



# Terms

## 1. GENERAL DESCRIPTION; WHO PERFORMS SERVICES.

**1.1** These General Terms and Conditions (“**Terms**”) govern the provision of services by Managed by Q LLC. (“**Managed by Q**”) or its third party vendors to the customer named in the Statement of Work (as described below) (“**Customer**”). The services provided by Managed by Q or its third party vendors are generally in the nature of cleaning, maintenance, construction, handyman, staffing and/or space management services, and/or supplies delivered by Managed by Q or its third party vendors to a Customer, such as office and cleaning supplies, and are referred to collectively in these Terms and in the Statement of Work as the “**Services**”. The Services are generally ordered by a Customer through Managed by Q’s online platform located at <https://www.managedbyq.com>.

**1.2** Services a Customer orders through the online platform will be performed by:

- Managed by Q itself, through an affiliated entity named “Q Services” – these are referred to by Managed by Q as “First Party Services”; **or**
- Customers may use Managed by Q’s online platform to arrange for Services to be performed by a third party vendor rather than Managed by Q itself (with invoicing, Statements of Work and related processing continuing to be coordinated through the Managed by Q platform) – these third party vendors are referred to by Managed by Q from time to time as “Partners”.

The Statement of Work will specify by whom the Services will be performed – Q Services, a Partner or a combination of the two.

## 2. STATEMENT OF WORK; CERTAIN TERMS RELATING TO SERVICES.

**2.1** Agreements. No agreement shall exist between Managed by Q and Customer until a Statement of Work shall have been agreed in writing (including electronically) by the parties. While these Terms are general in nature and apply to all Managed by Q engagements, the Statement of Work is specific to the Customer and sets forth in detail the particular Services Managed by Q will be performing for the Customer, when and where those Services will be performed, who will be performing them, the fees for the same and other details specific to the project on which Managed by Q and Customer mutually agree. The confirmed Statement of Work and these Terms taken together shall constitute the entire agreement between Managed by Q and Customer regarding the provision of Services to such Customer and are referred to collectively herein as the “**Agreement**”.



**2.3** Locales for Performance. Unless otherwise agreed in writing by the parties, the performance of Services shall be made at or to, as applicable, the address set forth in the Statement of Work and, in the case of any delivery of supplies which forms part of the Services, title to and risk of loss for the same shall pass to Customer upon delivery thereof to Customer.

**2.4** Times of Performance. Any times or dates for performance communicated by or on behalf of Managed by Q or its third party vendors are estimates and shall not be binding on Managed by Q or such third party vendor. In no event shall Managed by Q or any of its third party vendors be liable for any delay in performance, and no delay in performance of any Services shall relieve Customer of its obligation to accept performance thereof and make payment of any amounts due in accordance with the Agreement. Customer's failure to accept the performance of any Service pursuant to the Agreement shall not release or excuse Customer from its obligation to timely pay all amounts due in connection with such Agreement. If Customer rejects or revokes acceptance of the Services or fails to pay any amounts when due, Managed by Q, in its sole and absolute discretion, may extend the period of performance by such period as Managed by Q may deem reasonable, or withhold or cancel performance of any Services, or cancel any or all Agreements without any further obligations to Customer whatsoever.

**2.5** Changes to the Agreement. Customer may submit to Managed by Q written requests (including electronically) to change the scope of Services or time of performance and/or delivery of the same described in the applicable Agreement (each such request, an "**Amendment Request**"). Managed by Q may, at its sole discretion, consider such Amendment Requests, provided that Managed by Q will have no obligation to perform any Amendment Request unless and until Managed by Q has agreed in writing (including electronically) to adopt such Amendment Request. Managed by Q will continue to perform the Services that are not affected by such Amendment Request pursuant to the applicable Agreement.

**2.6** Cancellations. Unless the Statement of Work provides for a different notice period, Customer may cancel any recurring Services at any time by providing thirty (30) days advance written notice (email is acceptable). This thirty-day notice period will be waived if Customer orders replacement Services of the same or greater value through Managed by Q. In the case of "one-off" (rather than recurring) Services, Customer may cancel the same (again, unless the Statement of Work provides for a different notice period) at any time up to twenty-four (24) hours prior to the scheduled start time for the applicable Services (with the understanding that Customer will remain responsible for the fees relating to any one-off Services that are cancelled on less than twenty-four (24) hours' notice).

