



# HR That Works 2.0

## Private Label Program Agreement

The Private Label Program is designed to help you attract and retain quality clients and customers by allowing you to provide powerful risk management and productivity tools to your growing clientele.

### Program features include:

- The creation of your own customizable HR That Works 2.0 SharePoint portal;
- An easy to use web-based administrative site that allows you to provide and control access to **HR That Works** for your critical accounts;
- Access to state of the art legal compliance and personnel management tools;
- Monthly newsletters and Webinars; and
- Unlimited technical and administrative support.

### Program benefits include:

- Reduced claims and litigation;
- Increased employee productivity and decreased turnover;
- Significantly increased website traffic;
- Increase in the scope and perceived value of the client relationship; and
- A healthier bottom line for you and your client!

Pricing for the **HR That Works** Private Label Program is based on the number of user accounts available during a month. Price breaks are offered to encourage your use of the program. **A one-time set-up fee of \$1997 must accompany your Application.**

<u>User licenses</u>	<u>Price per month</u>	<u>Annual Price (2months free!)</u>
1-25	\$500	\$ 5,000
1-50	\$750	\$ 7,500
1-100	\$1,000	\$ 10,000
1-250	\$2,000	\$ 20,000
1-500	\$2,500	\$ 25,000

Additional licenses outside this framework are available to those with 100 or more licenses in increments of 25, pre-paid annually for \$2,500. So, for example, if you have 100 and want an additional 25, you can easily do so. We hope that makes sense. If not, give us a call at (800) 234-3304.

I would like to contract for up to \_\_\_\_\_ user licenses per month.

\* Cost per unit is based on the assumption you will take full advantage of the ability to give clients access.

\*\* There is a 15% discount for a one year pre-payment agreement. So, for example if you commit to 100 licenses you would save yourself \$2,000 for the year.

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Monthly payment for the program must be made by automatic bank withdrawal or credit charge to our Bank of America account.

**Note:** To provide pricing stability, we will agree to limit any program rate increases to no more than 15% per year.

## **USER AGREEMENT**

This Private Label User Agreement (“Agreement”) is made and entered into between your firm (“You”, or “Your”) and the Employer Advisors Network, Inc., a Florida corporation dba **HR That Works!**, dba **LAWSUIT FREE!**, dba donphin.com (“EAN” “ Us”, “We”, “Our” or, “Provider”). This Agreement describes the terms and conditions that apply to the Private Label Program (the “Program”) offered by Provider to You through its web sites, [www.employeradvisorsnetwork.com](http://www.employeradvisorsnetwork.com) and [www.hrthatworks.com](http://www.hrthatworks.com) (collectively referred to as the “Site”). You must register and accept the terms of this Agreement to use any part of the program. You and Provider are referred to collectively as the “Parties” and individually as a “Party.

**BEFORE YOU MAY PARTICIPATE IN THE PRIVATE LABEL PROGRAM, YOU MUST AGREE TO BE BOUND BY THIS AGREEMENT. PLEASE READ THIS AGREEMENT CAREFULLY. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, YOU MAY NOT BECOME A PARTICIPATING ASSOCIATE.**

### **1. SCOPE AND DEFINITIONS**

- A. This Agreement establishes the terms by which EAN Inc., a Florida Corporation, will provide You with access to the Site. If You accept the terms of this Agreement, You will be entering into a contractual relationship solely with EAN and not with any other organization.
- B. As used herein the following terms shall have the following meanings:  
  
“EAN”, “We” or “Provider” means Employer Advisors Network, its assignees, partners, licensees, successors and/or its affiliates.
- C. “Associate,” “You” or “Your” refers to the signator company to this Agreement.
- D. Content means information, communications, software, spreadsheets, outlines, checklists, flowcharts, documents, forms, digital tools, templates, Web based applications, templates, “how to” business content, photos, video, graphics, music, sounds and other material and services, collectively.
- E. “Agreement” means all of the terms and conditions set out in this Private Label Agreement, in the User FAQ and on the Site, which may be amended by EAN from time to time and which are subject to change by EAN at any time.

