

## EMPLOYERS REFERENCE SOURCE

### SERVICE AGREEMENT

Corporate Name \_\_\_\_\_(hereinafter "Client")\_

Physical Address \_\_\_\_\_

Phone Number \_\_\_\_\_ Fax Number\_\_\_\_\_

Contact Name \_\_\_\_\_ Title\_\_\_\_\_

For what specific purpose do you intend to request information?

Employment\_\_\_\_ Credit Granting\_\_\_\_ Other\_\_\_\_ (please explain)

This Agreement is entered into by and between Employers Reference Source ("ERS") and Client on \_\_\_\_\_. The undersigned Client does desire to use the services of ERS. The Client hereby certifies that the information ordered from and submitted to ERS will be requested under the following conditions:

1. ERS agrees to:

- (a) Comply with all laws applicable to preparing reports for employment purposes;
- (b) Follow reasonable procedures to assure maximum possible accuracy of information reported subject to paragraph 2-d below, and to re-verify if requested by Client with no additional charge if, in ERS's determination, original information was inaccurate;
- (c) With the exception of claims or suits arising out of the accuracy or completeness of the information reported, to defend Client from and against any claim or litigation related to any property damage or for the death or bodily injury to any person or persons caused by, or arising from the negligent, intentional or wilful acts or omissions of ERS, , employees, or agents during the course of providing service under said agreement to Client. Client shall notify ERS immediately of any claim or suit and shall reasonably cooperate with ERS in the investigation and defense of such claim or suit at its own expense.
- (d) Not, without prior written consent of the Client disclose, advertise, or publish in any manner the fact that ERS has furnished or contracted to furnish to the Client the services hereunder. This prohibition includes, but is not limited to, the publication or naming of the Client on ERS's customer list."

2. Client agrees:

- (a) To keep all records, whether oral or written strictly confidential and, except as required by law or lawful company policy, reveal no information from reports to the person reported or to any other persons except a person whose official duty requires him to participate in the decision for the transaction for which the report was ordered and who has agreed to protect the confidentiality of such information as required by law
- (b) To request no information for use other than for lawful employment purposes and to obtain a proper release statement from each applicant.
- (c) To defend, indemnify and hold ERS, its officers, agents, employees and contractors harmless on account of any expense or damage, including reasonable attorneys' fees and court costs resulting from any act or omission of Client, including, without limitation, the publishing by Client of report information contrary to the above conditions or otherwise contrary to law.

- (d) To recognize that the information in reports is secured from and processed by fallible sources (human and otherwise) and that for the fee charged, ERS cannot be an insurer or guarantor of the accuracy of the information reported, but that ERS will provide the maximum degree of accuracy of information possible under the circumstances, and releases ERS and its agent, officers, employees and contractors from liability except to the extent due to ERS's negligence or willful misconduct in connection with the preparation of reports and for any loss suffered by Client resulting directly from reports prepared by ERS. IN NO EVENT WILL ERS BE LIABLE TO THE CLIENT FOR ANY INCIDENTAL, INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES (INCLUDING BUT NOT LIMITED TO LOST PROFITS), RELATED TO THE ERS PRODUCTS OR SERVICES OR THIS AGREEMENT, WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF THE CLIENT IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT ARISE AND (B) ERS'S TOTAL CUMULATIVE LIABILITY RELATED TO THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS RECEIVED BY ERS HEREUNDER FOR THE ERS PRODUCTS AND SERVICES WITH RESPECT TO WHICH THE CLAIM RELATES DURING THE SIX MONTHS PRECEDING THE DATE ON WHICH THE CLAIM AROSE (SUCH LIMITATION BEING INTENDED TO BE AN AGGREGATE CAP AND NOT PER INCIDENT). Client acknowledges that ERS has set its prices and entered into this Agreement in reliance upon the limitations of liability and the disclaimers of warranties and damages set forth herein, and that the same form an essential basis of the bargain between the parties.
- (e) To order consumer reports, as defined by the Fair Credit Reporting Act, only when intended to be used lawfully for employment eligibility.
- (f) That ERS is not rendering a decision of whether to employ the applicant or not. That decision is solely based on the Clients own criteria and Client expressly releases ERS from any and all liability arising out of or relating to its hiring decisions, whether or not those decisions were impacted or influenced by any ERS products or services..