**2.7** Customer Responsibilities. In connection with each applicable Agreement, Customer shall: (i) provide Managed by Q or its third party vendor with full access to Customer's premises and provide the necessary number of authorizations, keys, fobs, access cards, access codes, security codes, alarm codes or other means of access, and access instructions, such as preferred access points, as required by Managed by Q or its third party vendor, for the sole purpose of the performance of the Services; (ii) provide Managed by Q or its third party vendor a sample Certificate of Insurance within three (3) business days of the date of the Statement of Work in the event Customer or its landlord requires such Certificate of Insurance from Managed by Q or its third



Managed by Q or its third party vendor; and (vi) perform Customer's duties and tasks set forth in the applicable Agreement, and such other duties and tasks as may be reasonably required to permit Managed by Q or its third party vendors to perform the Services.

**2.8 Relationship of the Parties.** The parties are independent contractors and nothing in an Agreement shall be construed as constituting a joint venture, common undertaking or other association between the parties. Neither party shall be deemed to be an employee, agent, partner nor legal representative of the other party for any purpose, and neither party shall have any right, power or authority to create an obligation or responsibility on behalf of the other party, or to make any representation or warranty on behalf of such party, except as set forth in the respective Agreement.

### 3. PAYMENT.

**3.1 Fees and Expenses.** In consideration of Managed by Q's or its third party vendor's provision of the Services and the rights granted to Customer under any applicable Agreement, Customer shall pay Managed by Q all fees set forth in and in accordance with the terms of the Statement of Work ("**Fees**"). Managed by Q reserves the right to modify Fees upon thirty (30) days advance written notice to Customer. All Fees relating to Services shall be paid and delivered through the Managed by Q platform only, and in no event directly to any applicable third party vendor or otherwise outside of the Managed by Q platform, regardless of whether it is Managed by Q or a third party vendor that has performed the Services (with two (2) possible exceptions: (a) payment outside of the Managed by Q platform may be authorized by Managed by Q for a particular circumstance from time to time and (b) if a prior relationship with one of Managed by Q's third party vendor exists). All invoices generated for or on behalf of Managed by Q relating to First Party Services will come from Q Services.

**3.2 Payment Terms.** In the event the Statement of Work omits any necessary payment terms, Customer shall be billed and shall pay and deliver the Fees to Managed by Q for the following types of Services as follows (with the understanding that references below to payments by credit card may also be made by ACH transfer):

#### 3.2.1. Q Services: Cleaning and Supplies

Q Services shall issue invoices to the Customer for Services in the form of cleaning and provision of supplies with the frequency and at the rates agreed between Managed by Q and the Customer in the Statement of Work. Q Services shall charge the Customer's credit card provided at the time of registration three (3) days after the date of the invoice.

#### 3.2.2 Q Services: Maintenance

Certain Services are in the form of maintenance and are typically invoiced following fulfillment of the applicable order for the same. In all events, Q Services shall issue invoices to the Customer for such Services with the frequency and at the rates agreed between Managed by Q and the Customer in the Statement of Work. The Customer understands that the final amount may be less than or greater than any estimated amount previously provided to the Customer. Q Services shall



Third Party Services are Services purchased through Managed by Q and that will be performed by one of Managed by Q's vendors (rather than Q Services). A Customer will always be made aware when Services purchased through Managed by Q are provided by third parties. Third Party Services will typically be billed at the frequency and rate agreed between Managed by Q and the Customer in the Statement of Work (with the understanding, in the interest of transparency, that Managed by Q and each applicable third party vendor have separately agreed on how fees paid by a Customer relating to any such Third Party Services will be apportioned between them). The Customer understands that the final amount may be less than or greater than the estimated amount and agrees to pay for the actual amount of time such Services required. Q Services will charge the Customer's credit card provided at the time of registration three (3) days after the date of the invoice.