### **2. OUR COMMITMENT TO YOU**

- We shall be honest with you in all communications and transactions.
- We will do everything reasonable to make your membership a huge success.
- We will be responsive to your needs and return phone calls promptly.
- We will stay current on the law and management trends and update the program frequently.
- We will notify you in advance of significant changes to the **HR That Works** web site.
- We will be reasonable about placing a direct competitor in your market. If you go head to head on only a handful of cases out there, that’s not what we are talking about. If, however, the two of you split a major chunk of your market, we will seriously consider saying “no” to an opportunity. (We’ve done it plenty already).

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Our goal is to eventually work with up to 250 insurance agencies spread out nationwide, supported by an attorney or HR consultant in their market who is also qualified to be an EAN member. This will afford us the ability to share best practices, while continually improving the power of this program.

### 3. *REQUIREMENTS*

- A. ***Enrollment in the Private Label Program.*** To begin the enrollment process, You must submit a completed Private Label Program Agreement (“Agreement”), review the New Client Orientation, complete the Set Up Questionnaire and complete the Bank Withdrawal/ Credit Card Agreement and if desired, the Pre-payment Authorization (attached) which shall be deemed part of this Agreement and incorporated in full herein. We will evaluate Your Application in good faith and will notify You of Your acceptance or rejection in a timely manner. Those Associates accepted will receive a signed contract for their files. We may reject Your Application if We determine (in Our sole discretion) that Your site is unsuitable for Our Private Label Program for any reason, including, but not limited to, inclusion of content that is, in Our opinion, unlawful, harmful, threatening, defamatory, obscene, harassing, or racially, ethnically, or otherwise objectionable. If We reject Your Application, You are welcome to reapply to the Private Label Program at any time. PROVIDER RESERVES THE RIGHT TO REJECT ANY APPLICATION FOR ANY REASON OR NO REASON.
- B. ***Eligibility.*** To participate in the Program, You must be a registered business in Your state and be in good standing under applicable state and federal law. You agree to immediately notify Provider of any notice of claims filed against you by any federal, state, county or local agency claiming false or misleading business practices or violation of a statute or regulation. Unless you prepay, you must provide a valid credit card number, billing address, and credit card expiration date or equivalent bank automatic withdrawal information. You must notify Provider if there are any changes to this information within 5 working days of the change. Provider uses this information to charge Your credit cards or bank account for fees due to Provider for the Program and to verify Your name, address and other information. Provider will not disclose any credit card or bank account information in the aggregate or to any otherwise unauthorized third party other than for resolving billing disputes with Your credit card company or bank.

### 4. *LICENSE, RESTRICTIONS AND OWNERSHIP*

- A. ***Reservation of Rights.*** Subject to the limited licenses granted to You under this section, each party reserves all of its rights, title and interest in its intellectual property rights (including, without limitation, copyright, trademark, service mark, patent and trade secrets). You acknowledge that title to copyright in all written and electronic materials of EAN belongs solely to EAN, and that all licensed reproductions used for marketing purposes must bear copyright notice of EAN in the form “Copyright [current year] [www.employeradvisorsnetwork.com](http://www.employeradvisorsnetwork.com)” or “Copyright [current year] [www.hrthatworks.com](http://www.hrthatworks.com).” Materials which are copied or reproduced and which bear any trademarks or service marks of EAN including but not limited to *HR That Works!*, *LAWSUIT FREE!* or *Building Powerful Employment Relationships!* must include those trademarks on the copied or reproduced material. Neither Party grants any License to the other except as specifically set forth in this Agreement.
- B. ***License Grant.*** Provider grants to You a non-exclusive right to the utilization of the Private Label Program on their website. You are allowed to use, sublicense, or sell access to the Site, as set forth in this Agreement, without express written permission.
- C. ***Your Grant.*** By entering into this Agreement and submitting any information or materials to Provider (“Licensed Materials”) for posting on the Site, You hereby grants Provider a non-exclusive, worldwide, rights of use, copying, reproduction and incorporation under EAN’s copyrights.

You agree and understand that the Products and Materials offered by the Provider are available for use only while this Agreement is in effect. After the termination of this Agreement, You agree not to use or permit

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the use of, or cause or permit to be published any portion (including the format and artwork), or any derivative of the Materials which you have received from the Provider, and you agree to cease using all source codes and passwords received from the Provider pursuant to this Agreement.

