

**STATE WORKFORCE AGENCY PARTICIPATION AGREEMENT**  
**DIRECTEMPLOYERS ASSOCIATION NATIONAL LABOR EXCHANGE**  
**SERVICES**

This Participation Agreement (hereinafter referred to as “Agreement”) is made as of this \_\_\_\_\_ day of \_\_\_\_\_, 2007 (hereinafter referred to as “Effective Date”), between DirectEmployers Association (hereinafter referred to as “DirectEmployers”), an Indiana non-profit located at 9002 N. Purdue Road, Quad III - Suite 100, Indianapolis, IN 46268, and

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(hereinafter referred to as “agency”), a state agency providing workforce services to employers, employees, and job seekers in its state.

**Article I. Purpose**

This Agreement sets forth the terms and conditions of the working relationship established between the parties through which DirectEmployers agrees to provide a national labor exchange and other related services to the agency to enhance the electronic products that DirectEmployers currently provides its members for human capital management and to support efforts of the agency to improve customer service to employers, workers, and job seekers by developing more efficient and innovative service delivery mechanisms. This Agreement operates within and as governed by the framework set forth in the Agreement between DirectEmployers and NASWA, titled “Alliance Agreement Between DirectEmployers Association and the National Association of State Workforce Agencies.

**Article II. Definitions**

The following terms used in this Agreement shall have the meanings set forth below:

- A. “*Agreement*” includes the terms of this document and any addenda and/or attachments thereto.
- B. “*AJB*” is America’s Job Bank, a national electronic labor exchange funded by the United States Department of Labor (USDOL) which is scheduled to be discontinued as of June 30, 2007.
- C. “*Confidential information*” includes but is not limited to: 1) technical and business information relating to one of the parties’ products, research and development, production, costs, engineering processes, profit or margin information, finances, customers, marketing, and future business plans; 2) social security numbers and federal employer identification numbers; 3) individually identifiable information reported by employers or jobseekers using the national labor exchange that is identified as confidential at the time it is entered into the system; or 4) any other information identified as being confidential by either party at the time it is disclosed, whether communicated orally or otherwise.
- D. “*DirectEmployers*” is an Indiana non-profit corporation owned and managed by employers to share best practices, create new industry standards, provide research, and develop and manage Internet-based systems and software to increase labor market efficiency and reduce employment costs. Unless the context clearly provides otherwise, all references to “DirectEmployers” found in this Agreement shall be read to include DirectEmployers’ employees, contractors, consultants, and agents.

- E. *“DirectEmployers Member Services”* are a set of services that member companies receive for their dues that include, but are not limited to, distribution of all of the jobs spidered or uploaded by JobCentral to its network of affiliate job website, automated distribution of those jobs through VetCentral to achieve Jobs for Veterans Act compliance, research reports, conference calls, think tank teleconferences, and membership meetings.
- F. *“Intellectual property”* means any and all (by whatever name or term known or designated) tangible and intangible and now known or hereafter existing: copyrights (including derivative works, as defined by the United States Copyright Act, and all amendments thereof), trademarks, trade names, trade secrets, know-how, patents, any other intellectual and industrial property and proprietary rights, of every kind and nature throughout the universe and however designated, and including all registrations, applications, renewals, and extensions thereof.
- G. *“JobCentral”* is a web clearinghouse operated by DirectEmployers on which employers can post available jobs and recruit eligible job candidates and on which job seekers may search for job openings and apply for employment. The terms *“JobCentral”* and *“national labor exchange”* may be used interchangeably for the purposes of understanding and interpreting this Agreement.
- H. *“NASWA”* is the National Association of State Workforce Agencies, a non-profit corporation whose members include state administrators of unemployment insurance laws, employment services, training programs, employment statistics and labor market information, and other programs and services provided through publicly-funded state workforce systems. Unless the context clearly provides otherwise, all references to *“NASWA”* found in this Agreement shall be read to include NASWA’s employees, contractors, consultants, and agents.
- I. *“National labor exchange”* is the national electronic labor exchange operated by DirectEmployers in cooperation with NASWA and state workforce agencies to replace the services and tools provided by AJB in accordance with the terms and conditions of the participation agreement entered into between participating state workforce agencies and DirectEmployers. The terms *“national labor exchange”* and *“JobCentral”* may be used interchangeably for the purposes of understanding and interpreting this Agreement.
- J. *“Parties”* are DirectEmployers and the state workforce agency whose name appears in the heading of this Agreement. Unless the context clearly provides otherwise, all references to *“parties”* found in this Agreement shall be read to include the employees, contractors, consultants, and agents of the parties.
- K. *“Self-service websites”* are website home pages created by DirectEmployers and branded by DirectEmployers with state agency identification to which employers who self-post job orders and job seekers who self-post resumes will be directed at the time of posting and for follow-up activities. Self-service websites will be integrated into JobCentral so that other functionality of these self-service websites will be provided by DirectEmployers through JobCentral.
- L. *“Self-service website agencies”* are state workforce agencies participating in the national labor exchange that do not have their own self-supported agency websites but will utilize the self-service websites provided by DirectEmployers for employers posting jobs and job seekers posting resumes in their state.
- M. *“Spidering”* is a program utilized by a search engine designed to automatically discover, download, analyze, and index web pages for the search engine. The term *“spidering”* is sometimes used interchangeably with *“indexing”* to signify the same activity.

