

Employee Funding & Administration

PARTICIPATION AGREEMENT

THIS PARTICIPATION AGREEMENT is between Small Business Insurance Services, LLC (“SBIS”), a subsidiary of the Small Business Association of Michigan (“SBAM”), Kushner & Co., Inc. (“Kushner”), and SBAM Member, _____ (“Member”).

WITNESSETH:

- A. Member is a member of SBAM in good standing.
- B. Member desires to or has adopted a cafeteria plan under Section 125 of the Internal Revenue Code of 1986, as amended (the “Plan”), containing eligible reimbursement accounts for the benefit of its employees and the eligible dependents of such employees and/or a Health Savings Account or Health Reimbursement Arrangement.
- C. As a benefit to its members, SBAM has established a relationship with Kushner to provide Plan administrative services at a discounted rate to SBAM members.
- D. Member wishes to utilize the services of Kushner to assist in the implementation and administration of its plan.
- E. Kushner is willing to provide such services in accordance with the terms of this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the execution of this Agreement, and by paying a monthly service fee to SBIS for Plan administrative services, the parties hereto agree as follows:

1. Plan Services. Kushner shall provide the following services to Member (check applicable products):

- Self-Administered Premium Only Plan (See Exhibit A for a description of products and services).
- Fully-Administered Premium Only Plan (See Exhibit B for a description of products and services).
- Green Paperless Option** (discounted price)

- Flexible Spending Accounts with Fully Administered Premium Only Plan (See Exhibit C for a description of products and services).
- Green Paperless Option** (discounted price)
- Fully-Administered Health Reimbursement Arrangement (See Exhibit D for a description of products and services).
- Green Paperless Option** (discounted price)
- Health Savings Account (See Exhibit E for a description of products and services).
- Green Paperless Option** (discounted price)
- Self-Administered Health Reimbursement Arrangement DOCUMENT (See Exhibit F for a description of products and services).
- Debit Card (See Exhibit G for description of services).

2. Administrative Consultation and Advice. Kushner, as necessary, shall report to Member matters of general interest with respect to the Plan. Upon request, Kushner shall advise and assist the employer in the evaluation and adoption of Plan changes. Kushner shall provide to Member all notices reflecting its privacy policies and practices as required by state and federal law.

3. Member's Obligations.

A. Member is the Plan Administrator and a named fiduciary of the Plan, as those terms are defined in the Employee Retirement Income Security Act of 1974 ("ERISA"). Member is responsible for the general management and administration of the Plan, including, but not limited to:

- i. Payment of claims for benefits under the Plan and payments of expenses for the administration of the Plan including without limitation, taxes and other governmental fees assessed against the Plan or Member and any attorneys, auditors, or other professional appointed by Member in connection with the Plan;
- ii. Establishment, amendment and termination of the Plan and establishment of a funding policy for the Plan;

- iii. Final interpretation of the Plan, including determination of eligibility and amount, manner and time of Plan benefit payments;
- iv. Enrollment of eligible persons in the Plan and providing Kushner with a complete and accurate enrollment form for each participant prior to the effective date of the participant's coverage;
- v. Obtaining written waivers of Plan coverage from eligible persons declining such coverage;
- vi. Forwarding to Kushner, by the last day of each month, a written list of all persons beginning coverage under the Plan in the next month and persons terminating coverage, complete and accurate enrollment forms for new participants and signed waivers of Plan coverage for newly eligible persons declining such coverage;
- vii. Reviewing monthly billing statement for accuracy of enrollment records and immediately informing Kushner of any inaccuracies; and
- viii. Providing participants with a SPD as required by ERISA. ERISA requires that a SPD be distributed to new participants within ninety (90) days of their enrollment, that Member update SPDs in general every five (5) years and that a summary of material modifications be distributed within 210 days after the end of any Plan Year that the Plan's benefits were substantially modified.

B. Member will provide written notice to each of its employees and those employees' dependents who participate in the Plan of the following in accordance with Michigan Compiled Laws 550.932:

- i. Benefits provided and any changes in such benefits;
- ii. The fact that individuals covered by the Plan are not insured;
- iii. The fact that, in the event the Plan or Member does not ultimately pay medical expenses that are eligible for payment under the Plan, the individuals covered by the Plan may be liable for those expenses;
- iv. The fact that Kushner merely processes claims and does not insure that any medical expenses of individuals covered by the Plan are paid; and

v. The fact that complete and proper claims for benefits made by individuals covered by the Plan will be promptly processed, but that in the event there are delays in processing claims, the individuals covered by the Plan will have no greater rights to interest or other remedies against Kushner than as otherwise afforded them by law.

C. As a condition to Kushner's obligations, Member shall cooperate with Kushner, provide Kushner with information required to comply with procedures, and pay service fees as required by paragraph 4 of this Agreement.

D. Member shall, if required by law or regulation, notify each participant and provide each participant with an opportunity to opt-out (if required) or obtain from each participant such written authorization for release of any personal financial record and medical record in accordance with applicable state and federal law to permit Member to perform its obligations under this Agreement.

4. Administrative Service Fee. The Administrative Service Fee for each product is set forth in the Fee Schedule attached as Exhibit H and may be amended from time to time by Kushner with at least 60 calendar days written notice to Member by either SBAM or Kushner.

5. Maintenance of Membership. Member's eligibility to obtain or maintain Plan administrative services offered to SBAM Members by Kushner shall terminate if Member's membership terminates or at the end of the period for which Member has paid SBAM dues. If Member's dues are not paid in full at the end of a thirty (30) day grace period, SBAM will notify Kushner that Member is no longer a member in good standing, which shall be good cause for immediate termination of this Agreement.

6. Termination and Modification of Agreement.

A. This Agreement may be terminated after the initial term of 12 months in accordance with the provisions of Section 5 of Kushner & Company Consulting and Administrative Services Agreement (see Section 12(A) of this Agreement) by sending timely written notice by certified mail, return receipt requested, to the other parties. Upon termination, all services and products set forth in paragraph 1 shall be immediately relinquished.

B. Kushner and SBIS, respectively, retain the right to immediately terminate this Agreement for cause by giving written notice of termination to Member.

C. This Agreement may be modified, altered or amended only in writing and signed by an authorized officer of all parties to this Agreement.

7. Compliance With Law. State and federal laws (including, but not limited to, ERISA and HIPAA), establish a variety of obligations on Member relative to Member's benefit or welfare programs provided to their employees and employees' dependents. Neither Kushner, SBAM nor SBIS assume the legal obligations otherwise applicable to Member under any such laws. Member is urged to consult its legal counsel for information about their obligations under such laws and the manner in which such obligations can be satisfied.

8. Liability and Indemnification.

A. Kushner's liability under this Agreement is limited to the performance of the services described in paragraph 1. In no event shall Kushner be liable for the benefits under the Plan or for any other payment except as expressly stated herein.

B. The parties agree that neither SBAM nor SBIS shall have any liability arising out of any provision in this Agreement.

C. Member shall be liable for and shall protect and defend at its cost, save, hold harmless and indemnify Kushner, SBAM and SBIS, and their respective agents, employees, officers, directors and shareholders from and against any and all fines, penalties, losses, damages, costs, expenses, attorneys' fees and court costs suffered by them. Neither Kushner, SBAM nor SBIS shall have any liability for any damages to participants in the Plan resulting from a decision of the Member not to pay any claim and Member shall protect, defend at its cost, save, hold harmless and indemnify Kushner, SBAM and SBIS from any such damages, costs, expenses, attorneys' fees and court costs.

D. Member shall also assume the liability for any assessment of tax based upon the existence of the Plan, including all fines, penalties, losses, damages, costs, expenses, attorneys' fees and court costs incurred in connection with such assessment.