#### 3.2.4 Staffing Services

Managed by Q and certain of its third party vendors also provide staffing services to Customers, comprised primarily of filling open personnel needs at a Customer by virtue of either one of the following means:

- temporary assignments of individuals to a Customer, pursuant to which such individual – a “temp” – continues as an employee of Managed by Q or the applicable third party vendor but is assigned by Managed by Q or such third party vendor to perform services on a temporary basis for or on behalf of such Customer; under this arrangement Q Services invoices the Customer for the actual hours worked by the applicable individual at the hourly rate agreed in the Statement of Work (with Managed by Q or the applicable third party vendor remaining responsible for compensating the temp); Q Services shall charge the Customer's credit card provided at the time of registration three (3) days after date of the invoice; ***or***
- permanent placement of an individual with a Customer, *i.e.*, following an introduction by Managed by Q or the applicable third party vendor such Customer hires such individual outright as an employee of such Customer.

The fees associated with a permanent placement, as described in the immediately foregoing bullet, are set forth on [Exhibit A](#) to these Terms; [Exhibit A](#) also sets forth the fees applicable to the circumstance in which a Customer hires on a permanent basis a temp previously assigned to perform services for or on behalf of the Customer per the first bullet above – these fees are referred to by Managed by Q as “conversion fees”. [Exhibit A](#) also sets forth certain additional terms and limitations applicable to Staffing Services, including without limitation relating to the setting of the hourly rate for temporary assignments (first bullet above) and certain restrictions on the tasks which may be assigned to temporary personnel.

#### 3.2.5 General Terms re: Fees

Q Services, in its sole discretion, may charge any and all outstanding payments under the applicable Agreement that remain unpaid for a period of sixty (60) days after the date of the invoice, to the credit card provided by the customer at the time of registration, and the customer



overdue amount for each thirty days the amount is overdue. The late fee shall be prorated for any period that is less than thirty (30) calendar days.

**3.3 Taxes.** Unless otherwise set forth in the applicable Agreement, the Fees, and other amounts payable to Managed by Q hereunder do not include any sales, use, value added or other similar taxes, tariffs or duties, payment of which will be the sole responsibility of Customer, unless otherwise specified by Managed by Q. In the event Customer is required by law to make any deduction or to withhold from any sum payable hereunder, then the sum payable by Customer to Managed by Q shall be paid to Managed by Q net of such deduction or withholding. Customer shall pay the applicable tax authorities any such required deduction or withholding. Customer shall reimburse Managed by Q for any such amounts that Managed by Q pays on Customer's behalf no later than simultaneously with the Fees for the related Services.

#### **4. OWNERSHIP.**

Managed by Q Materials. Managed by Q shall exclusively own all rights, title and interest in and to any processes, methodologies, techniques, data, information, software and materials of any kind used by Managed by Q and/or its personnel in connection with the provision of the Services including all Managed by Q Confidential Information (as defined below), worldwide copyrights, trademarks or service marks, moral rights, trade secret rights, know-how and any other intellectual property rights therein, and any improvements thereto (collectively, "Managed by Q Materials"). Customer shall have no rights in the Managed by Q Materials except as expressly agreed to in writing by the parties.

#### **5. NETWORK DELAYS.**

The online platform, Services and any software used by Managed by Q may be subject to limitations, delays, and other problems inherent in the use of the internet, telecommunications, networks and electronic communications. Managed by Q is not responsible for any delays, delivery failures, or other damage resulting from such problems.

#### **6. NON-SOLICITATION.**

None of Customer or any of its affiliates shall directly or indirectly solicit or hire any employee or sub-contractor of Managed by Q, or any of its affiliates, or of any of their respective third party vendors during the term of any Agreement and for a period of six (6) months following its expiration or termination, without prior written approval of Managed by Q. In the event of a breach of this Section 6 by the Customer, the Customer shall pay a standard recruiting fee equal to 20% of the employee's annual salary. The Customer acknowledges and agrees that Managed by Q and its third party vendors have invested significant time and resources in the hiring, training and management of their employees and contractors and the foregoing amount fairly represents the damages that would be sustained by them due to a breach of this clause. For avoidance of doubt, the parties understand that the foregoing terms of this Section 6 shall not apply in the case of individuals solicited for hire and/or hired by a Customer as a result of any Staffing Services provided by Managed by Q or any of its third party vendors to a Customer pursuant to Section 3.2.4 above (*i.e.*, individuals permanently placed by Managed by Q or any of its third party vendors with a Customer or who are permanently hired by a Customer following a temporary assignment to such Customer).



