

FMLASource®

AGREEMENT

This agreement ("Agreement") sets forth the agreed upon terms and conditions surrounding FMLASource, Inc.'s ("FMLASource") delivery of Family and Medical Leave Act ("FMLA") administration and information services ("Services") to all employees of Guilford County (hereinafter referred to as "Client") to begin February 15, 2019 ("Commencement Date"). This Agreement also refers to FMLASource and Client individually as "Party" and collectively as the "Parties." The terms and conditions are as follows:

1. **Term:** Initial term of two (2) years for the delivery of Services to Client. After the expiration of the initial term (February 14, 2021), this Agreement shall automatically renew for successive two (2) year periods unless either Party shall deliver to the other Party written notice of non-renewal not less than one hundred and twenty (120) days prior to the expiration of the initial term or any applicable renewal term.
2. **Fees:**
 - (A) Client agrees to pay FMLASource a fee of \$1.41 per employee per month. Client represents that as of the Commencement Date it has approximately 2,300 employees located in the United States. Client agrees to provide FMLASource with quarterly updated employee counts. Fees to be paid by Client to FMLASource shall be adjusted to reflect the updated employee counts. Payment for Services is due on a quarterly basis beginning on the Commencement Date and thereafter on or before each three (3) month anniversary of the Commencement Date. In the event that any payment due FMLASource hereunder is not received by FMLASource from Client when due, a delinquency charge shall be assessed on each installment assessed in default for not less than five days in an amount not to exceed five percent (5%) for each month the installment remains unpaid or the maximum amount allowed by law, in addition to attorney's fees and other costs and expenses incurred by FMLASource to collect any amounts due hereunder. FMLASource reserves the right to amend its fees in the event of any program or administrative changes due to state or federal law.
 - (B) Pre-approved travel expenses (associated with, for example, Client requested training or Account Management) are billed separately and are due thirty (30) days after receipt of invoice by Client.
3. **Exclusivity:** During the term of this Agreement, Client warrants that FMLASource shall be the exclusive provider of the Services under this Agreement to all employees of Client, its affiliates and subsidiaries.
4. **Services:** Services are described on Schedule I attached hereto. Client understands that it is entitled to standard FMLA Services pursuant to the terms and conditions of this Agreement. In the event Client desires to customize services, Client and FMLASource shall mutually agree upon the scope and cost of such customizations. Customizations may include, without limitation, creation of file feeds, software programming, web-site development or process adjustments.
5. **Eligibility Files:** Client shall use its best efforts to provide FMLASource with complete and accurate employee eligibility files on a monthly basis. Client understands and agrees that FMLASource shall not be liable for any claims or losses resulting from or related to Client's failure to provide such files or from Client's provision of incomplete or inaccurate eligibility files.
6. **Force Majeure:** No failure, delay or default in performance of any obligation of FMLASource shall constitute an event of default or breach of the Agreement to the extent that such failure to perform, delay or default arises out of a cause, existing or future, that is beyond the control and without negligence of FMLASource, including, but not limited to: action or inaction of governmental, civil or military authority; fire, strike, lockout or other labor dispute; flood, war; terrorism; riot; theft; earthquake and other natural disaster.

7. **Taxes:** All fees quoted and payable under this Agreement exclude taxes. Client will pay or reimburse FMLASource for all applicable sales, services and other taxes (excluding taxes on FMLASource's net income) that may be levied upon the performance of Services under this Agreement.
8. **Notices:** Any notice required hereunder will not be effective, unless in writing, signed by an authorized officer of the Party delivering such notice, and sent by certified mail or recognized overnight carrier to the signatories below.
9. **Assignment:** Client must assign its rights and obligations under this Agreement to any successor by merger, consolidation or sale or other disposition of all or substantially all of its assets or stock.
10. **Amendment:** Any changes, additions, or deletions to this Agreement will not be considered binding or agreed to unless the modifications have been initialed or otherwise approved in writing by the other Party.
11. **Facsimile or Scan/Counterparts:** Facsimile or electronically scanned transmission of an executed copy of this Agreement or any amendments hereto shall be accepted as evidence of a Party's execution of the Agreement or amendment. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original.
12. **Severability:** If and to the extent any provision of this Agreement is held illegal, invalid or unenforceable in whole or in part under applicable law, such provision or such portion thereof will be ineffective as to the jurisdiction in which it is illegal, invalid or unenforceable to the extent of its illegality, invalidity or unenforceability and will be deemed modified to the extent necessary to conform to applicable law so as to give the maximum effect to the intent of the Parties. The illegality, invalidity or unenforceability of such provision in that jurisdiction will not affect the legality, validity or enforceability of such provision or any other provisions of this Agreement in any other jurisdiction.
13. **Governing Law:** This Agreement shall be interpreted under and governed by the laws of the State of Illinois, without regard to its conflict of laws rules.
14. **Clause Headings:** The clause headings appearing in this Agreement have been inserted for the purpose of convenience and ready reference. They do not purport to, and shall not be deemed to, define, limit or extend the scope or intent of the clauses to which they appertain.
15. **Employment Decisions:** Client understands that FMLASource does not provide any legal advice. Client understands that decisions made by FMLASource regarding FMLA eligibility shall not be deemed by Client to be a recommendation, suggestion or determination to take any employment action against an employee. Client agrees that it shall provide FMLASource with at least five (5) business days' prior written notice in the event Client intends to take an adverse employment action against an employee as a result of or in reliance upon a leave decision made by FMLASource.
16. **Relationship of the Parties:** FMLASource and Client agree that FMLASource is an independent contractor and neither Party nor their respective employees or agents shall be deemed to be an employee of the other, nor shall this Agreement be deemed to create a partnership, joint venture, agency relationship or other association between the Parties hereto.
17. **No Third Party Beneficiaries:** Nothing express or implied in this Agreement is intended to confer, nor shall anything herein confer, upon any person or entity other than Client and FMLASource any rights, remedies, obligations, or liabilities whatsoever, whether in contract, statute, tort (such as negligence) or otherwise, and no person or entity shall be deemed a third Party beneficiary under or by reason of this Agreement.
18. **Indemnification:** To the fullest extent permitted by law, FMLASource shall indemnify, defend and hold harmless Client from and against third party claims directly caused by FMLASource's gross negligence or willful misconduct in the performance of the Services provided hereunder by FMLASource. FMLASource shall have no obligation to indemnify or hold harmless Client for any claims arising out of the negligence or willful misconduct of Client, or Client's agents, officers, directors, employees, or contractors.