### **Article III. Responsibilities of the Parties**

In addition to any other responsibilities explicitly set forth elsewhere in this Agreement, the parties shall, respectively, have the following responsibilities:

A. DirectEmployers shall:

1. Establish a national labor exchange and state job websites – as requested by participating state workforce agencies - to replace the services and tools now offered to employers, employees, job seekers, and state workforce agencies through the AJB that shall, at a minimum, include the tools and services identified in Addendum A attached to this Agreement and shall also:
  - a. allow employers, through jobs posted on VetCentral one at a time, to comply with the federal contractor mandatory job listing requirements;
  - b. improve the current functionality of the AJB for participating state workforce agencies by offering the enhanced, additional services to participating state workforce agencies identified in Addendum A; and
  - c. continue to offer all services offered through AJB (See Addendum B) to employers and job seekers at no cost to such employers and job seekers.
2. Make the national labor exchange operational for the agency no later than July 1, 2007.
3. Establish a self-service website for the agency upon the agency's request.
4. Provide all technical services and support, as dictated by the agency's level of interaction and the tools and services utilized by the agency, needed to ensure its successful participation in the national labor exchange.
5. Ensure the security and continuous operation of the national labor exchange.
6. Protect all confidential information exchanged through the system.
7. Refrain from providing any services connected with the operation of a national labor exchange to the agency other than those services provided herein or those services described in a separate agreement for customized national labor exchange services.
8. Engage NASWA as the liaison between DirectEmployers and participating workforce agencies on matters relating to operation and governance of the national labor exchange as established in the Agreement between DirectEmployers and NASWA, titled "Alliance Agreement Between DirectEmployers Association and the National Association of State Workforce Agencies.
9. Work with NASWA, on behalf of participating state workforce agencies, to govern, operate, and continuously improve the national labor exchange through NASWA's participation on all governing committees of the system, involvement in dispute resolution upon request of participating state workforce agencies and/or DirectEmployers, and through other activities should the need arise.

B. The agency shall:

1. Use the national labor exchange system as a replacement for the functions served by the discontinued AJB.
2. Ensure that uploads of state job orders to the national labor exchange for download to all other participating workforce agencies are carried out in a timely fashion and comply with the upload protocol established by DirectEmployers.
3. Utilize the agency validation process – if any – to verify and validate employer job postings before uploading to the national labor exchange and cooperate with DirectEmployers on removal of fraudulent employers and jobs posted by such employers.