## 8. CONFIDENTIAL INFORMATION.

**8.1 Confidential Information.** “Confidential Information” means: any know-how, trade secrets, and other business or other information of either party that is designated as “confidential” or “proprietary” at the time of disclosure or due to its nature or under the circumstances of its disclosure the party receiving such information knows or has reason to know should be treated as confidential or proprietary.

**8.2 Exclusions.** Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault or breach of the Agreement; (ii) is already known by the other party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the other party without use of the other’s Confidential Information; (iv) is rightfully received by the party from a third party without restriction on use or disclosure; or (v) is disclosed with the prior written approval of the party owning the Confidential Information.

**8.3 Use and Disclosure Restrictions.** Neither party shall use the other’s Confidential Information except as necessary for the performance or enforcement of any applicable Agreement and will not disclose such Confidential Information to any third party except to those of its employees, subcontractors who have a bona fide need to know such Confidential Information for the performance or enforcement of any applicable Agreement; provided that each such employee and subcontractor is bound by a written agreement that contains use and nondisclosure restrictions consistent with the Terms set forth in this Section. Both parties shall employ all reasonable steps to protect the other’s Confidential Information from unauthorized use or disclosure, including, but not limited to, all steps that it takes to protect its own information of like importance. The foregoing obligations will not restrict either party from disclosing the other’s Confidential Information: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other to contest such order or requirement; (ii) to its legal or financial advisors; and (iii) as required under applicable securities regulations.

## 9. WARRANTY.

**9.1 Warranty Disclaimers.** MANAGED BY Q DOES NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE ONLINE PLATFORM OR ANY SOFTWARE PROVIDED BY MANAGED BY Q FOR USE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (C) THE QUALITY OF ANY SERVICES, INFORMATION, OR OTHER MATERIAL OR SUPPLIES PURCHASED OR OBTAINED THROUGH ANY SERVICE (INCLUDING BUT NOT LIMITED TO ANY CLEANING SERVICES) WILL MEET THE CUSTOMER’S REQUIREMENTS OR EXPECTATIONS, (D) ERRORS OR DEFECTS IN THE ONLINE PLATFORM, ANY SERVICE, SOFTWARE OR SUPPLIES WILL BE CORRECTED, OR (E) THE SOFTWARE OR THE SERVER(S) THAT MAKE THE ONLINE PLATFORM AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. MANAGED BY Q WILL PROVIDE THE SERVICES USING A COMMERCIALY REASONABLE AMOUNT OF SKILL AND CARE. BEYOND THAT, MANAGED BY Q MAKES NO REPRESENTATION, WARRANTY, OR GUARANTEE AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, AVAILABILITY,



MANAGED BY Q ARE PROVIDED STRICTLY ON AN “AS IS, WHERE IS” BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, ARE DISCLAIMED BY MANAGED BY Q. THE CUSTOMER ACKNOWLEDGES AND AGREES THAT THE ENTIRE RISK ARISING OUT OF ITS USE OF THE ONLINE PLATFORM, SOFTWARE, SERVICES AND ANY SUPPLIES PURCHASED THROUGH AND/OR FROM MANAGED BY Q, REMAINS SOLELY WITH THE CUSTOMER.

## **10. TERM AND TERMINATION.**

**10.1** Term. Subject to the remaining provisions of this Section 10, the Agreement shall remain in full force and effect for as long as the applicable Statement of Work is in effect.

**10.2** Termination for Convenience. Unless otherwise set forth in the Statement of Work, any Agreement may be terminated for convenience by either party by giving thirty (30) days’ prior written notice to the other party; provided that Customer shall continue to be responsible for Fees incurred for all Services ordered prior to or during the notice period.

**10.3** Termination for Cause. Each party shall have the right to terminate any Agreement at any time by written notice to the other party if the other party breaches any material term of an Agreement, including, but not limited to the failure of Customer to timely pay in full any Fees or any other expenses payable to Managed by Q pursuant to such Agreement, and fails to cure such breach within three (3) business days after receipt of written notice thereof.

In the event of a probable breach of the Agreement by the Customer or any of its representatives, Managed by Q reserves the right to (i) modify or discontinue, temporarily or permanently, the Services (or any part thereof) and (ii) refuse any and all current and future use of the online platform or suspend or terminate the Customer’s account (or any part thereof) on the online platform. Managed by Q shall not be liable to the Customer or any third party for any modification, suspension or discontinuation of the Services. Managed by Q will use good faith and reasonable efforts to provide notice to the Customer prior to suspension or termination of its account by Managed by Q.