You understand that the Products and Materials offered by the Provider, including, but not limited to, audits, legal reports and other documents, are not drafted to meet any particular state's laws or meet any particular clients legal and business requirements.

You agree that Provider shall not be liable for any claims arising out of the misuse of the materials, products, documents or any other materials or information furnished by the Provider. You agree to indemnify and hold the Provider harmless for any claim or loss, including all expenses and reasonable attorney fees of the Provider, for your misuse of any of the materials and information furnished by the Provider. In no event shall the Provider's liability, if any, exceed the amount of any fee tendered to the Provider in consideration for becoming an Associate. You agree that the Provider, its assessors and assigns, shall not be liable for acts, inactions, errors, and/or omissions beyond the amount of fees tendered to the Provider in consideration for becoming an Associate. You acknowledge that Provider makes no warranties, either expressed or implied, other than as contained in this Agreement. You expressly acknowledge that they seek to become an Associate as their free, informed and voluntary act.

D. ***Policies and Pricing.*** Customers who are provided access to *HR That Works!* Products through the Private Label Program will be deemed to be Our mutual customers. Accordingly, all of Our rules, policies, and operating procedures concerning customer orders, customer service, and *HR That Works!* Product and Services sales will apply to those customers. We may change Our policies and operating procedures at any time. For example, We will determine the prices to be charged for *HR That Works!* Products sold under the Private Label Program in accordance with Our Own pricing policies and Your contractual agreement. Absent a discount pricing agreement, we reserve the right to change the fees or applicable charges and to institute new changes at any time, upon thirty (30) days notice to you which may be sent by email.

E. ***Associate Sites.*** You shall be solely responsible for all materials that appear on its site. It shall strictly adhere to all applicable laws and regulations in conducting its business and more specifically in marketing and advertising Our Site. Without restricting the generality of the foregoing, You shall not send unsolicited e-mail and shall not send e-mail or any other communication to a recipient if the recipient has requested that it discontinue such communication, nor shall it send or display on its Web site any material that may be considered to be harassing, libellous, defamatory, legally obscene or pornographic, threatening, abusive or hateful.

You grant to Us a non-exclusive license to utilize Your names, titles, website and logos, as the same may be amended from time to time (the "Your Trademarks"), to advertise, market, promote, and publicize in any manner Our rights hereunder; provided, however, that We shall not be required to so advertise, market, promote, or publicize Your Trademarks. This license shall terminate upon the expiration or termination of this Agreement.

We shall have the right to monitor Your website at any time and from time to time to determine if it is in compliance with the terms and conditions on this Agreement.

F. ***Sales Taxes.*** You shall be responsible for all taxes and other similar levies pursuant to any law or regulation. You shall report any sales it makes of the materials to its taxation authorities as required by law.

**Note:** The sale of internet based information may not be subject to sales tax in your state. Please check with your tax attorney or CPA.

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5. **FEES**

- A. Your financial obligation is deemed to start once You are notified that Your status is “live” by way of e-mail from Provider. Fees are due monthly as set forth in the Program Description above. Monthly dues can only be paid by automatic check withdrawal or by way of credit card. You will be billed on the last working day of every month. If You request a one year pre-pay discount on the Set Up Questionnaire then this discount and payment will be reflected on the Administration Site. A late charge of 10% will be charged if any monthly payment is not received by the 5<sup>th</sup> day of the month. Any fee not received within five (5) days of notification of non-receipt of payment will result in cancellation of the Agreement, as more fully set forth below. You agree that the failure of the Provider to charge any fees as specified in this Agreement when it has the right to do so, shall not invalidate any provision herein nor constrain the Provider from enforcing its fees and charges at any time in the future.

