rights to third parties under this Agreement.

- 15 Governing Law and Jurisdiction. This Agreement shall be governed by and construed under the laws of the State of Delaware, except to the extent preempted by ERISA. If any provision of the agreement is held to be invalid by any court of competent jurisdiction, such finding shall not invalidate the remainder of the Agreement. With respect to any claim arising out of this Agreement, (i) each party irrevocably submits to the exclusive jurisdiction of the courts of the State of Delaware, or the United States District Court, located in New Castle County, Delaware, and (ii) each party irrevocably waives any objection which it may have at any time to the venue of any suit, action or proceeding arising out of or relating to this Agreement brought in any such court and irrevocably waives any claim such suit, action or proceeding is brought in an inconvenient forum and further irrevocably waives the right to object, with respect to such claim, suit, action or proceeding brought in any such court, that such court does not have jurisdiction over such party. Notwithstanding the foregoing, Company may bring suit for non-payment of fees in any court of competent jurisdiction.