9. Confidentiality. All files, data and information relating to the business of any party in the possession of any other party will be deemed confidential and will not be disclosed except upon lawful order of a court or public authority which order compels obedience under penalty of contempt or fine or impairment or

loss of the right to do business. In the event of any such disclosure, the disclosing party shall immediately notify the other parties in writing detailing the circumstances of and extent of such disclosure.

10. Professional Services. Member acknowledges that neither Kushner, SBAM nor SBIS is rendering any legal or accounting services or advice, and that the Plan and SPD are prepared subject to the direction of and with the approval of the Member and its legal counsel. Member is solely responsible for carefully reviewing and editing the Plan, SPD and all documents in connection therewith to confirm their accuracy and suitability for its needs. The legal and tax status of the Plan under applicable law is a matter for determination by the Member and not by Kushner, SBAM or SBIS.

11. Consent to Use of Aggregate Plan Information. Member hereby acknowledges and consents to Kushner, SBIS and/or SBAM's use of its aggregate Plan information. This use includes, but shall not be limited to, use in statistical and other reporting to governmental units, marketing and/or solicitation of new SBAM members.

12. Miscellaneous.

A. By signing this Agreement, all parties understand that Kushner & Company Consulting and Administrative Services Agreement, attached as Exhibit I, is hereby incorporated in full into and as a part of this Agreement. In the event any language between the two documents is contradictory or unclear, the provisions of Kushner & Company Consulting and Administrative Services Agreement shall prevail.

B. This Agreement shall constitute the entire agreement of the parties. This Agreement supersedes all prior or contemporaneous written or oral understandings and agreements, and may not be added to, modified or waived in whole or in part, except by in writing and signed by all parties.

C. This Agreement shall be governed by and interpreted in accordance with the laws of the State of Michigan.

D. No party hereto shall have the right to assign this Agreement without the written consent of the other parties.

E. Whenever written notice is required under the terms of this Agreement, it shall be delivered either in person or by mail to the appropriate party. Notice by mail shall be delivered as follows:

Kushner: Kushner & Co., Inc.
2427 W. Centre Avenue
Portage, MI 49024

SBAM: Small Business Association of Michigan
120 N. Washington Square, Suite 1000
Lansing, MI 48933

SBIS: Small Business Insurance Services, L.L.C.
120 N. Washington Square, Suite 1000
Lansing, MI 48933

Member: _____
(company name)

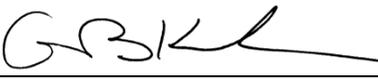
(address)

_____, _____
(city, state, zip)

E. This Agreement may be executed in any number of identical counterparts, any or all of which may contain the signatures of fewer than all of the parties, and all of which shall be construed as part of a single instrument. Execution of a facsimile counterpart or electronic transmission of this Agreement shall be deemed execution of the original Agreement. Facsimile or electronic transmission of an executed copy of this Agreement shall constitute acceptance of this Agreement. Member specifically acknowledges and affirms that an electronic signature shall constitute acceptance of the terms and conditions set forth herein.

[Signature Page Follows]

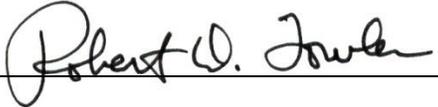
KUSHNER & CO., INC., a
Michigan corporation

By: 

Its: President and CEO

Date: _____

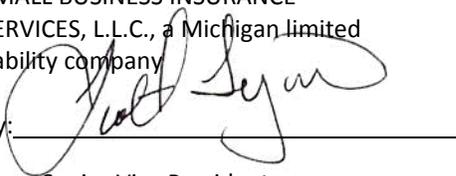
SMALL BUSINESS ASSOCIATION
OF MICHIGAN, a Michigan
non-profit corporation

By: 

Its: CEO

Date: _____

SMALL BUSINESS INSURANCE
SERVICES, L.L.C., a Michigan limited
liability company

By: 

Its: Senior Vice President

Date: _____

MEMBER: _____

By: _____

Its: _____

Date: _____

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Revised 06/19

EXHIBIT A

SELF-ADMINISTERED PREMIUM ONLY PLAN (POP)

- Access via SBAM's Website to a master Plan Document and Summary Plan Description ("SPD"), as those terms are defined in the Employee Retirement Income Security Act of 1974 ("ERISA"), which can be customized by Member. Kushner shall update the master Plan Document and SPD on an as-needed basis, for changes which are required or otherwise necessitated by law. All updates to the master Plan Document and SPD shall be made by Kushner within two (2) weeks after Kushner becomes aware of the law or circumstance that necessitates the change.
- A complete spreadsheet and guide to allow Member to complete all non-discrimination tests applicable to the Plan.
- Detailed instructions for establishing and administering pre-tax deductions in payroll systems.
- An annual newsletter to explain the benefits and tax savings of the Plan for distribution to employees.
- Access to an electronic version of a master enrollment form that can be tailored by Members for use by its employees.

EXHIBIT B

FULLY ADMINISTERED PREMIUM ONLY PLAN (POP)

- A Plan Document and SPD customized by Kushner for Member. Kushner shall update the master Plan Document and SPD on an as-needed basis, which are required or otherwise necessitated by law. All updates to the master Plan Document and SPD shall be made by Kushner within two (2) weeks after Kushner becomes aware of the law or circumstance that necessitates the change.
- Computer software, currently known as Data Collection Module, in which the Member inputs certain data relating to the Plan. The data is then electronically transferred to Kushner & Company for purposes of performing all applicable non-discrimination tests at the end of the Plan year.
- Detailed instructions for establishing and administering pre-tax deductions in payroll systems.
- An annual newsletter to explain the benefits and tax savings of the Plan for distribution to employees.
- Access to an electronic version of an enrollment form customized by Kushner for each Member.
- A toll-free telephone number and email address for an Kushner representative available to answer Plan-related questions.

EXHIBIT C

FLEXIBLE SPENDING ACCOUNTS

- A Plan Document and SPD customized by Kushner for Member. Kushner shall update the master Plan Document and SPD on an as-needed basis, which are required or otherwise necessitated by law. All updates to the master Plan Document and SPD shall be made by Kushner within two (2) weeks after Kushner becomes aware of the law or circumstance that necessitates the change.
- Computer software, currently known as Data Collection Module, in which the Member inputs certain data relating to the Plan. The data is then electronically transferred to Kushner for purposes of performing all applicable non-discrimination tests at the end of the Plan year.
- Detailed instructions for establishing and administering pre-tax deductions in payroll systems.
- An annual newsletter to explain the benefits and tax savings of the Plan for distribution to employees.
- Access to an electronic version of an enrollment form customized by Kushner for each Member.
- A toll-free telephone number and email address for an Kushner representative available to answer Plan-related questions.
- The establishment, implementation and processing of a Member-specific medical reimbursement account and dependent care reimbursement accounts.
- Flexible spending account administration guide to aid Member in day-to-day operations of its Plan, which shall be updated by Kushner as required or necessitated by law.
- An annual newsletter to explain the benefits and tax savings of the Plan for distribution to employees.
- Worksheets for medical reimbursement account and dependent care reimbursement accounts.
- Access to an electronic version of an enrollment form customized by Kushner for Member.
- Not less than 60 days prior to the end of a Plan year, Kushner will send Member and all Member participants an account summary.
- Upon receipt of a claim for benefits under the Plan, Kushner will review the claim submitted and determine the amount, if any, which is due and payable. Claims for benefits must be submitted to Kushner in accordance with procedures prescribed by Kushner. Kushner will maintain records of claims received and determinations thereon for so long a period as Kushner shall determine to be appropriate. Before destruction of said records, Member shall have the right to request that they be transferred to

Member. Kushner shall disburse benefit payments to such persons entitled to such payments under the Plan. Such payment shall be made through a banking system established by Kushner or the Member. Kushner shall provide Member with a monthly summary statement and a monthly reconciliation of claims paid. Member agrees to maintain on deposit and make available to Kushner funds sufficient to pay claims under the Plan. Kushner is not responsible in any manner whatsoever for providing funds for the payment of claims hereunder. Member is solely liable and responsible for providing funds for the payment of claims.