4. Cooperate with DirectEmployers to assign appropriate occupational codes to jobs posted to the agency website and to ensure assignment of appropriate occupational classification for jobs posted directly by DirectEmployers.
5. Cooperate with DirectEmployers to use procedures established for removal of inappropriate job orders from the system.
6. Remove all confidential information from jobs and/or resumes prior to posting to the national labor exchange and establish a protocol, in cooperation with DirectEmployers, to allow employers and job seekers to designate information as confidential or restricted information within the meaning of this Agreement.
7. Create a standard process, in cooperation with DirectEmployers, to have job seekers provide permission for their resumes to be shared through the national labor exchange.
8. Appoint NASWA as the liaison between the agency and DirectEmployers with regard to matters relating to the national labor exchange.
9. Work with NASWA, DirectEmployers, and the other participating state workforce agencies to govern, operate, and continuously improve the national labor exchange through activities of the Executive and Operations Committees (described under Article VII), and by other appropriate means.

#### **Article IV. System and Information Security**

DirectEmployers shall be responsible for protecting the security of the national labor exchange and the confidentiality of information contained in the system.

- A. *Restrictions on Electronic Access.* DirectEmployers shall employ security measures that meet or exceed industry standards. DirectEmployers will employ the following security measures at all levels of the national labor exchange to restrict possible access from outside the system:
  1. Security provisions shall be implemented at the router, firewall and switch, as well as at the machine level and within the code base.
  2. Access between machines/clusters shall be restricted to only that which is necessary within the functionality of the system.
  3. The web cluster and the FTP Fileserver shall be the only machines accessible from outside the system, and such access shall be available only through the appropriate port(s) and for the appropriate function.
- B. *Sensitive Data.* The national labor exchange shall not store any information that is not necessary to the transaction of active job posting and employment searches. DirectEmployers shall also:
  1. Employ Secure Socket Layer technology for all financial transactions to ensure privacy and prevent identity theft.
  2. Make Secure Socket Layer technology available for regular job seeker and employer logins should the need arise in the future due to the inclusion of confidential or sensitive information as part of the login process.
  3. Take appropriate counter measures to prevent the exposure of database login information, as well as other data hijacking methods like SQL injection.
- C. *Restrictions on Physical Access.* The national labor exchange shall be hosted at a secure facility with round-the-clock physical security and double keycard access limited to individuals whose presence in the facility is necessary as part of their official duties. All components shall be stored in locked cabinets.

- D. *Environmental and Physical Controls.* The Network facility hosting the national labor exchange shall be equipped with all necessary environmental controls, power backup, fire suppression protections, and similar protections.

## **Article V. System Reliability and Utility**

DirectEmployers shall take all necessary steps to ensure that the national labor exchange is available to the agency and to the public, twenty-four hours per day, seven days a week, with guaranteed 99% uptime during the peak hours of operation designated by the agency.

- A. *Continuous Monitoring and Response.* DirectEmployers recognizes the national labor exchange forms the code base for all self-service websites and in recognition of this fact shall continuously monitor the national labor exchange to keep itself apprised of any technical or operational issues as they arise. DirectEmployers will keep NASWA informed of such issues. Self-service website agencies shall be notified immediately of any significant issues affecting their site operations. Notification procedures shall also extend to agencies that upload/download jobs to and from the national labor exchange. DirectEmployers shall address any technical issues related to data transfer immediately.
- B. *Notice of Maintenance Downtime.* If downtime is required for system maintenance, the agency shall be notified ahead of time in accordance with a notice schedule established by the Operations Committee. Downtime will be scheduled during non-peak hours. The parties acknowledge that, although unlikely, emergency situations may possibly require system downtime for maintenance without notification. In this event, DirectEmployers shall provide the agency with timely notice of the nature of the maintenance activity and the estimated length of the downtime. DirectEmployers shall ensure that while the system is being maintained security and confidentiality protections required under this Agreement will be upheld.

## **Article VI. Technical Support**

- A. *Help Desk & Response Times.* Employers and jobseekers shall be able to contact DirectEmployers by phone or email and receive an answer within 24 hours during normal business hours.

The agency shall be able to contact a DirectEmployer technical staff member during state business hours via telephone and e-mail for all support services and receive an immediate response. Technical staff shall also be available to the agency to assist in resolving issues relating to employer registrations, job postings, and uploading and downloading jobs. The agency shall be able to request that specific registrations or job postings be deleted or modified. DirectEmployers shall make every effort to establish a single point of contact for the agency to report problems and request technical assistance.