To the fullest extent permitted by law, Client shall indemnify, defend and hold harmless FMLASource from and against third party claims resulting from or arising out of Client's gross negligence or willful misconduct, incomplete or inaccurate eligibility file(s) or employment-related decisions. Client shall have no obligation to indemnify or hold harmless FMLASource for any claims arising out of the negligence or willful misconduct of FMLASource, or FMLASource's agents, officers, directors, employees, or contractors. In addition, in matters in which FMLASource is not an adverse party, Client shall pay or reimburse FMLASource for all reasonable staff time, attorneys' fees and expenses FMLASource incurs in relation to subpoenas, depositions, discovery demands and other inquiries in connection with suits, proceedings, governmental, legislative or regulatory hearings, investigations or other civil or criminal proceedings in which Client is a party, subject or target.

The obligations of indemnity hereunder are conditioned on the Party seeking indemnification (i) giving the indemnifying Party prompt written notice of any claim for which indemnification will be sought, (ii) permitting the indemnifying Party to assume exclusively the control of the defense and settlement of such claim, and (iii) providing reasonable assistance and cooperation (at the indemnified Party's expense) in the defense and settlement of such claim. The indemnified Party may take part in its defense at its own expense after the indemnifying Party assumes the control thereof. The indemnifying Party shall not settle or compromise any indemnified claim hereunder in a manner that admits fault or liability on the part of the indemnified Party, or requires the indemnified Party to take or forbear from taking any action, unless with the prior written consent of the indemnified Party (such consent not to be unreasonably withheld).

The indemnification obligations of FMLASource and Client shall terminate upon the expiration of the Agreement except as to any matter concerning which a claim has been asserted by notice to the other party at the time of such expiration or within 365 days after effective date of Agreement termination.

19. Limitation of Liability: NOTWITHSTANDING ANYTHING TO THE CONTRARY SET FORTH HEREIN, FMLASOURCE SHALL NOT BE LIABLE, WHETHER UNDER CONTRACT, NEGLIGENCE, STRICT LIABILITY, OR OTHER LEGAL OR EQUITABLE THEORY, FOR ANY AMOUNTS IN EXCESS OF THE FEES AND CHARGES PAID BY CLIENT HEREUNDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO ANY LIABILITY. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, PUNITIVE OR EXEMPLARY DAMAGES EVEN IF A PARTY HAS BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

20. Entire Agreement: This Agreement, together with the Schedules attached hereto, shall constitute the entire Agreement by and between the Parties with respect to the subject matter hereof. There are no promises, terms, conditions, or obligations other than those contained herein and, this Agreement shall supersede all prior and contemporaneous communications, representations or agreements, either verbal or written, by and between the Parties hereto, all of which are merged herein.

Please sign below to acknowledge each Party's acceptance of these terms.

FMLASource, Inc.

Guilford County

By: _____

By: _____

By: Richard A. Chaifetz

By: _____

Its: Chairman & CEO

Its: _____

Date: _____

Date: _____

SCHEDULE I COVERED SERVICES

- 1. Account Management:** FMLASource will assign Client an account manager who will serve as the contact person and provide Client with reports and feedback on the Services. The account manager will also respond to Client's questions and provide information to Client's human resource staff or other managers/supervisors as applicable.
- 2. Service Access:**
 - a) Access to FMLA specialists through a toll-free number, from 7:30 A.M to 9:30 P.M. (Monday through Friday) CST; and
 - b) 24/7 access to automated service tools: FMLASource internet site, mobile application and automated phone answering system (IVR).
- 3. FMLA Administration:** FMLASource will provide the following Services:
 - a) Maintain and update the FMLA eligibility database based on information provided by Client.
 - b) Receive and document leave requests via telephonic, e-mail, regular mail and internet submissions.
 - c) Administer FMLA eligibility determinations based on Client's guidelines and applicable federal and state regulations. Any administrative decisions outside of the guidelines shall be referred to Client for final determination.
 - d) Provide legally required leave request documentation, and collect and review medical certification forms that are received by FMLASource.
 - e) Make leave decisions and issue legally required notifications, based on applicable federal and state regulations and mutually agreed upon timelines and procedural guidelines.
- 4. Reporting:**
 - a) Employee FMLA absence history for the applicable rolling 12 month period; and
 - b) Program utilization reports detailing employees on leave, frequency of leave, and overall leave usage data.