**10.4** Bankruptcy, Insolvency. Either party may terminate any Agreement by written notice to the other party, effective upon receipt with no right to cure the default, if the other party files a petition for bankruptcy, reorganization or arrangement under any state statute, or makes an assignment for the benefit of creditors or takes advantage of any insolvency statute or similar statute, or if a receiver or trustee is appointed for the property and assets of the party and the receivership proceedings are not dismissed within sixty (60) days of such appointment.

**10.5** Effect of Termination. Upon the expiration or termination of any Agreement: (i) each party will promptly return to the other party all Confidential Information, keys, fobs, iPads, or any other device provided by the other party, or at the other party’s request, destroy all Confidential Information of the other party in its possession or control; and (ii) unless otherwise set forth in an Agreement, Customer shall pay all accrued and unpaid Fees and other expenses incurred through and including the effective date of such expiration or termination of the applicable Agreement(s).



Customer shall indemnify, defend and hold Managed by Q and its affiliates and each of their respective directors, officers, employees, shareholders, affiliates, agents and representatives, harmless, from and against any and all liability, claims, lawsuits, losses, demands, damages, costs and expenses, including but not limited to reasonable attorney's fees, expert's fees, court costs, and other costs (collectively, "**Losses**") arising from any third party claim due to (i) any use of the Services, except to the extent such Losses have been incurred as a direct result of Managed by Q's gross negligence or willful misconduct, (ii) any breach of any of Customer's representations or covenants or other terms contained in an Agreement or any other agreement in which these Terms are incorporated or to which these Terms are attached or made part of, (iii) a specification or instruction provided by or on behalf of Customer; (iv) bodily injury, personal injury (including death) to any person, damage to tangible property, or violation of any third party intellectual property rights, resulting from the negligent acts or willful misconduct of Customer or its personnel or agents hereunder; (v) the Customer's violation of any third party rights including but not limited to rights of third party vendors referred to the Customer via the online platform; or (vi) the Customer's use or misuse of the online platform or any Services.

## 12. LIMITATION OF LIABILITY.

In no event shall Managed by Q and/or any of its licensors or third party vendors be liable to Customer for any indirect, incidental, consequential, punitive, special or exemplary damages of any kind, including, but not limited to, loss of profits, loss of business opportunity, loss of data, loss of use, and loss of production arising from or in any way connected to any Agreement, even if such damages were foreseeable and whether or not Managed by Q, its licensors and/or third party vendor had been advised of the possibility therefor. The total liability of Managed by Q and its third party vendors for any and all claims relating to or arising under any Agreement shall be limited to the sum of payments made by Customer to Managed by Q under such Agreement. This limitation of liability shall apply to all legal theories, including breach of contract, tort and strict liability, whether for negligence or otherwise.

MANAGED BY Q MAY (THROUGH THE ONLINE PLATFORM OR OTHERWISE) INTRODUCE THE CUSTOMER TO THIRD PARTY VENDORS (AND THEIR SUBCONTRACTORS) FOR THE PURPOSES OF PROVIDING SERVICES. MANAGED BY Q WILL NOT ASSESS THE SUITABILITY, LEGALITY OR ABILITY OF ANY THIRD PARTY VENDORS (OR THEIR SUBCONTRACTORS) OR PERFORM ANY OTHER INVESTIGATION AND THE CUSTOMER EXPRESSLY WAIVES AND RELEASES MANAGED BY Q FROM ANY LIABILITY, CLAIMS OR DAMAGES ARISING FROM OR IN ANY WAY RELATED TO SUCH THIRD PARTY VENDORS (OR THEIR SUBCONTRACTORS). MANAGED BY Q IS NOT RESPONSIBLE FOR THE CONDUCT, WHETHER ONLINE OR OFFLINE, OF ANY THIRD PARTY VENDOR (OR ITS SUBCONTRACTORS). MANAGED BY Q WILL NOT BE A PARTY TO DISPUTES OR NEGOTIATIONS OF DISPUTES BETWEEN THE CUSTOMER AND SUCH THIRD PARTY VENDORS (OR THEIR SUBCONTRACTORS). RESPONSIBILITY FOR THE DECISIONS THE CUSTOMER MAKES REGARDING SERVICES OFFERED VIA THE ONLINE PLATFORM (WITH ALL ITS IMPLICATIONS) RESTS SOLELY WITH THE CUSTOMER. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING PARAGRAPH, PARTIES OTHER THAN MANAGED BY Q OPERATE STORES OR BUSINESSES, PROVIDE SERVICES, OR SELL PRODUCT LINES THROUGH THE SERVICES. IN ADDITION, MANAGED BY Q MAY PROVIDE LINKS TO THE WEBSITES OF AFFILIATED COMPANIES AND CERTAIN OTHER BUSINESSES. WE ARE NOT RESPONSIBLE FOR EXAMINING OR EVALUATING, AND WE DO NOT