- B. *Escalation Procedures.* The Operations Committee shall establish parameters for assigning severity levels to operational problems associated with the national labor exchange and shall establish escalation procedures and resolution protocols and schedules to address severe problems.
- C. *System Change Requests.* Agency requests for changes to the national labor exchange shall be submitted concurrently to DirectEmployers and NASWA. NASWA and DirectEmployers shall jointly determine if the change request should be submitted to the Operations Committee for consideration or represents an incidental change to daily operations that may be implemented by

DirectEmployers without further review. Major system changes or enhancements proposed by the agency to NASWA and DirectEmployers shall be reviewed by the Operations Committee for review, discussion, and comment. Final decision making on proposed major system changes or enhancements shall be made by the Executive Committee (as described in Article VII, A.1.) based on critical factors such as total system impact, budgetary considerations, and other relevant factors.

## **Article VII. Governance**

- A. The national labor exchange shall be jointly governed and overseen by DirectEmployers, representatives of a number of the participating state workforce agencies and NASWA. Governance of the system shall be accomplished primarily through the work of the following standing committees:
1. Executive Committee – consisting of one senior-level representative from NASWA, one senior-level representative from DirectEmployers, one state representative, and one employer representative. The Executive Committee shall provide overall guidance for the project, resolve certain disputes, and make final determinations on whether to implement major system changes or enhancements.
  2. Operations Committee – consisting of six employers, six state representatives, one representative from DirectEmployers, and one representative from NASWA. The Operations Committee shall provide guidance and input for all program and business issues, input on proposed new functionality and features, and guidance and input on technical issues such as data exchange, spidering, search technology, and similar issues.
- B. Any recommendation submitted by the Operations Committee and not accepted by DirectEmployers can be appealed to the Executive Committee.
- C. DirectEmployers and NASWA may, from time to time, establish ad hoc workgroups and/or committees, ask Committees to work jointly to address common issues of concern and may, upon mutual agreement, establish other standing committees.
- D. *Expedited change permitted.* Market and customer demands may require a change to JobCentral that will not modify, limit, qualify, or otherwise adversely affect the rights and benefits accorded to the agency under this participation agreement with DirectEmployers. Nothing contained herein shall be read to require DirectEmployers to submit such change to NASWA or the agency for their consideration and approval prior to action being taken by DirectEmployers. DirectEmployers shall inform NASWA and the participating workforce agency of such change made to JobCentral within twenty-four (24) hours of the change. Should NASWA and/or the participating workforce agency believe the change does adversely affect their participation in the national labor exchange or their rights and benefits under their agreements with DirectEmployers, they may jointly work to resolve any concerns with DirectEmployers or bring the matter to the Executive Committee for its review, consideration, and any appropriate remedial action.

Notwithstanding the foregoing, no changes by DirectEmployers to the hosted self-service websites shall be made without prior review and approval obtained through the governance process set forth in this Article.