- Member-employee password-protected access to the BeneWorld Website to view all flexible spending account activity within each employee's own account.

EXHIBIT D

FULLY ADMINISTERED HEALTH REIMBURSEMENT ARRANGEMENT

- A Plan Document and SPD customized by Kushner for Member. Kushner will update the master Plan Document and SPD on an as-needed basis, which are required or otherwise necessitated by law. All updates to the master Plan Document and SPD shall be made by Kushner within two (2) weeks after Kushner becomes aware of the law or circumstance that necessitates the change.
- Computer software, currently known as Data Collection Module, in which the Member inputs certain data relating to the Member's Plan. The data is then electronically transferred to Kushner for purposes of processing of the Participating Member's Plan.
- A toll-free telephone number and email address for a Kushner representative available to answer Member's Plan-related questions.
- The establishment, implementation and processing of a Member-specific Health Reimbursement Account.
- Upon receipt of a claim for benefits under the Member's Plan, Kushner will review the claim submitted and determine the amount, if any, which is due and payable. Claims for benefits must be submitted to Kushner in accordance with procedures prescribed by Kushner. Kushner will maintain records of claims received and determinations thereon for so long a period as Kushner shall determine to be appropriate. Before destruction of said records, Member shall have the right to request that they be transferred to Member. Kushner shall disburse benefit payments to such persons entitled to such payments under the Member's Plan. Such payment shall be made through a banking system established by Kushner on the Member. Kushner shall provide Member with a monthly summary statement and a monthly reconciliation of claims paid. Member agrees to maintain on deposit and make available to Kushner funds sufficient to pay claims under the Plan. Kushner is not responsible in any manner whatsoever for providing funds for the payment of claims hereunder. Member is solely liable and responsible for providing funds for the payment of claims.
- Member-employee password-protected access to the BeneWorld Website to view all account activity within each employee's own account.

EXHIBIT E

SELF-ADMINISTERED HEALTH REIMBURSEMENT ARRANGEMENT

- Access via SBAM's Website to a master Plan Document and Summary Plan Description ("SPD"), as those terms are defined in the Employee Retirement Income Security Act of 1974 ("ERISA"), which can be customized by Member. Kushner shall update the master Plan Document and SPD on an as-needed basis, for changes which are required or otherwise necessitated by law. All updates to the master Plan Document and SPD shall be made by Kushner within two (2) weeks after Kushner becomes aware of the law or circumstance that necessitates the change.

EXHIBIT F

HEALTH SAVINGS ACCOUNT

- Computer software, currently known as Data Collection Module, in which the Member inputs certain data relating to the Plan. The data is then electronically transferred to Kushner's bank/trustee partner for purposes of processing of the Member's Plan.
- A toll-free telephone number and email address for a Kushner representative available to answer Member's Plan-related questions.
- The establishment, implementation and applicable processing of a Member- employee specific Health Savings Account (HSA).
- Kushner may, if requested by the employee and contracted by the Member, review the claim submitted and determine the amount, if any, which is eligible for tax-free status. Claims for benefits must be submitted to Kushner or bank/trustee in accordance with procedures prescribed by Kushner. Kushner or bank/trustee will maintain records of claims received and determinations thereon for so long a period as Kushner shall determine to be appropriate. Before destruction of said records, Member shall have the right to request that they be transferred to Member.
- Member-employee password-protected access to either the bank/trustee's website or BeneWorld Website (if no site is available through bank/trustee).

EXHIBIT G

DEBIT CARD

- Payable only in conjunction with FlexPlus with flexible spending accounts, health savings account and health reimbursement arrangement products.
- An optional debit card available to Members' employees through which the Employee can access his or her FlexPlus with flexible savings account, health savings account or health reimbursement arrangement directly to pay for eligible expenses.

EXHIBIT H

FEE SCHEDULE

By the service(s) selected in the Enrollment Form attached, the fees shall be as indicated and selected on that form. An uncompleted current Enrollment Form is attached on the following pages.

**Section 125 Plan
Flexible Spending Accounts
Health Savings Accounts
Health Reimbursement Arrangements**



EFFECTIVE DATE REQUESTED: _____

COMPANY INFORMATION

Company Name:		
Contact Person:		
Address:		
City:	State:	Zip:
Phone:	Fax:	E-Mail:

HEALTH INSURANCE AGENT INFORMATION

Health Insurance Agent Name:		
Health Insurance Agent Address:		
City:	State:	Zip:
Phone:	Fax:	E-Mail:
Are you enrolled in an SBAM-sponsored BCBSM / BCN plan? <input type="checkbox"/> No <input type="checkbox"/> Yes Group/Suffix # _____		

PLEASE INDICATE THE PROGRAM(S) YOU'RE ENROLLING IN:

ADMINISTRATION CHOICES	COST
<input type="checkbox"/> SELF-ADMINISTERED PREMIUM-ONLY PLAN (POP)	<input type="checkbox"/> One-time Fee for Templates \$109.00
<input type="checkbox"/> FULLY ADMINISTERED PREMIUM-ONLY PLAN (POP)	<input type="checkbox"/> GREEN ACH OPTION Monthly Fee \$27.50 <input type="checkbox"/> Monthly Fee \$35.00
<input type="checkbox"/> FLEXIBLE SPENDING ACCOUNT (FSA) ADMINISTRATION Full Premium Only Plan Administration FSA Medical and Dependent Care Administration	<input type="checkbox"/> GREEN PAPERLESS SERVICE \$5.25 Per Participant, Per Month (\$52.50 monthly minimum) <input type="checkbox"/> \$6.00 Per Participant, Per Month (\$75 monthly minimum) Debit Card Included - No Additional Charge Enter Total Number of Participants _____

<input type="checkbox"/> HEALTH REIMBURSEMENT ARRANGEMENT (HRA) ADMINISTRATION Full Premium Only Plan Administration HRA Medical and Dependent Care Administration	<input type="checkbox"/> GREEN PAPERLESS SERVICE \$5.25 Per Participant, Per Month (\$52.50 monthly minimum) <input type="checkbox"/> \$6.00 Per Participant, Per Month (\$75 monthly minimum) Debit Card Included - No Additional Charge Enter Total Number of Participants _____
<input type="checkbox"/> SELF-ADMINISTERED HEALTH REIMBURSEMENT ARRANGEMENT (HRA) DOCUMENT	<input type="checkbox"/> One-time Fee for Templates \$109.00
<input type="checkbox"/> HEALTH SAVINGS ACCOUNT ADMINISTRATION (HSA) Full Premium Only Plan Administration and HSA Administration	<input type="checkbox"/> GREEN PAPERLESS SERVICE \$4.25 Per Participant, Per Month (\$52.50 monthly minimum) <input type="checkbox"/> \$5.00 Per Participant, Per Month (\$75 monthly minimum) Debit Card Included - No Additional Charge Enter Total Number of Participants _____

SELECT YOUR PAYMENT OPTION

Payment Method:

One-time POP/HRA check enclosed made payable to SBIS.

Please Mail Monthly Invoice.