SUBCONTRACTORS). CUSTOMER ACKNOWLEDGES THAT DIFFERENT TERMS OF USE AND PRIVACY POLICIES MAY APPLY TO ITS USE OF SUCH THIRD PARTIES' (AND THEIR SUBCONTRACTORS') SERVICES AND CONTENT. MANAGED BY Q DOES NOT ENDORSE SUCH THIRD PARTY (OR SUBCONTRACTOR) SERVICES AND IN NO EVENT SHALL MANAGED BY Q BE RESPONSIBLE OR LIABLE FOR ANY PRODUCTS OR SERVICES OF SUCH THIRD PARTIES (OR THEIR SUBCONTRACTORS).

### **13. PUBLICITY.**

Customer agrees that Managed by Q may, at its own expense, refer to Customer and utilize Customer's logos and marks in promotional materials, press releases, advertisements, and other public disclosures, solely as a reference to representative customers of Managed by Q.

### **14. GENERAL PROVISIONS.**

**14.1** Modification of Terms. Managed by Q may amend or modify these Terms from time to time. Managed by Q may, at its sole discretion, provide Customer with written notice of any such changes, revisions, amendments or modifications, provided, however that any such changes, revisions, amendments or modifications shall become effective without any further action by any party and that they shall not apply to any Agreement prior to the effective date of such changes, revisions, amendments or modifications. Managed By Q may modify these Terms or any additional Terms that apply to a Service to, for example, reflect changes to the law or changes to the Services. You should look at the Terms regularly. Managed By Q will post notice of modifications to these Terms on this page. Managed By Q will notify you when its Terms have been updated. Changes will not apply retroactively and will become effective no sooner than thirty days after they are posted. However, changes addressing new Services or changes made for legal reasons will be effective immediately. If you do not agree to the modified Terms for a Service, you should discontinue your use of that Service and provide notice to Managed By Q.

If there is a conflict between these Terms and the additional Terms, the additional Terms will control for that conflict.

If you do not comply with these Terms, and Managed By Q does not take action right away, this does not mean that Managed By Q is giving up any rights that it may have (such as taking action in the future). If it turns out that a particular term is not enforceable, this will not affect any other terms.

**14.2** Assignment. Customer may not assign any Agreement or any other contract with Managed by Q or any of its rights or obligations without the express prior written consent of Managed by Q. Any purported assignment or delegation in violation of this Section shall be null and void. No assignment or delegation relieves Customer of any of its obligations under these Terms and/or an Agreement. Subject to the foregoing, these Terms will bind and inure to the benefit of the parties' permitted successors and assigns.

**14.3** Governing Law. These Terms, all Agreements and all claims arising in connection with any Agreement shall be governed and construed in accordance with the laws of the State of New York without giving effect to the conflicts of law principles thereof.



commence upon receipt of a written notice by the other party from the party asserting a claim.

Managed by Q takes Disputes seriously and will work to investigate any claims made. In the event of any Dispute resulting from a claim of theft by one of Managed by Q's employees or contractors, the Customer agrees to notify Managed by Q immediately. Managed by Q shall investigate such matter and may work with private investigators and the police as it deems necessary. The Customer shall share any supporting evidence with Managed by Q or any investigative body.