## **Article VIII. Proprietary Rights**

- A. Materials of Parties. Each party owns and shall continue to own all right, title and interest in and to all information, documentation, materials and products (including, without limitation all Intellectual Property rights therein) owned or developed by such party, including but not limited to software application and documentation and any modifications, updates or new versions thereof. In the case of DirectEmployers, materials referenced herein shall include, but not be limited to, its software application and documentation and any modifications, updates or new versions thereof; and in the case of the agency, materials referenced herein shall include, but not be limited to, its software application and documentation and any modifications, updates or new versions thereof, and any modifications, updates or new versions thereof. Without limiting the foregoing, any and all software, software development tools, know how, methodologies, processes, technologies, or algorithms used by either party in performing its obligations under this Agreement which are based upon, contain or constitute trade secrets or proprietary information of a party or are otherwise owned or licensed by such party, shall be and remain such party's property, and the other party shall have no interest therein or claim thereto except as specifically set forth herein.
- B. Trademarks and Trade Names. The parties acknowledge and agree that the agency owns all right, title and interest in and to the agency's trademarks, agency's trade names, logos, and all derivative works of the foregoing, and all intellectual property rights therein; and that DirectEmployers owns all rights, title and interest in and to the DirectEmployers' trademarks, DirectEmployers' trade names, logos, derivative works of the foregoing, and all intellectual property rights therein. The parties further acknowledge and agree that any benefit and goodwill accruing from the usage of such names and logos shall belong to the owner. Except as expressly agreed between the parties, the parties shall have no other rights to use the name and logo of the other party and neither party grants title, right or interest in any trademarks or trade names to the other party under this Agreement.
- C. Prior Approval. The use of any promotional, marketing or other materials and the disclosure of any oral, visual, or written information by one party about the other party or about this Agreement shall be subject to prior, written approval by the other party. Neither party shall originate any publicity, news release, or other public announcement relating to this Agreement or the existence of a working relationship between the parties without the prior written approval of the other party.
- D. No Other Licenses. Except as explicitly set forth in this Agreement, neither party grants any other license, by implication or otherwise.

## **Article IX. Confidentiality**

- A. Prohibition of Disclosure. During the term of this Agreement, each party hereto (hereinafter referred to as "Disclosing Party") may disclose to the other party (hereinafter referred to as "Recipient") confidential information in connection with the performance of this Agreement, and Recipient may otherwise discover confidential information about the Disclosing Party in connection with this Agreement. All confidential information shall remain the sole property of Disclosing Party and Recipient shall have no rights to or in the confidential information. Recipient shall hold the confidential information in strict confidence. Recipient shall not make any disclosure of the confidential information (including methods or concepts utilized in the confidential information) to anyone without the express written consent of Disclosing Party, except to employees, contractors, consultants, or agents to whom disclosure is necessary for the performance of this Agreement and who are bound in writing to maintain the confidentiality of the information. The Recipient shall not

use the confidential information other than as necessary to the performance of this Agreement, or to the extent it is required to disclose such information in the context of any administrative or judicial proceeding, provided that prior written notice of such disclosure and a reasonable opportunity to oppose or limit disclosure is given to Disclosing Party.

- B. Third Party Information Collection and Use. Unless otherwise agreed to between the parties and permitted under all applicable federal and state laws, job information and postings and resumes and other job seeker information transferred between the parties under this Agreement shall not contain any personal identifiers such as Social Security Numbers, Federal Employer Identification Numbers (FEIN), or information regarding the race, ethnicity, age, or gender of job applicants. Notwithstanding the foregoing, should the agency need to collect any of the information described above it may elect to have DirectEmployers make such information available, in a secure fashion, to authorized state staff or, based upon the agency's written request, to federal or state compliance agencies.

Unless otherwise provided herein, information provided to DirectEmployers by the agency for the purpose of posting jobs shall not contain any information that is not intended to be displayed. Job postings collected by the national labor exchange through the agency's own website shall display only that information which the employer wants displayed regarding the job. Employer contact information including, for example, phone number, address, and contact name, shall not be displayed to anyone outside of that employer and DirectEmployers and agency staff. Employers and jobseekers shall be given the option of identifying certain information that should be treated as "restricted", i.e. data or information that is not confidential information within the meaning of this Agreement but, on the owner's request, is not to be made available for access by others. Information identified as restricted shall be available only to DirectEmployers' staff and authorized agency staff who shall have access to this data only for administrative and reporting purposes.

- C. Obligations Upon Expiration or Termination. Upon the expiration or termination of the Agreement, each party shall return to the other party any confidential information of the other party, in whatever medium it may exist, and/or destroy any confidential information of the other party that is in its possession and not capable of being returned. The return and/or destruction of such confidential information shall be accomplished in a manner and in accordance with a timetable acceptable to the Disclosing Party.
- D. Obligations Survive Termination of Agreement. The provisions of this Article shall survive the termination of this Agreement with regard to any confidential information disclosed during the term of this Agreement.