If **Green Paperless Service** is selected, check this box and complete the information below:

Name of Financial Institution: Checking Savings

Routing Number: Account Number:

I hereby authorize Kushner & Company (“Kushner”) to initiate debit (withdrawal) or credit (deposits) transactions from our account indicated above at the depository financial institution named above (“Depository”), and to debit/credit the same to such account. By my signature below we acknowledge that the origination of ACH transactions from and to our account must comply with the provisions of U.S. law. We also agree to pay any and all transaction charges to Kushner if a properly initiated transaction causes a reversal due to insufficient funds. This authorization is to remain in full force and effect until Kushner has received written notification from me of its termination in such time and in such manner as to afford Kushner and Depository a reasonable opportunity to act upon it.

Signature: _____

Date: _____

Please submit completed enrollment form to: The Small Business Association of Michigan (SBAM)
Attention: Kellie Neiryck
120 N Washington Square, Suite 1000
Lansing, MI 48933
kellie.neiryck@sbam.org

EXHIBIT I

**KUSHNER & CO., INC.
CONSULTING AND ADMINISTRATIVE SERVICES AGREEMENT**

Coversheet of Key Terms

Client: SBAM Member Adopting SBAM/Kushner & Company Participation Agreement

Kushner: Kushner & Co., Inc.

Effective Date: Date indicated in SBAM/Kushner & Company Participation Agreement

Initial Term: Twelve (12) months from the Effective Date as more fully explained in the terms and conditions of this Agreement.

Confidentiality Note: As is more fully explained in the terms and conditions of this Agreement, all information shared between and/or among the parties shall be kept fully confidential to the maximum extent allowable, including full compliance with HIPAA (as defined in the Agreement) confidentiality and information security requirements, as necessary. See Section 7 for further reference.

Services (As indicated on the SBAM/Kushner & Company Participation Agreement):

Consulting Services

Kushner & Company Consulting,
ERISA-ACA Consulting
FSA/HRA/HSA Plan Document(s)

Administrative Services:

Health and Welfare Benefit Plans
Flexible Spending Account Administration
Health Reimbursement Account Administration
Health Savings Account Administration
Other:

KUSHNER & CO., INC.
CONSULTING AND ADMINISTRATIVE SERVICES AGREEMENT

This Client Consulting and Administrative Services Agreement (“**Agreement**”) is entered into as of the date indicated in the SBAM/Kushner & Company Participation Agreement (“**Effective Date**”), by and among Kushner & Co., Inc., a Michigan corporation (“**Kushner**”), and the SBAM member entering into the SBAM/Kushner & Company Participation Agreement (“**Client**”).

RECITALS

A. Kushner is an established HR and organizational consulting and administration company, experienced in providing HR and organizational consulting and administration to entities, such as Client.

B. The Client desires to retain Kushner to provide the HR consulting and administration services identified herein and Kushner is willing to provide such services, either directly or under Kushner’s supervision.

NOW, THEREFORE, the parties agree as follows:

1. **Retention.**

1.1. The Client retains Kushner to perform the Services pursuant and subject to the terms and conditions set forth in this Agreement. Kushner will devote the necessary time and energy to such services, and will provide services under this Agreement with the same degree of care normally exercised by other companies under similar circumstances.

2. **Initial Services.**

2.1. Kushner shall provide the Client with the services as indicated on the SBAM/Kushner & Company Participation Agreement, hereby incorporated herein.

2.2. **Additional Services.** The Client may request and Kushner may agree to provide certain services not indicated in Section 2.1 above, or otherwise in this Agreement, including certain professional consulting, administrative and other services, for which Kushner may charge the Client at its then-current hourly rate and provided by Kushner upon request by the Client.

3. **Client Responsibilities.**

3.1. **Information and Cooperation.** At all times during the Term, Client must provide to Kushner in a timely manner such information about Client’s employees and operations as Kushner deems reasonably necessary to perform the Services, and Client shall cooperate with and accurately and timely respond to reasonable requests for information by Kushner in the performance of the Services. Without limiting the generality of the foregoing, Client shall deliver to Kushner, on a timely and accurate basis and, if available to Client, in a format requested by Kushner all Client information relating to Client’s employees and the Client’s organization structure and ownership and this Agreement as may, from time to time, be reasonably requested by Kushner.

3.2. **Reliance on Client Information.** All information provided at any time by or at the direction of Client (through an agent or otherwise) to Kushner or its subcontractors (including, without limitation, information provided by Client prior to execution of this Agreement or during the Implementation phase) must be true, complete and accurate, and Kushner will be entitled to fully rely upon it. Kushner will not be obligated to verify the truth, completeness or accuracy of the information submitted to Kushner or its subcontractors by or at the direction of Client.

3.3. **Client Compliance Obligation.** At the time of execution of this Agreement, and at all times throughout the Term, Client must remain in compliance with all federal, state and local laws and regulations applicable to it or its business with respect to which a failure to comply would have any material impact on Kushner or its obligations under this Agreement.

3.4. **Client Responsibility for Employees and Agents.** Client is solely responsible for the acts, errors and omissions of Client’s employees in the conduct of Client’s business and, unless arising from the use of the Services, Kushner has no responsibility or liability for any losses, claims, damages, expenses, liabilities or obligations that arise as a result of the operation of Client’s business.

4. **Implementation and Administrative Fees.** The Client must pay Kushner Consulting and Administrative Fees as follows:

4.1. **Consulting and Administration Fees.**

A. **Net Due Upon Receipt.** As of the Effective Date, for all of the consulting and/ or administrative services provided by Kushner to the Client indicated in Section 2, above, the Client must pay Kushner the consulting and/or administrative fees

set forth in attached Exhibit C (the “**Service Fees**”), as invoiced in full, payable by the Client upon receipt of the invoice, as billed each month by SBAM or its agent(s). Client’s failure to do so, if not remedied by Client in accordance with Section 3, may be treated by SBAM and Kushner as a default under the Agreement.

- B. Kushner-Initiated ACH. As of the Effective Date, Client may, at its direction to SBAM and its agent(s), for all of the consulting and/or administrative services provided by Kushner to the Client indicated in Section 2, above, the Client must pay Kushner the consulting and/or administrative fees set forth in attached Exhibit C (the “**Service Fees**”), payable by ACH withdrawal on a monthly basis within 10 calendar days after the Client’s receipt of an electronic invoice for such services. Kushner will deliver to Client an electronic invoice for the monthly Service Fee for the immediately preceding Billing Period via the Client’s last known e-mail address. Client authorizes an ACH withdrawal to be made not earlier than the 10th day after the delivery of the electronic invoice for the full undisputed amount of the applicable monthly Service Fee from a bank account of Client designated by Client (“**Client’s Bank Account**”). Client agrees to deposit in Client’s Bank Account on a timely basis available funds in an amount sufficient to pay the monthly Service Fee on the date scheduled for the ACH debit, and Client’s failure to do so, if not remedied by Client in accordance with Section 3, may be treated by Kushner as a default under the Agreement.
- 4.2. Out-of-Pocket Expenses. In addition to the Consulting and Administration Fees, all out-of-pocket expenses, such as but not limited to mileage, travel, meals, hotels, photocopy and reproduction expenses, and legal consultation fees shall also be invoiced, and are due and payable upon receipt of the invoice. Client acknowledges and agrees that a ten (10) percent administrative charge shall also be added to each out-of-pocket expense.
- 4.3. Fee Disputes. The Client shall have the right to dispute any invoice, or any portion of an invoice, within five calendar days after the receipt of the electronic invoice, by email notice to Kushner with the subject line “Fee Dispute”, followed by hard copy notice pursuant to the notice provisions contained in this Agreement. In the event that the Client disputes a portion of an invoice, Client agrees to allow the ACH withdrawal by Kushner of the undisputed portion of the invoice in accordance with the terms of this Agreement. The parties shall use good faith and best efforts to resolve payment disputes in as timely a manner as possible. No interest or finance charges will be assessed to Client for the disputed portion of invoices while under dispute. The Client shall allow the ACH withdrawal by Kushner of the portion of an invoice formerly in dispute within 10 calendar days of the date of dispute resolution.
- 4.4. Annual Adjustment. The fee schedule contained in Exhibit C is subject to annual review by Kushner and the fees may be adjusted accordingly after the initial term of this Agreement. No less than 60 days prior to each anniversary of the Effective Date, Kushner may submit a revised fee schedule to Client for review and consideration. Client will have ten days from receipt of the revised fee schedule to terminate the Agreement for rejection of the revised fee schedule. If 30 days lapse after Client’s receipt of a revised fee schedule without acceptance or rejection by Client, Client will be deemed to have accepted the revised fee schedule.