### 3. Payment Terms

Employers Reference Source has provided Client with a schedule of the Charges for its reports and services. Employers Reference Source will give reasonable prior notice (not less than five calendar days) of any change in the Schedule of Charges. Client does acknowledge that ERS will normally bill monthly for the services rendered and the payment terms are Net due within 30 days of billing date. Client does agree to pay invoices when due and Client also agrees to pay reasonable attorney's and court costs in the event that invoices are not paid within thirty-days of the billing date or in the event ERS incurs attorneys' fees or costs as a result of any act or omission by Client in connection with this Agreement, including, without limitation, a breach of any of the terms or conditions contained herein or a failure of Client to perform any of its obligations hereunder..

### 4. Term and Termination

This Agreement shall be effective as of the date first written above and shall continue for a term of three (3) years following said effective date. Upon expiration of the initial three-year term, this Agreement shall automatically renew for successive one (1) year terms, unless terminated by either party by giving written notice in the manner and to the address provided herein for notices, not less than sixty (60) days prior to the expiration of the then-current term or renewal term. Notwithstanding the foregoing, either party may terminate this agreement without cause or penalty upon sixty (60) days' written notice to the other party in the manner and to the address provided herein for notices, provided, however, that all fees due and owing to ERS by Client shall have been paid in full as of the termination date set forth in the notice. If such fees and costs have not been paid in full as of the date of termination, then this Agreement shall continue in full force and effect on a month-to-month basis until all fees due and owing to ERS have been paid in full by the Client. Upon termination, neither party shall have any further rights or obligations to the other with respect to this Agreement, except for (1) the Client's obligation to pay all amounts due and owing; and (2) those obligations set forth in paragraphs 1( c), 1(d), 2(a), 2(c), 2(d) and 2(f), Governing Law, Mediation and Arbitration provisions, each of which shall survive the termination or earlier cancellation of this Agreement.

5. Entire Agreement; Amendments

This Agreement constitutes the entire agreement between the parties and supersedes all prior agreements, whether written or oral. No other understanding, oral or otherwise, regarding the subject matter of this agreement shall be considered to exist or to bind any of the parties unless otherwise stated in this agreement. Any amendments to this Agreement are of no force and effect unless set forth in a writing signed by both ERS and Client.

6. Governing Law; Arbitration and Mediation.

The laws of the State of Connecticut, including its choice of law provisions, shall govern the enforcement and interpretation of this Agreement. Any dispute arising out of or related to this Agreement or a breach thereof, with the exception of claims by ERS of nonpayment by Client, shall first be submitted to non-binding mediation. In the event the parties are unable to resolve the dispute through mediation, then such dispute shall be determined and settled by arbitration in accordance with the rules of the American Arbitration Association (“AAA”). Such arbitration shall be conducted in Connecticut. The award rendered thereon by the arbitrator shall be final and binding on the parties thereto, and judgment thereon may be entered in any court of competent jurisdiction. Nothing in this Section shall prevent either party from applying to a court of competent jurisdiction for equitable or injunctive relief. The cost of mediation shall be shared equally by both parties.

7. Counterparts

This Agreement may be executed in multiple counterparts, each of which, when taken together, shall constitute an original.

8. Notices

Any notice provided for in this Agreement shall be deemed properly delivered if sent via (1) certified mail, return receipt requested; (2) overnight mail by a nationally recognized overnight mail delivery service; (3) facsimile, with proof of receipt by recipient; or (4) electronic mail, with proof of receipt to recipient to the following addresses:

If to ERS:

Employers Reference Source Inc.  
PO Box 7019, Prospect, CT 06712  
1587 Hamilton Ave, Waterbury, CT 06706  
Phone 888.512.2525 / Fax 888.520.2110  
info@employersreference.com

If to Client:

(Provide contact name, address, fax and email address)

The above information shall remain valid for notice purposes unless and until either party amends said information by way of (a) a written, amendment to this Agreement signed by both parties; or (2) notice to the other party delivered in the manner set forth above.

9. Failure to Enforce; Invalidity

Either party's failure to enforce any provision of this Agreement will not be construed as a waiver of any provision or right. In the event that a portion of this Agreement is held unenforceable, the unenforceable portion will be construed in accordance with applicable law as nearly as possible to reflect the original intentions of the parties, and the remainder of the provisions will remain in full force and effect.