If the Customer and Managed by Q are unable to resolve a Dispute through informal negotiations, all claims arising from use of the Services (except those Disputes expressly excluded below) will be finally and exclusively resolved by binding individual arbitration. Any election to arbitrate by one party will be final and binding on the other. THE CUSTOMER UNDERSTANDS THAT IF EITHER PARTY ELECTS TO ARBITRATE, NEITHER PARTY WILL HAVE THE RIGHT TO SUE IN COURT OR HAVE A JURY TRIAL. The arbitration will be commenced and conducted under the Commercial Arbitration Rules (the "AAA Rules") of the American Arbitration Association ("AAA") and, where appropriate, the AAA's Supplementary Procedures for Consumer Related Disputes ("AAA Consumer Rules"), both of which are available at the AAA website [www.adr.org](http://www.adr.org). The Customer's arbitration fees and share of arbitrator compensation shall be governed by the AAA Rules (and, where appropriate, limited by the AAA Consumer Rules). The arbitration may be conducted in person, through the submission of documents, by phone or online. The arbitrator will make a decision in writing, but need not provide a statement of reasons unless requested by a party. The arbitrator must follow applicable law.

All arbitrations shall proceed on an individual basis. The arbitrator is empowered to resolve the Dispute with the same remedies available in court; however, any relief must be individualized to the Customer and shall not affect any other customer. The Customer and Managed by Q agree that each may bring claims against the other in arbitration only in the Customer's or Managed by Q's respective individual capacities and in so doing the Customer and Managed by Q hereby waive the right to a trial by jury, to assert or participate in a class action lawsuit or class action arbitration (either as a named-plaintiff or class member), and to assert or participate in any joint or consolidated lawsuit or joint or consolidated arbitration of any kind. If a court decides that applicable law precludes enforcement of any of this paragraph's limitations as to a particular cause of action, then that cause of action (and only that cause of action) must remain in court and be severed from any arbitration.

The foregoing arbitration agreement shall be governed by, and interpreted, construed, and enforced in accordance with, the Federal Arbitration Act. The terms of the arbitration agreement provisions shall survive after this Agreement terminates or the Customer's use of the Service ends. Except as set forth above, if any portion of this arbitration agreement is deemed invalid or unenforceable, it will not invalidate the remaining portions of the Arbitration Agreement.

Each party retains the right to bring an individual action in small claims court or to seek injunctive or other equitable relief on an individual basis in a federal or state court in New York, New York, with respect to any dispute related to the actual or threatened infringement, misappropriation or violation of a party's intellectual property or proprietary rights. It is the parties' intent that this Agreement be construed to the fullest extent allowed by law, such that the only exceptions shall be



**14.5** Injunctive Relief. In the event of a violation or threatened violation of Sections 4, 6, 8 and/or 14 by Customer, Managed by Q shall have the right, in addition to such other remedies as may be available to it at law or pursuant to these Terms, to temporary or permanent injunctive relief enjoining such act or threatened act in any court of competent jurisdiction without any requirement to post a bond or provide other security. The parties acknowledge and agree that the legal remedies for such violations or threatened violations are inadequate and that Managed by Q would suffer irreparable harm.

**14.6** Waiver of Jury Trial. The parties hereby irrevocably waive their right to a trial by jury in any litigation in any court with respect to any claim, controversy or dispute arising out of or in connection with any Agreement.

**14.7** Notices. All notices, requests, consents, claims, demands, waivers and other communications required or permitted under any Agreement shall be in writing and delivered in person, by electronic transmission including email (provided receipt shall have been acknowledged in writing by the recipient thereof), by overnight delivery service, or by registered or certified mail, postage prepaid with return receipt requested. All communications for Managed by Q must be sent to Managed by Q, Attn.: Legal Department, 233 Spring Street, 11th Floor, New York, NY 10013 and to the Customer at the address provided by the Customer at the time of registration, or to such other address that may be designated by the respective parties in writing from time to time.

**14.8** Waiver. The failure or delay by either party to exercise any right under these Terms and/or any Agreement shall not be construed as waiver of such right.

**14.9** Entire Agreement; Conflicts. These Terms together with the applicable Agreement constitute the entire and exclusive agreement of the parties regarding its subject matter and supersedes any and all prior or contemporaneous agreements, communications, and understandings (both written and oral) regarding such subject matter. In the event of a conflict between the provisions of these Terms and the provisions of an Agreement, the provisions of an Agreement shall govern and control.