5. Term and Termination.

- 5.1. Term. The initial term of this Agreement (“**Initial Term**”) will be for a period commencing as of the Effective Date and ending after the number of months or completion of the scope of service as stated on the Coversheet of this Agreement, unless terminated earlier as provided below. For any Administrative Services, after the Initial Term, this Agreement shall be renewed automatically for successive equal terms as stated on the Coversheet of this Agreement, unless either party gives the other party at least 90 days’ advance written notice of its intention to terminate this Agreement at the end of the then current term.
- 5.2. Termination by the Client. Notwithstanding any other provision of this Agreement, the Client may terminate this Agreement upon the occurrence of any of the following events:
- A. Kushner defaults in the performance of any of its obligations under this Agreement and the default is not cured within 30 days. Provided, however, if such default cannot reasonably be cured within 30 days, the Client may not terminate this Agreement if Kushner has commenced to cure the default within 30 days to the reasonable satisfaction of the Client and thereafter continues diligently to cure such default;
- B. The filing by Kushner or against Kushner of any bankruptcy or similar financial reorganization, or if Kushner is deemed unable to pay its debts by a court of competent jurisdiction.
- If at any time within the initial term or upon a renewal term, this Agreement is terminated (i) by the Client for any reason other than an express provision of the Agreement that authorizes the Client to provide Kushner with a notice of termination, or (ii) by Kushner due to an uncured Event of Default by the Client, Client must remit to Kushner a one-time lump-sum payment (the “**Client Termination Fee**”). This fee will be calculated by multiplying the “Client’s Average Monthly Service Fee” (as defined below) by the difference between the number of months as stated on the Coversheet of this Agreement and the number of months for which a Service Fee was paid by Client to Kushner. The “**Client’s Average Monthly Service Fee**” will be calculated by averaging the monthly administrative service fees paid to Kushner by Client during the most recent six months. If the Client’s service agreement is terminated during the initial six month period, the Client’s Average Monthly Service Fee shall be calculated by averaging the monthly administrative service fees paid or payable by Client during the number of months prior to termination. The Client Termination Fee shall be due and payable by Client within 30 days after the termination of this Agreement by Client. Client’s obligation to pay any such Client Termination Fee shall survive the termination of this Agreement. This Section 5.2 may not be construed as the exclusive remedy, an election of remedies, or a waiver of damages resulting from an event of default by Client.

- 5.3. Termination by Kushner. Notwithstanding any other provision of this Agreement, Kushner may terminate this Agreement immediately upon the occurrence of any of the following events:
- A. Client defaults in any monetary obligation due Kushner under this Agreement and the default is not be cured within 15 days after written notice from Kushner;
 - B. Client defaults in the performance of any of its obligations under this Agreement other than monetary obligations to Kushner, and the default is not be cured within 30 days after written notice from Kushner;
 - C. The filing by the Client or against the Client of any bankruptcy, financial reorganization, or if the Client is deemed unable to pay its debts by a court of competent jurisdiction; or
 - D. Client incurs at least three defaults of any of its obligations within a 12-month period, even if the defaults were subsequently cured.
- 5.4. Effect of Termination.
- A. In the event of termination by any party, Kushner will continue to perform Services until the end of normal working hours on the effective date of termination. Upon the effective date of termination of this Agreement, and except as otherwise provided in this Agreement, neither party will have any further rights or obligations under this Agreement except to the extent accrued through such effective date, including without limitation, the right to receive any accrued but unpaid compensation, and as otherwise set forth in this Agreement. Upon termination, each party shall take all reasonable steps requested by the other party to effect a smooth transition.
 - B. Recordkeeping after the date of termination of this Agreement will become the responsibility of the applicable Client. Upon any such termination, Kushner will transfer to the Client such information from Kushner's records relating to the Services as shall be necessary for the Client to continue to provide its human resources and employee benefit accounting and Kushner shall also transfer to Client a final accounting. Kushner shall be entitled to receive a fee, as described in Exhibit C for furnishing such information and accounting electronically in a customary computer format. Kushner may retain a copy of such books and records to evidence its compliance with applicable laws and regulations and to assert or defend against any claim arising with respect to the activities of Kushner and/or the Client in connection with this Agreement or the operation of the Client's business.

6. Intellectual Property.

- 6.1. Ownership. Kushner and its subcontractors retain the copyright and all other intellectual property rights associated with the documents and services provided by Kushner and its subcontractors under this Agreement. The Client acknowledges and agrees that Kushner and its subcontractors possess valuable proprietary rights in their human resources consulting and administrative services programs and any and all documents and materials provided to the Client by Kushner, including but not limited to policy and procedure manuals; public information/education programs; public information messages for print and audiovisual media; quality assurance standards/compliance programs; and the data collection and reporting system. Such proprietary information shall be maintained in confidence and shall, in all circumstances, remain the exclusive property of Kushner and its subcontractors.
- 6.2. Limited License. All materials furnished by Kushner to Client including, without limitation, all forms, brochures, documents as well as other materials that can be printed through Kushner or a Subcontractor's Web site (collectively, "**Materials**") are licensed (not sold). The term "**Materials**" shall not be deemed to refer to or include any data or information regarding Client employees. Kushner grants Client a limited, personal, nonexclusive, non-transferable license to use the Materials solely for the purposes of accessing and using the Services consistent with the terms set forth in this Agreement (the "**Materials License**"). Client shall not distribute, alter or use the Materials for any other purpose. Client shall treat all Materials as Confidential Information as defined in Section 7 of this Agreement. Upon the termination of this Agreement, Client must destroy all Materials or, if requested by Kushner, return all Materials to Kushner. Except as expressly authorized in this Agreement, Client may not copy or otherwise reproduce any portion of Kushner or a Subcontractor's website or the Materials, except to the extent necessary for Client to use Kushner or a Subcontractor's website and Materials for their intended purpose, as set forth in this Agreement; cause or permit reverse compilation or reverse assembly of all or any portion of Kushner or a Subcontractor's website; distribute, disclose, market, rent, lease, transfer, or provide or permit access to any portion of Kushner or a Subcontractor's website or the Materials to any third party not authorized under this Agreement; or, use Kushner or a Subcontractor's website or the Materials except as authorized pursuant to this Agreement.

7. Confidential Information.

- 7.1. Client Obligations. The Client acknowledges and agrees that Kushner will disclose confidential information to it in confidence and with the understanding that such information constitutes valuable business information developed by Kushner at great expenditure of time, effort, and money. The Client agrees that it, its Managers, Shareholders, Members, officers, employees, and its affiliates shall not, without the express prior written consent of Kushner, use such confidential information for any purpose other than in connection with the performance of this Agreement. The Client further agrees to keep strictly confidential and hold in trust all confidential information and, except as required by law, not disclose or reveal such information to any third party without the express prior written consent of Kushner, and further agrees not to permit any of its Managers, Members, officers, employees, or agents to disclose or reveal such information to any third party without the express prior written consent of Kushner. The Client acknowledges that the disclosure of confidential information to it by Kushner is done in reliance upon the Client's representations and covenants in this Agreement. Upon termination of this Agreement by either party for any reason whatsoever, the Client shall promptly return to Kushner all

material constituting or containing confidential information whether that material consists of original documents provided to the Client by Kushner, or copies produced by the Client, and the Client and its affiliates will not thereafter for any purpose, use, appropriate, or reproduce such information or disclose such information to any third party. The Client further agrees that a violation of this provision may cause irreparable damage to Kushner and the exact amount of such damage may be difficult or impossible to ascertain, and for that reason further agrees that Kushner may request, without the obligation to post bond, injunctive relief from any court of competent jurisdiction, restraining any threatened or further violation of this provision; provided, however, that such right to injunctive relief shall be cumulative and in addition to whatever other remedies Kushner may have.