6. **CONFIDENTIALITY**

- A. **General Obligation.** Each Party agrees that Confidential Information shared during any conference calls, meetings, surveys, or other communications by fellow associates, customers, the Provider, or other parties, will be held in confidence to the same extent and the same manner as each Party protects its own Confidential Information, but each Party agrees that in no event will less than reasonable care be used. Each Party shall, however, be permitted to disclose relevant aspects of such Confidential Information to its officers or employees on a “need-to-know” basis, provided that they have undertaken to protect the Confidential Information to the same extent as required under this Agreement. Each Party agrees to use all reasonable steps to ensure that the other Party's Confidential Information received under this Agreement is not disclosed in violation of this Section.
- B. **Confidential Information.** Confidential information is defined as, Except as otherwise specifically provided in the Agreement, (a) each Party's trade secrets under applicable law (including, without limitation, financial information, processes, formulas, specifications, programs, instructions, technical know-how, methods and procedures for operation, and benchmark test results); (b) the existence of lawyer-client relationships, (c) any confidential or other proprietary information, whether of a technical, business, legal or other nature that is of value to the owner of such information and is treated as confidential (including, without limitation, information about employees, marketing strategies, services, business or technical plans and proposals, in any form); (d) any other information identified by a Party as "Confidential Information"; and (e) any other information relating to a Party that is or should be reasonably understood to be confidential or proprietary.
- C. **Privileged Information.** Provider, and You shall not access nor disclose any known "Privileged Information" to any third-party without a valid subpoena. "Privileged Information" means any information that held in confidence between the Provider and You.
- D. **Exceptions.** The obligations set forth in this section do not apply if and to the extent the Party receiving Confidential Information or Privileged Information ("Receiving Party") establishes that: (i) the information disclosed to the Receiving Party was already known to the Receiving Party, without obligation to keep it confidential; (ii) the Receiving Party received the information in good faith from a third party lawfully in possession thereof without obligation to keep such information confidential; (iii) the information was publicly known at the time of its receipt by the Receiving Party or has become publicly known other than by a breach of this Agreement; (iv) the information is independently developed by the Receiving Party without use of the other Party's Confidential Information; or (v) the information is required to be disclosed by applicable statute or regulation or by judicial or administrative process; provided that, in the case of (i) through (v) above, such circumstances are demonstrated with written evidence thereof and that, in the case of (v) above, the Receiving Party will use reasonable efforts under the circumstances to notify the other Party of such requirements so as to provide such Party the opportunity to obtain such protective orders or other relief as the compelling court or other entity may grant.

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7. ***USER DATA***

- A. Provider shall have all right, title, and interest in any information it collects from users of the Site, including, without limitation, usage and traffic data and registration information. All users of the Site will be deemed to be customers of Provider, and the collection, retention and use of information from the Site will be subject exclusively to Provider's then current Privacy Policy. Provider will have the right to exploit or use any user information it collects in conformity with its Privacy Policy and this Agreement.
- B. You shall have 24-hour, 7 days per week, access to the Administration Center maintained by EAN.

8. ***COPYRIGHT RESTRICTIONS***

- A. Except for the license granted in the User Agreement, all right, title, and interest in the Site and the Products (including all trademarks, copyrights, and other intellectual property rights), in all languages, formats and media throughout the world, are and will continue to be the exclusive property of EAN and/or the Content Partners.

You may not decompile, reverse engineer, disassemble, rent, lease, loan, sublicense, or create derivative works from the Site. You may not copy, modify, reproduce, republish, distribute, transmit or use the Site or the Products for commercial or other purposes, except to the extent required in order for you to use the Site and the Products in the manner expressly provided herein.

Neither you nor any other party which may obtain Products that are not already publicly available may use or facilitate directly or indirectly the use of such Products in any manner that is adverse to EAN, to any Content Partner, to any author of such Products, or to any client of such Content Partner or author. Content Partners are third-party beneficiaries of this provision.

One of the exciting aspects of working on a web portal is the ability to share documents. One of the limitations is copyright law. To begin with, we encourage you to manipulate our forms for the specific use of your company. Please just make sure to keep our copyright notice on the forms and all will be OK. They do not become your copyrightable property simply because you manipulate them or give them to others. If you leave the program, our forms leave with it. It would be hard to run this business any other way. Likewise, if you have a form you want us to use we'll certainly consider it. The only caveat is we get to put the HR That Works copyright on it. If we did it any other way we couldn't encourage Members to improve the program. Please also be clear with your other relationships about the use of any forms you are using and your own copyright caveats. For example if the docs are copy written by a third party, can you use them in the site? What happens if you leave that relationship?

We can't police the use of other documents in the system by thousands of Members. This means everyone is responsible for their own copyright concerns.