**14.10** Severability. If any provision of these Terms or an Agreement is held invalid or unenforceable by a court of competent jurisdiction, the remaining provisions will remain in full force and effect, and the provision affected will be construed so as to be enforceable to the maximum extent permissible by the applicable law.

**14.11** Force Majeure. Except for Customer's obligation to pay the Fees and other expenses payable to Managed by Q, neither party will be responsible for any failure or delay in its performance under these Terms or any Agreement due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, shortages of or inability to obtain labor, energy, raw materials or supplies, war, acts of terror, riot, acts of God or governmental action.

**14.12** Counterparts. Each Agreement may be executed in counterparts, in electronic form or facsimile, each of which will be deemed an original, and all of which together will constitute one and the same instrument.



### Certain Terms Applicable to Staffing Services

The following terms apply when a Customer engages Managed by Q or one of its third party vendors specifically for a staffing service.

#### *Permanent placement fees*

- If the Customer hires a candidate from Managed by Q or one of its third party vendors as a permanent placement (the second bullet under Section 3.2.4 of the Terms), the fee owed will equal 20% of that employee's starting annual salary. Provided that the foregoing fee is paid within 30 calendar days following the date of hire, if employment terminates for any reason other than death, disability, reduction of workforce or a significant change in scope of responsibilities or title within the first 90 calendar days of hire, Managed by Q or the applicable third party vendor will either replace the candidate (but only once) at no additional cost, or refund a pro rata portion of the placement fee calculated by subtracting the number of calendar days since the start date from 90 and dividing the result by 90.

#### *Conversion fees*

- In the event

event that Customer hires an assigned employee who is on a temporary assignment from Managed by Q or one of its third party vendors (the first bullet under Section 3.2.4 of the Terms), the fee owed will amount to a percentage of that employee's first year annual salary, which percentage will decrease on a sliding scale based on the number of billed hours worked by the applicable individual for the Customer prior to the date of hire. Unless agreed upon otherwise in writing (or electronically) between Managed by Q or the applicable third party vendor and Customer through the Managed by Q platform, the sliding scale will apply as follows

- up to 200 billed hours: 20% of starting annual salary;
- 201 to 400 billed hours: 15% of starting annual salary;
- 401 to 600 billed hours: 10% of starting annual salary;
- 601 to 800 billed hours: 5% of starting annual salary; and
- 801+ billed hours: no fee.

#### *Temporary assignment fees*

- The hourly bill rate for temporary assignments shall be agreed upon in writing (or electronically) between Managed by Q or the applicable third party vendor and Customer through the Managed by Q dashboard, taking into account any and all applicable federal, state and/or local laws and regulations relating to the same;



- in addition to the foregoing fees, Customer shall reimburse Managed by Q or the applicable third party vendor for all costs incurred in connection with any incremental background and/or drug tests Managed by Q or such third party vendor is required to perform over and above any standard tests Managed by Q or such third party vendor performs of its own accord.

#### *No payroll transfer*

- Customer agrees not to directly or indirectly cause or permit any individual who had been temporarily assigned to it by Managed by Q or any of its third party vendors (per the first bullet under Section 3.2.4 of the Terms) to perform services for Customer under Customer's own or any other entity's payroll for a period of 1 year after the temporary assignment of the applicable individual to Customer had ended, without paying the application fee; and
- If Customer receives a resume for an open position through Managed by Q or any of its third party vendors, and such Customer submits or otherwise forwards the same resume to another potential employer ("Third-Party Employer"), a permanent placement fee (as described above) is owed to Managed by Q by such Customer if the applicable candidate is interviewed within 1 year following Third-Party Employer's receipt of the resume and is subsequently hired by that Third-Party Employer or any of its affiliates.

#### *Amendments to fees*

- Any amendment to the fee structure detailed above shall be valid only if agreed upon by Managed by Q or the applicable third party vendor and Customer in writing (or electronically) through the Managed by Q platform.

#### *Certain Restrictions re: Temporary Assignments*

- Customer may not request or require any temporary personnel assigned to it by Managed by Q or one of its third party vendors to attend unpaid events, engage in any illegal activities or undertake any assignments that would reasonably be expected to put the applicable individual in "harm's way", such as working in vehicular traffic or operating heavy machinery. If the scope or location of any temporary individual's work for Customer is modified, Customer shall promptly so inform Managed by Q or the applicable third party vendor.