## **Article X. Representations and Warranties**

- A. Warranty by DirectEmployers. DirectEmployers represents and warrants to the agency that it:
1. has the full power and the right to enter into this Agreement, to grant the rights set forth herein, and to fully perform its obligations under the Agreement; and
  2. has not previously and will not grant any rights in the national labor exchange to any third party that are inconsistent with this Agreement; and
  3. is the sole owner of the patent, copyright, or other intellectual property rights utilized in the creation of the national labor exchange and the other services and tools for state workforce agencies referenced in this Agreement and that it has not violated any third-party's copyright, trademark, intellectual property, or proprietary rights in developing them; and

4. shall comply with all applicable state and federal laws, rules, and regulations in the performance of its duties and obligations under this Agreement.
- B. Warranty by the agency. The agency represents and warrants to DirectEmployers that it:
1. has the full power and the right to enter into this Agreement, to grant the rights set forth herein, and to fully perform its obligations under the Agreement; and
  2. has not previously and will not take any actions relative to its participation in the national labor exchange that are inconsistent with this Agreement; and
  3. is the sole owner of the patent, copyright, or other intellectual property rights utilized in the creation of its own agency website, web products, and services for employers and job seekers referenced in this Agreement and that it has not violated any third-party's copyright, trademark, intellectual property, or proprietary rights in developing them; and
  4. shall comply with all applicable state agency and federal laws, rules, and regulations in the performance of its duties and obligations under this Agreement.

#### **Article XI. Term and Termination of Agreement**

- A. The term of the Agreement shall commence on the effective date and shall continue as long as the DirectEmployers and NASWA agreement referenced in Article I of this Agreement remains in effect.
- B. This Agreement may be terminated upon mutual agreement of the parties or unilaterally by any party provided that the terminating party serves the other party with a written notice of its intention to terminate the Agreement at least ninety (90) days prior to the proposed date of termination.
- C. Notwithstanding the above, this Agreement may be terminated immediately, upon written notice by either party, should governing state or federal laws or regulations render performance hereunder illegal, impracticable, or impossible.

#### **Article XII. Resolution of Disputes**

- A. In the event there is a dispute between the parties regarding any of the terms and conditions of this agreement, including an alleged breach of the Agreement, the parties agree to make every effort to resolve the dispute informally by referring the matter to the Operations Committee.

#### **Article XIII. Costs of System Participation and Compliance with Terms of Agreement**

- A. System Participation Costs. Unless otherwise agreed to between the parties, the national labor exchange shall be supported solely through fees to non-members, and dues paid by DirectEmployers' member-companies and DirectEmployers shall provide all services associated with the national labor exchange to the agency at no cost.
- B. Paid Advertising Prohibited. DirectEmployers shall not use paid advertising on the national labor exchange as a means of generating capital or supporting the operation of the national labor exchange.
- C. Agreement Costs. Each party shall bear its own costs and expenses incurred in performing its obligations under this Agreement.

## Article XIV. General Conditions

- A. Non-Exclusive Agreement. This Agreement does not grant to DirectEmployers the right to be the exclusive provider of national labor exchange services to the agency and nothing herein shall be read to limit the agency's right to obtain such services from other firms, companies, or vendors in addition to those obtained from DirectEmployers under this Agreement.
- B. Contract for Separate Customized Services. In addition to this Agreement, the parties may enter into an additional agreement with one another solely for the purpose of identifying separate customized services not covered under this Agreement to be provided by DirectEmployers to the agency in connection with its participation in the national labor exchange. Any such agreement shall be appended to this Agreement, considered to be incorporated by reference herein, and subject to all other terms and conditions of this Agreement. Under no circumstances may the parties' agreement regarding the provision of separate customized services amend, limit, abridge, qualify, or otherwise affect the provisions of this Agreement except that it may allow for the payment of costs associated with separate customized services by the agency to DirectEmployers. Any additional agreements between the parties involving the national labor exchange that do not comply with the terms of this paragraph shall be null and void.
- C. Waiver. No waiver of any right under this Agreement shall be deemed effective unless contained in writing signed by a duly authorized representative of the party against which the waiver is sought to be enforced, and no waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement.
- D. Severability. If any provision in this Agreement is invalid or unenforceable, that provision shall be construed, limited, modified or, if necessary, severed, to the extent necessary, to eliminate its invalidity or unenforceability, and the other provisions of this Agreement shall remain in full force and effect.
- E. Assignment. This Agreement shall be binding upon the parties and their respective successors and assigns, but neither party may, nor shall it have the power to, assign this Agreement or any of the benefits hereof in whole or in part in any manner whatsoever without the prior written consent of the other party and any attempted transfer or assignment by a party in violation of this Article shall be void. Neither party shall unreasonably withhold or delay its consent to a requested assignment or transfer.