9. ***TERM & TERMINATION***

- A. ***Term.*** This Agreement shall continue in full force and effect terminated until by way of notice from one party to the other, as set forth below.
- B. ***Termination.*** You may terminate Your status and this Agreement at any time with written notice delivered to the Employer Advisors Network, Inc. 450 B St. Suite 1800 San Diego, Ca. 92101. In addition to written notice. You shall also forward an e-mail notice of termination to [inquiry@employeradvisorsnetwork.com](mailto:inquiry@employeradvisorsnetwork.com). Provider will confirm cancellation by way of an e-mail reply within three (3) days of receipt. You agree that any monthly fees will be due and payable until notice of termination is received. You agree that your status is "at will". Provider can terminate this Agreement, if You fail to pay any monthly or pre-payment discount membership fee on time, if they do not abide by this Agreement, and if they do not promote

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cooperation amongst fellow Associates, if they do not abide by the rules adopted by the Provider, or for any other, or no reason.

Provider may immediately terminate this Agreement or prohibit or suspend access to the Site or the Service, without any liability, if: (a) You receive two (2) or more late; (b) Your use of the Service violates this Agreement or any applicable policy or guideline, is potentially illegal or harmful to Provider or any other party, or could subject Provider to liability or additional expense; (c) providing the Service becomes technically or commercially unfeasible; (d) You fail to pay any charges due to Provider; or (e) for any other reason, or no reason.

Termination of this Agreement for any reason shall immediately terminate all licenses and use permissions. You agree after termination to respect Provider's title in, and refrain from infringing, all of Provider's proprietary rights including the copyrights, trademarks and trade secrets in the subject matter of this Agreement.

- C. **Survival.** The following sections will survive termination or cancellation of this Agreement: "Confidentiality", "Conflict Resolution", "Warranties and Representations", "Indemnification", "Limitation of Liability", and "General Provisions".

## 10. **CANCELLATION AND CONFLICT RESOLUTION**

- A. **Conflict Resolution.** You understand and agree that if any part of this Agreement and License is held to be invalid, void or enforceable, the remaining parts will continue in full effect. You understand and agree that this is not a Franchise Agreement nor a Network Marketing Agreement under any Federal or State law. This Agreement shall be governed by and construed in accordance with the laws of the State of Florida. Except for lawsuits filed by Provider claiming infringement of copyright, or requesting injunctive relief, all disputes shall be submitted for mediation and if not resolved, thereafter submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association. Mediation and arbitration proceedings shall be conducted at AAA San Diego headquarters located at San Diego, California 92101. With respect to any lawsuit where Provider is claiming infringement of copyright, or for any other matter filed by Provider, in which injunctive relief is sought, You shall submit to the jurisdiction of San Diego County, California and You agree that venue is proper in that county.

## 11. **WARRANTIES AND REPRESENTATIONS**

- A. **Your Warranties.** You hereby represent and warrant to Provider that (a) you have the right and power to perform its obligations and to grant the rights granted herein; and (b) its performance under this Agreement will not violate any Agreement or obligation between it and a third party or any applicable law, ordinance or regulation.
- B. **Provider's Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, PROVIDER DOES NOT MAKE AND HEREBY DISCLAIMS, AND YOU HEREBY WAIVE, ANY REPRESENTATIONS OR WARRANTIES, ARISING BY LAW OR OTHERWISE, REGARDING THE SITE, ANY MATERIALS, OR THE SERVICES DESCRIBED BY THIS AGREEMENT, OR ANY PORTION THEREOF, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, OR ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. WITHOUT LIMITING THE FOREGOING, PROVIDER SPECIFICALLY DOES NOT WARRANT THE SERVICE OR THE SITE DESCRIBED HEREIN (A) AGAINST FAILURE OF PERFORMANCE INCLUDING, WITHOUT LIMITATION, ANY FAILURE DUE TO COMPUTER HARDWARE OR COMMUNICATION SYSTEMS, OR (B) ANY ECONOMIC OR OTHER BENEFIT THAT YOU MIGHT OBTAIN THROUGHOUT ITS PARTICIPATION IN THIS AGREEMENT.