7.2. Kushner Obligations. Kushner acknowledges and agrees that as a result of it providing services to the Client under this Agreement, Kushner will obtain confidential information pertaining to the Client, and its affiliates. Such confidential information will include, but not be limited to, employee lists and profiles, financial information, and proprietary business information and methods. Kushner further agrees to keep strictly confidential and hold in trust all confidential information and neither it nor its directors, officers, employees, agents, or affiliates will use such confidential information for any purpose, or, except as required by law, disclose such confidential information to any third party other than for purposes of performance or enforcement of rights under this Agreement, without the express prior written consent of the Client on behalf of itself and its affiliates, as the case may be. Upon termination of this Agreement by either party for any reason whatsoever, Kushner shall promptly return to the Client all material constituting or containing confidential information whether that material consists of original documents provided to Kushner by the Client, or copies produced by Kushner, and Kushner and its affiliates will not subsequently for any purpose, use, appropriate, or reproduce such information or disclose such information to any third party. Kushner further agrees that a violation of this provision may cause irreparable damage to the Client, and/or its affiliates, as the case may be, and the exact amount of such damage may be difficult to ascertain, and for that reason further agrees that the Client, or the applicable affiliate may request, without the obligation to post bond, injunctive relief from any court of competent jurisdiction, restraining any threatened or further violation of this provision; provided, however, that the right to injunctive relief will be cumulative and in addition to whatever other remedies the Client, and its affiliates as applicable, may have.

7.3. Authorized Disclosures. As of the Effective Date of this Agreement, Client authorizes Kushner and its employees to access data and other Confidential Information of Client that is (i) contained in Client's Kushner website, (ii) otherwise is provided, directly or indirectly, by Client to Kushner, or (iii) contained in one or more external data sources containing Client and its employees' information, wherever Kushner needs such access, including access to Client and its employees' data stored by Kushner or Kushner's subcontractors in connection with the Services and this Agreement. Client acknowledges that such data includes, but is not limited to, Client's Confidential Information regarding its ownership structure, financial reports, employee names, addresses, birth dates, social security numbers, and banking information); financial information (including, but not limited to, compensation paid to employees and related tax deductions), and benefit information (including, but not limited to, eligibility and enrollment information related to any health insurance, life insurance, dental insurance, retirement plan, or any other benefit plan provided to employees and their dependents by or through Clients). All disclosures of data and Confidential Information described in this Section are referred to as the "Authorized Disclosures." Client agrees that Kushner shall have no obligation or responsibility for obtaining any employee or other third party consents that may be required in connection with the Authorized Disclosures. Client agrees to indemnify, defend, and hold harmless Kushner and its officers, employees, agents, and subcontractors from and against any and all claims, losses, damages, liabilities, penalties, obligations, and expenses (including, but not limited to, court costs and attorney fees) resulting from, arising out of, or related to the Authorized Disclosures.

7.4. Privacy and Security of Certain Information. To the extent applicable, each party agrees that it will comply in all material respects with all federal and state mandated laws, regulations, rules, or orders applicable to privacy, security, and electronic transactions, including, without limitation, regulations promulgated under Title II Subtitle F of the Health Insurance Portability and Accountability Act (Public Law 104-191) ("**HIPAA**"). Furthermore, the parties shall promptly amend the Agreement or execute such documents to conform with any new or revised legislation, rules, and regulations to which Client and Kushner are subject now or in the future including, without limitation, HIPAA and Standards for Privacy of Individually Identifiable Health Information or similar legislation ("**Laws**") in order to ensure that Client and Kushner are at all times in conformance with all Laws. If, within 30 days of either party first providing notice to the other of the need to amend the Agreement to comply with Laws, the parties, acting in good faith, are (i) unable to mutually agree upon and make amendments or alterations to this Agreement to meet the requirements in question, or (ii) alternatively, the parties determine in good faith that amendments or alterations to the requirements are not feasible, then either party may terminate this Agreement upon 30 days' prior written notice.

8. Administrative Services. If Client selects administrative services then the provisions specified below will apply to the provisions of those services:

8.1. Flexible Spending Accounts ("FSA"), Health Reimbursement Accounts ("HRA"), or Health Savings Accounts ("HSA"). Whenever Kushner provides performs administrative services as the plan recordkeeper for Client's Flexible Spending Accounts, Health Reimbursement Accounts, or Health Savings Accounts the follow provisions will apply. Customarily, these provisions will apply when Client has adopted a cafeteria plan under Section 125 of the Internal Revenue Code of 1986, as amended and/or a Health Reimbursement Account under Section 105 (the "Plan") containing eligible reimbursement accounts for the benefit of its employees and the eligible dependents of such employees.