For the purposes of this Agreement, a "transfer" shall be deemed to include, without limitation, the following: (a) a merger or any other combination of an entity with another party, whether or not the entity is the surviving entity; (b) any transaction or series of transactions whereby a third party acquires direct or indirect power to control the management and policies of an entity, or (c) the transfer of any rights or obligations in the course of a liquidation or other similar reorganization of an entity.

Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of each party and their respective successors and assigns.

- F. Force Majeure. If the performance of this Agreement or any obligation hereunder is prevented, restricted, or interfered with by any act or condition whatsoever beyond the reasonable control of the affected party, the party so affected, upon giving prompt notice to the other party, shall be excused from such performance, to the extent of such prevention, restriction, or interference.

- G. Compliance with Laws. Each party shall be responsible for compliance with all applicable laws, rules, and regulations related to the performance of its obligations under this Agreement and both parties hereby agree not to knowingly, directly or indirectly, violate any federal, state, or local law or regulation of the United States, or any applicable U.S. or foreign export provision.
- H. Notices. All instructions, notices, consents, demands, or other communications required or contemplated by this Agreement shall be in writing and shall be made by electronic transmission, by facsimile transmission, by overnight courier service, or by first class mail, postage prepaid, addressed to the respective party and at the facsimile number or address as set forth below, or to such other party, facsimile number or mail or e-mail address as may be hereafter specified by written notice to:

DirectEmployers Association, Inc.  
 9002 N. Purdue Road, Quad III, Suite 100  
 Indianapolis, IN 46268  
 Attention: Dan Jordan, J.D., Chief Counsel  
 Fax: 317-874-9100  
 Email: [dan@jobcentral.com](mailto:dan@jobcentral.com)

For the agency:  
 Contact Name:  
 Address: \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 Fax: \_\_\_\_\_  
 Email: \_\_\_\_\_

NASWA  
 Alliance Chief Business Officer  
 444 N. Capitol Street, NW  
 Suite 142  
 Washington, DC 200001  
 Fax: 202 434-8033  
 Email: [pgerassimides@naswa.org](mailto:pgerassimides@naswa.org)

All instructions, notices, consents, demands, or other communications shall be considered effectively given as of the day of actual delivery; as of the date specified for overnight courier service deliver; as of three (3) business days after the date of mailing; or on the day the electronic or facsimile transmission is received at the receiving location and receipt is confirmed by the sender. Any communication by facsimile transmission shall also be sent by United States mail on the same date of the facsimile transmission.

- I. Clarity. For purposes of clarity and unless specifically otherwise stated in this Agreement, neither party is a reseller of licensed products or services for the other.
- J. Parties Relationship. This Agreement is not intended to nor does it constitute or create a joint venture, legal partnership, or other relationship of any kind except as specifically described herein. Neither party shall have authority to bind the other, except to the extent specifically described by the Terms of this Agreement, or otherwise in writing. Neither the agency nor DirectEmployers shall hold

itself nor its staff out as nor claim to be an officer, partner, joint venturer, employee, or agent of the other party.