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**12. RELEASE AND INDEMNIFICATION**

- A. You hereby release and agree to hold harmless, defend and indemnify Provider (and its respective employees, directors, shareholders, licensees, affiliates, agents and representatives) from and against any and all claims, actions, proceedings, suits, liabilities, damages (actual, consequential or incidental), settlements, penalties, fines, costs or expenses (including, without limitation, reasonable lawyers' fees and other litigation expenses) of every kind, whether known or unknown, incurred by Provider arising out of or relating to (1) Your use of the Site and Services, including, without limitation, (a) any transactions, claims or disputes between a Site user and You, and (b) any claims or disputes between You and the regulatory agencies in any jurisdiction in which You are doing business; (2) any breach of Your representations and/or warranties set forth in this Agreement; and (3) any improper or illegal use of the Site or Services.

**13. LIMITATION OF LIABILITY**

- A. IN NO EVENT SHALL PROVIDER AND ITS RESPECTIVE EMPLOYEES, DIRECTORS, SHAREHOLDERS, LICENSEES, AFFILIATE, AGENTS AND REPRESENTATIVES BE LIABLE WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY FOR ANY INDIRECT, INCIDENTAL, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES ARISING OUT OF THE USE OR INABILITY TO USE THE SERVICES OR PERFORMANCE OF ANY RELATED SERVICES, EVEN IF PROVIDER HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL THE AGGREGATE LIABILITY OF PROVIDER WHETHER IN CONTRACT, WARRANTY, TORT (INCLUDING NEGLIGENCE WHETHER ACTIVE, PASSIVE OR IMPUTED), PRODUCT LIABILITY, STRICT LIABILITY OR OTHER THEORY ARISING OUT OF OR RELATED TO THE USE OR INABILITY TO USE THE SERVICES EXCEED THE AMOUNT YOU ACTUALLY PAID TO PROVIDER FOR THE SERVICES. YOU HEREBY RELEASES PROVIDER FROM ANY AND ALL OBLIGATIONS, LIABILITIES, AND CLAIM IN EXCESS OF THIS LIMITATION. SOME STATES AND PROVINCES DO NOT ALLOW THE LIMITATION OR EXCLUSION OF LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL DAMAGES SO THE ABOVE LIMITATION OR EXCLUSION MAY NOT APPLY TO YOU.

**14. SHAREPOINT DISCLAIMER**

- A. The HR That Works portal is built on Windows SharePoint Services 3.0. Partners and client companies have their own workspaces where their respective site and the related content are stored. Agency and client company administrators should not delete or try to modify any Web parts or HR That Works content. Since partners and client companies can upload their own content to the portal, HR That Works will not take the responsibility for the content published by the partners and client companies. Partners, companies and any other members may take advantage of the robust SharePoint Platform, but we are not in a position to support SharePoint changes. To learn more about the capabilities of SharePoint 3.0 please go to <http://technet.microsoft.com/en-us/windowsserver/sharepoint/default.aspx> If there are modifications you would like to make in SharePoint you can always contact our programmers, AAJ Technologies, at [www.ajtech.com](http://www.ajtech.com).

**15. GENERAL PROVISIONS**

- A. **Modifications.** Provider reserves the right to change or modify any of the terms and conditions contained in this Agreement or any policy or guideline of the Site, at any time and in its sole discretion. Provider will post a notice of such changes or modifications to this Agreement on the Site for thirty (30) days. Any changes or modification to this Agreement will be effective upon posting of the revisions on the Site. Changes or modifications to referenced policies and guidelines may be posted without notice to You, therefore, You should frequently review such policies and guidelines. Your continued use of this Site and the Services following Provider's posting of its changes or modifications will constitute Your acceptance of

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such changes or modifications. If You do not agree to the terms of the modification or change, Your sole remedy is to terminate this Agreement.