- A. Definitions. The term “Client” will mean the Client, Fiduciary and Plan Administrator as may be used in other documents or applications. The term “Kushner” will mean the Plan Recordkeeper as used in other documents or applications. Other defined terms in this Section 8.2 will be as customarily used by Kushner.
- B. Services.
- (i) Plan Design. Upon written request, Kushner will assist the Client in developing an FSA, HRA and/or HSA plan of benefits for its employees in accordance with specifications provided by the Client. The Plan Document shall be established and maintained pursuant to a written instrument containing the descriptions, provisions and specifications required by law.
 - (ii) Claims Administration.
 - (a) Upon receipt of a claim for benefits under the Plan, Kushner will review the claim submitted and determine the amount, if any, which is due and payable. Claims for benefits must be submitted to Kushner in accordance with procedures prescribed by Kushner.
 - (b) Kushner will maintain records of claims received and determinations made for so long a period as Kushner shall determine to be appropriate. Before the destruction of said records, the Client shall have the right to request that they be transferred to the Client.
 - (iii) Payment of Claims.
 - (a) Kushner shall disburse benefit payments to such persons entitled to such payments under the Plan. Such payment shall be made through a banking system established by Kushner and the Client. Kushner shall provide the Client with a monthly summary statement and a monthly reconciliation of claims paid. The Client agrees to maintain on deposit and make available to Kushner funds sufficient to pay claims under the Plan. Kushner is not responsible in any manner whatsoever for providing funds for the payment of claims under this Agreement. The Client is solely liable and responsible for providing funds for the payment of claims under this Agreement.
 - (b) In the event Kushner pays any person less than the amount to which said person is entitled under the Plan, Kushner will promptly adjust the underpayment. In the event Kushner pays any person more than the amount to which said person is entitled under the Plan, Kushner shall take all reasonable steps to recover the overpayment, unless such payments have been authorized by the Client in writing.
 - (iv) Administrative Services.
 - (a) Kushner must approve, design, or assist in preparing all forms, announcement materials, and instructional materials for administration of the Plan and such other materials as are, in Kushner’s opinion, necessary or appropriate for the implementation and administration of the Plan. Kushner shall not be responsible for distributing to Plan participants or filing with any government department such Plan descriptions and modifications as may be required by law, but may distribute such materials as Kushner deems necessary to protect itself from liability for any benefits under this Agreement.
 - (b) Kushner will design administrative procedures, instruct the Client’s personnel in their implementation, and will, at the Client’s request, review the administration of the Plan with the Employee and make recommendations. Printing of any designed material by Kushner shall be at the specific request of the Client and subject to separate charges, to be paid by the Client.
 - (c) Kushner shall provide to Client all notices (including any required opt-out notice) reflecting its privacy policies and practices as required by state and federal law (including the Gramm-Leach-Bliley Act). Kushner agrees to amend this Agreement as is necessary from time to time to comply with the requirements of the privacy rules under HIPAA.
 - (v) Consultation and Advice. Kushner, as necessary, shall report to the Client matters of general interest with respect to the Plan such as problems of a recurring nature, suspected abuses of Plan Benefits, changes in the local situation, etc. Further, upon request, Kushner shall advise and assist the Client in the evaluation and adoption of Plan or Benefit changes.
- C. Client’s Duty.
- (i) Client is the Plan Administrator and a named Fiduciary of the Plan as those terms are defined in ERISA. As such, the Client is responsible for the general management and administration of the Plan, including, but not limited to, the following:
 - (a) Payment of claims for benefits under the Plan and payments of expenses for the administration of the Plan, including, without limitation, taxes and other governmental fees assessed against the Plan or the Client and any attorneys, auditors, or other professional appointed by the Client in connection with the Plan;
 - (b) Establishment, amendment, and termination of the Plan and establishment of a funding policy for the Plan;
 - (c) Final interpretation of the Plan, including determination of eligibility and amount, manner, and time of Plan benefit payments;
 - (d) Enrollment of eligible persons in the Plan and providing Kushner with a complete and accurate enrollment form for each participant prior to the effective date of the participant’s coverage;
 - (e) Obtaining written waivers of Plan coverage from eligible persons declining such coverage;
 - (f) Forwarding to Kushner, by the last day of each month, a written list of all persons beginning coverage under the Plan in the next month and persons terminating coverage, complete and accurate enrollment forms for new participants, and signed waivers of Plan coverage for newly eligible persons declining such coverage;
 - (g) Reviewing Kushner’s monthly billing statement for accuracy of enrollment records and immediately informing Kushner of any inaccuracies;
 - (h) Providing such participant with a Summary Plan Description as required by ERISA. ERISA requires that a Summary Plan Description be distributed to new participants within 90 days of enrollment, that the Client update Summary Plan Descriptions in general every five years, and that a summary of material modifications be distributed within 210 days after the end of any Plan Year that the Plan’s benefits were substantially modified.

- (ii) The Client will provide written notice to each Participant of the following in accordance with Section 550.932 of the Michigan Compiled Laws:
 - (a) What benefits are being provided and any changes in such benefits;
 - (b) The fact that individuals covered by the Plan are not insured;
 - (c) The fact that in the event the Plan or the Client does not ultimately pay medical expenses that are eligible for payment under the Plan, the individuals covered by the Plan may be liable for those expenses;
 - (d) The fact that Kushner merely processes claims and does not ensure that any medical expenses of individuals covered by the Plan are paid; and
 - (e) The fact that complete and proper claims for benefits made by individuals covered by the Plan will be promptly processed, but that in the event there are delays in processing claims, the individuals covered by the Plan will have no greater rights to interest or other remedies against Kushner than as otherwise afforded them by law.
 - (iii) As a condition to Kushner's obligations under this Agreement, the Client shall cooperate with Kushner, provide Kushner with information required by it, comply with the procedures prescribed by it, and make the payments required by this Agreement.
 - (iv) Client agrees to forward all Participant claims for benefits to Kushner so that claims can be reviewed in a timely manner and processed in accordance with the claims procedure stated in the Plan. As Plan Administrator, Client shall provide Kushner any and all revisions and changes in the Plan and additions and/or deletions to its list of Participants.
 - (v) Client shall, if required by law or regulation, notify each Participant and provide each Participant with an opportunity to opt-out (if required) or obtain from each Participant such written authorization for release of any personal financial record and medical records in accordance with applicable state and federal law (including the Gramm-Leach-Bliley Act) to permit Client and/or TPA to perform the obligations under this Agreement.
- D. Limitation of Liability. Kushner shall have no liability for any damages to participants in the Plan resulting from a decision of the Client not to pay any claim, and the Client shall protect, defend at its costs, save and hold harmless, and indemnify Kushner from any such damages, costs, expenses, attorney fees, and court costs. The Client shall also assume the liability for any assessment of tax based upon the existence of the Client's Plan, including all fines, penalties, losses, damages, costs, expenses, attorney fees, and court costs incurred in connection with such assessment. Furthermore, if Kushner shall pay, pursuant to the demand of an appropriate state or federal office, taxes based on the amounts paid into or from the Plan, the Client shall reimburse Kushner upon demand in the full amount of such taxes paid, including any interest and penalties added to and paid by Kushner.
- E. Notice of Plan Amendment. The Client shall file with Kushner all amendments, modifications, or changes in the Plan at least 60 days prior to the proposed effective date of such amendment, modification, or change. Kushner shall have no obligation to administer any such benefits provided by such amendment, modification, or change unless agreed in writing. Kushner retains the right to modify the schedule of administrative charges to reflect any additional services required by such amendment, modification, or change.

9. Indemnification.

- 9.1. Kushner Obligations. Except to the extent covered by Kushner's or the Client's insurance, Kushner agrees to indemnify, defend, and hold harmless the Client and/or its Members, Managers, employees, officers, directors, and agents from any and all claims (including, but not limited to, apparent agency claims), losses, damages, liabilities, and expenses, including reasonable attorney's fees (the "**Losses**"), to the extent that such losses arise from Kushner's grossly negligent or intentional actions or omissions with respect to the subject matter of this Agreement. This indemnification obligation shall survive the expiration or earlier termination of this Agreement.
- 9.2. Client Obligations. Except to the extent covered by Kushner's or the Client's insurance, the Client agrees to indemnify, defend, and hold harmless Kushner and/or its employees, officers, directors, and agents from any and all Losses to the extent that such Losses arise from the Client's actions or omissions with respect to the subject matter of this Agreement. This indemnification obligation shall survive the expiration or earlier termination of this Agreement.

10. Limitation of Liability.

- 10.1. Kushner shall not incur any liability in connection with the following: (a) any action it takes at the written direction of Client or its agents; any action it does not take at the written direction of Client or its agents to not take such action; or (c) any action it takes or does not take in reliance upon any written data supplied by Client or its agents. Written direction and written data includes direction and data given electronically.
- 10.2. Kushner will not be liable or responsible for delays or errors by acts of God or by reason of circumstances beyond its control, including civil or military authority, national emergencies, labor difficulties, mechanical breakdown, insurrection, war, riots, failure or unavailability of transportation, communication or power supply, fire, flood or other catastrophe, extreme market volatility or trading volumes.
- 10.3. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT, INCLUDING ALL SCHEDULES AND ATTACHMENTS, KUSHNER'S TOTAL LIABILITY TO CLIENT OR ANY THIRD PARTY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY THEORY OF LIABILITY SHALL NOT EXCEED THE LESSER OF: (I) THE TOTAL FEES PAID BY CLIENT TO KUSHNER HEREUNDER DURING THE TWELVE (12)

MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST EVENT TO WHICH SUCH LIABILITY RELATES, OR (II) TWENTY THOUSAND DOLLARS (\$20,000).