- B. **Force Majeure.** Provider shall be excused from performance hereunder to the extent that performance is prevented, delayed or obstructed by causes beyond its reasonable control, including but not limited to acts of God (fire, storm, floods, earthquakes, etc.), civil disturbances, disruption of telecommunications, power or other essential services, or interruption or termination of service by the Internet access Provider being used by Provider to link its servers to the Internet.
- C. **No Partnership.** Nothing contained in this Agreement is intended implicitly, or is to be construed, to constitute Provider and You as partner or joint venturer in a legal sense. Neither Party intends that a partnership, joint venture or similar relationship be formed by this Agreement or any performance there under. Neither Provider nor You shall have any express or implied right or authority to assume or create any obligations on behalf of or in the name of the other or to bind the other to any contract, Agreement or undertaking with any third party. You will not make any statement, whether on its Web site or otherwise, that reasonably would contradict anything in this Section.
- D. **Assignment.** Neither of the Parties hereto may sell, transfer, assign or otherwise dispose of any of its rights or obligations under this Agreement to any other person, without the express written consent of the other Party, except, if Provider or a majority of its assets are sold or merged into another entity, this Agreement may be transferred without consent and no further notice required. Subject to the preceding sentence, this Agreement will be binding upon, inure to the benefit of and be enforceable by the Parties hereto and their respective successors and assigns.
- E. **Statute of Limitations.** You agree regardless of any statute or law to the contrary that any claim or cause of action arising out of or relating to the Site, use of the Services, or this Agreement must be filed within one (1) year after such claim of action first arose or be forever barred.
- F. **Lawyers' Fees.** If any Party hereto brings an action or proceeding for the declaration of the rights of the Parties hereunder, for injunctive relief, or for an alleged breach or default of, or any other action or arbitration arising out of this Agreement or the transactions contemplated hereby, the prevailing Party in any such action shall be entitled to an award of reasonable lawyers' fees and any court costs incurred in such action or proceeding, in addition to any other damages or relief awarded, regardless of whether such action proceeds to final judgment.
- G. **Consents and Waivers.** The failure of a Party hereto at any time or times to require performance of any provision hereof shall in no manner affect its right at a later time to enforce the same unless the same is waived in writing. No waiver by a Party of any condition or any breach of any term, covenant, representation or warranty contained in this Agreement shall be effective unless in writing, and no waiver of any one or more instances shall be deemed to be a further or continuing waiver of any such condition or breach in other instances or a waiver of any other condition or breach of any other term, covenant, representation or warranty.
- H. **Governing Law; Jurisdiction.** This Agreement shall be governed by and construed in accordance with the laws of the State of California applicable to Agreements made and entirely to be performed within such state, without regard to its conflict of law rules. You hereby irrevocably and unconditionally submit to the exclusive jurisdiction of any state or federal court sitting in San Diego County, California over any suit, action or proceeding arising out of or relating to this Agreement.
- I. **Entire Agreement; No Third-Party Beneficiaries.** The terms set forth in this Agreement are intended by the Parties as a final, complete and exclusive expression of the terms of their Agreement with respect to the transactions contemplated by this Agreement and may not be contradicted, explained or supplemented by evidence of any prior Agreement, any contemporaneous oral Agreement or any consistent additional terms. There are no restrictions, promises, representations, warranties, covenants or undertakings, other than those

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expressly set forth or referred to herein. This Agreement is not intended to confer upon any person other than the Parties hereto any rights or remedies hereunder.

- J. **Severability.** Should any term or provision hereof be deemed invalid, void or unenforceable either in its entirety or in a particular application, the remainder of this Agreement shall nonetheless remain in full force and effect and, if the subject term or provision is deemed to be invalid, void or unenforceable only with respect to a particular application, such term or provision shall remain in full force and effect with respect to all other applications.
- K. **Counterparts.** This agreement may be executed in counterparts, and when each party has signed and delivered at least one such counterpart, each counterpart shall be deemed an original, and, when taken together with other signed counterparts, shall constitute an Agreement, which shall be binding upon and effective as to all Parties.

Dated: \_\_\_\_\_

Donald A. Phin, Esq.  
President,  
Employer Advisors Network, Inc.  
450 B St., Suite 1800  
San Diego County, California 92101  
(800) 234-3304  
Fax: (619) 550-3533  
[don@hrthatworks.com](mailto:don@hrthatworks.com)

Dated: \_\_\_\_\_

Full name: \_\_\_\_\_

Agency name: \_\_\_\_\_

EIN # or SS#: \_\_\_\_\_

Address: \_\_\_\_\_

City, State, Postal Code \_\_\_\_\_

Telephone: \_\_\_\_\_

Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

State Lic.# \_\_\_\_\_

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