- 10.4. IN NO EVENT SHALL CLIENT BRING ANY CLAIM OR CAUSE OF ACTION AGAINST KUSHNER OR ITS SUBCONTRACTORS MORE THAN ONE (1) YEAR AFTER SUCH CLAIM OR CAUSE OF ACTION ARISES. IN NO EVENT DOES KUSHNER OR ITS SUBCONTRACTORS ASSUME ANY LIABILITY TO ANY PARTY OTHER THAN CLIENT REGARDING THE USE OF KUSHNER OR A SUBCONTRACTOR'S WEBSITE OR THE SERVICES. UNDER NO CIRCUMSTANCES SHALL EITHER PARTY BE LIABLE TO THE OTHER OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, OR INCIDENTAL DAMAGES ARISING OUT OF THIS AGREEMENT OR THE USE OF, OR INABILITY TO USE, KUSHNER OR A SUBCONTRACTOR'S WEBSITE, EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

11. General.

- 11.1. Notices and Electronic Signature. By executing this Agreement, and except for actions requiring "Formal Notice" (as hereafter defined), the parties agree that Kushner and Client may transact business electronically pursuant to the "Electronic Signatures in Global and National Commerce Act," ("**ESIGN**") and any other similar state or local statute that authorizes electronic signatures in commerce, including, without limitation, the "Uniform Electronic Transaction Act" ("**UETA**"). Client agrees that Kushner may rely on electronic authorization by Client to make changes to employee or payroll records or data contained within Kushner website or relating to the Services, and Client releases Kushner and waives any rights to bring an action or seek damages from Kushner based in whole or in part on electronic instructions or authorizations by Client, or relating in any way to Kushner's reliance on electronic authorizations or instructions by Client as authorized under this Agreement.

Any provision of this Agreement that requires notification by "Formal Notice" shall be deemed to require written notification delivered by hand or mailed by United States First-Class mail, postage prepaid, addressed to the other parties at its address set forth in the Participation Agreement or at such other address as either party may from time to time designate by written notice to the other, and shall conclusively be deemed received three days after the same is deposited in the U. S. mail, or upon actual receipt, whichever is sooner. Alternatively, either party may use a recognized overnight express service, and such notice shall be deemed received the next Business Day after deposit with such recognized overnight express carrier, or upon actual receipt, whichever is sooner.

- 11.2. Professional Services. Client acknowledges that Kushner is not rendering any legal or accounting services or advice. The legal and tax status of the Client's employees and business operations under applicable law is a matter for determination by the Client and not by Kushner. To the extent applicable under the Services, Kushner is neither the Plan Administrator nor a named fiduciary of the Plan as these terms are defined in ERISA.
- 11.3. Severability. If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall, to any extent, be held to be invalid or unenforceable, the remainder of this Agreement, or the application of such term, covenant or condition to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected by it, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the fullest extent permitted by law.
- 11.4. Entire Agreement. This Agreement (including the Exhibits, which are incorporated in and form a part of this Agreement) constitutes the entire agreement between Kushner and Client with respect to the subject matter of it, and supersedes any prior proposals or other oral or written representations or agreements between the parties with respect to such subject matter. This Agreement may be amended, modified, or supplemented only by a written instrument executed by both parties, except as otherwise expressly provided. Article and Section headings contained in this Agreement are for reference only and shall not be deemed to have any substantive effect or to limit or define the provisions contained of the Agreement.
- 11.5. Assignment. This Agreement and the rights and duties under this Agreement may not be assigned by either party without the prior written consent of the other party; provided, however, either party may assign this Agreement to any person or entity that acquires all or substantially all of the assets of that party, whether by asset purchase, merger, consolidation or otherwise after giving 10 days' advance written notice to the other party. Notwithstanding any other provision of this Agreement to the contrary, and without relieving Kushner of its obligations under the Agreement, Kushner has the right to engage subcontractors to provide or perform any portion of the Services as Kushner deems appropriate. Kushner shall contractually require any such subcontractor to protect and safeguard all Confidential Information as required by this Agreement.
- 11.6. Governing Law and Venue. This Agreement is governed by the internal laws of the State of Michigan (without regard to the conflicts of laws rules of Michigan). Exclusive venue for any action is vested in Kalamazoo County.
- 11.7. Arbitration-General. If a dispute, controversy, or claim arises out of or relates to this Agreement including, without limitation, its termination or non-renewal, or the alleged breach thereof, and if said dispute cannot be settled through direct discussions, the parties shall endeavor to settle the dispute in an amicable manner by mediation administered by the American Arbitration Association under its Commercial Mediation Rules, before resorting to arbitration. If the matter has

not been resolved pursuant to mediation within 30 days of the commencement of such mediation (which period may be extended by mutual agreement in writing), then any such unresolved dispute, controversy, or claim shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules, and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction. One arbitrator approved by both parties shall conduct the arbitration, or if the parties are unable to agree upon an arbitrator within seven days of the conclusion of the mediation, the American Arbitration Association shall appoint the arbitrator. The arbitrator shall allow each party to conduct limited relevant discovery. The arbitrator shall have no authority to award punitive damages or any damages not measured by the prevailing party's actual damages and may not, in any event, make any ruling, finding, or award that does not conform to the terms and conditions of this Agreement. All fees and expenses of the arbitration shall be borne by the parties equally. However, each party shall bear their own expense of counsel, experts, witnesses, and preparation and presentation of the arbitration matter. Any such arbitration shall be conducted in Kalamazoo County, Michigan.

- 11.8. Non-Arbitrable Disputes. Notwithstanding the provisions of Section 11.7 of this Agreement, any dispute relating to (i) the validity or enforceability of Section 11.7, (ii) any disclosure of Confidential Information in violation of Section 7, or (iii) the ownership, validity, enforceability, or other rights in the intellectual property of Kushner or its subcontractors shall not be subject to arbitration. Any dispute described in the preceding sentence shall be submitted to the courts of the United States in the Western District of Michigan. Each party consents to the jurisdiction of such courts and waives any objections it may have to such venue or claim that such controversy or claim has been brought in an inconvenient forum. Any final judgment in such court shall be conclusive and binding on each party and enforceable against it in any court of competent jurisdiction.
- 11.9. Survival. Any provision of this Agreement, which by its terms is intended to so survive, shall survive termination or expiration of this Agreement.
- 11.10. No Third Party Beneficiaries. This Agreement is for the mutual benefit of and governs the relationship between Kushner and Client and it does not create any rights of any kind in any third party; provided that if more than one legal entity executes this Agreement as Client, each such entity shall be jointly and severally liable for all of Client's obligations hereunder. This Agreement shall in no way be construed or interpreted as creating an express or implied employment contract between Kushner and Client or Kushner and any employee of Client.
- 11.11. Independent Contractors. The parties are independent contractors. Nothing contained in this Agreement or done pursuant to this Agreement will cause either party to be the agent of the other party for any purpose or in any sense whatsoever, or constitute the parties as partners or joint venturers.
- 11.12. No Waiver. The failure of either party to enforce at any time any of the provisions of this Agreement, or the failure to require at any time performance by the other party of any of the provisions of this Agreement, shall in no way be construed to be a present or future waiver of such provisions, nor in any way affect the validity of either party to enforce each and every such provision. The express waiver by either party of any provision, condition or requirement of this Agreement shall not constitute a waiver of any future obligation to comply with such provision, condition, or requirement.
- 11.13. Authority. Each party has had the opportunity to consult with its own counsel in connection with the negotiation of this Agreement, and has bargaining power equal to that of the other party in connection with the negotiation, execution and delivery of this Agreement. The terms and conditions of this Agreement shall not be construed in favor of either party, but rather shall be construed according to the ordinary meaning of such terms and conditions.
- 11.14. Counterparts. This Agreement may be executed in multiple counterparts or duplicate originals and transmitted via facsimile or electronic mail, any and all of which shall be regarded as one and the same instrument, and which shall be construed and enforceable as the official and governing version in the interpretation and enforcement of this Agreement.