- K. Each party’s employees, agents, contractors, or consultants who perform services related to this Agreement shall remain under the exclusive direction and control of their respective employer and shall receive such salaries, compensation, and benefits as their respective employer may from time to time determine. Moreover, each party shall have the complete and sole responsibility for its employees, agents, contractors, or consultants who perform any service related to this Agreement with regard to compliance with all applicable laws, rules, and regulations governing such party and with the terms of this Agreement.
- L. Neither party shall knowingly, either directly or indirectly, solicit the other party’s employees, agents, contractors, or consultants without written authorization from the other party.
- M. Headings. The headings used in this Agreement are inserted for convenience only and shall not affect the meaning or interpretation of this Agreement.
- N. Entire Agreement. This Agreement, including any Attachments and Addenda thereto, constitutes the entire understanding and agreement between the agency and DirectEmployers and supersedes all prior or contemporaneous agreements, proposals, or communications, oral or written, between the parties relating to the subject matter of the Agreement. No modification of the Agreement shall be binding unless it is in writing and is signed by an authorized representative of each party; no other act, document, usage, or custom shall be deemed to amend or modify this Agreement.

IN WITNESS WHEREOF, the authorized representatives of the parties have executed this Agreement by their signatures below. This Agreement may be executed in counterparts and may be exchanged by facsimile or electronically scanned and emailed copy, each of which shall be deemed to be an original, and all of which together shall constitute one and the same agreement.

DirectEmployers Association, Inc.  
 (“DirectEmployers”)

The Agency

By: \_\_\_\_\_  
Executive Director

By: \_\_\_\_\_  
Stage Agency Administrator

Name: William O. Warren

Name:

Title: Executive Director

Title:

## Addendum A

### NATIONAL LABOR EXCHANGE SERVICES TO STATE WORKFORCE AGENCIES

#### GENERAL PROVISIONS

DirectEmployers will provide NASWA's state workforce agency members all current AJB functionality (see Addendum B) without cost through the national labor exchange centered in JobCentral. The approach for the delivery of these AJB replacement services is covered under the "Menu of Services" heading in Addendum A. The primary difference between the services provided through AJB and the new national labor exchange will be that large employers will have their corporate job sites spidered rather than using a batch upload process used in the current AJB Public Interface. DirectEmployers will submit a written project implementation plan to the participating workforce agencies by a date agreed upon between DirectEmployers and NASWA and will have participating state workforce agencies operational in JobCentral by July 1, 2007.

DirectEmployers will ensure that JobCentral will mirror the AJB by accommodating different levels of interaction with state workforce agencies. DirectEmployers recognizes that most state workforce agencies have created their own Internet job and resume banks and those agencies will want to promote their sites to their employers and job seekers. For those state workforce agencies that do not have their own job/talent bank, and should those states desire it, DirectEmployers will provide a free "self-service" site integrated into JobCentral in a manner similar to the way self-service sites are currently integrated with AJB. These sites will operate in much the same way that AJB's state workforce agency sites now function; however, agencies utilizing these sites will have much greater flexibility in controlling the content of their unique home pages.

Except as otherwise explicitly provided herein, DirectEmployers will provide the following services, tools, functions, formats, and features within the national labor exchange to be operated by DirectEmployers for participating state workforce agencies. The terms "JobCentral" and "national labor exchange" are used interchangeably herein.

#### I. Services and Functionality Available to Job Seekers & Employers

- A. Job Seekers: The following services will be provided by DirectEmployers on the national labor exchange site and on any of the hosted self-service sites without any charge to job seekers:
1. Job seekers will be able to search for jobs uploaded to JobCentral from a state workforce agency system or pulled from corporate sites on either JobCentral and/or a state self-service site.
  2. Job seekers will also be able to view JobCentral jobs when conducting a search on the state-operated website that downloads all or part of the JobCentral database.
  3. The user ID and password for registered job seekers will be recognized by the JobCentral site and any of the state self-service sites (as it is with AJB).
  4. The job seeker account will have the same functionality in JobCentral as in AJB (See Addendum B):
    - a. Free search of job listings by job seekers nationwide through the main site and through

any of the state self-service sites.

- b. Job seeker searches may be done with or without registration on the site.
- c. Free resume posting by registered job seekers through one of the state self-service sites. The resumes would be available to registered employers in any state with a JobCentral hosted self-service site. The job seeker has the option to make the resume confidential (searchable but contact information hidden), not searchable (but available for use in replying to relevant job postings), or open to a search by employers with contact information available.
- d. Job Agents (saved searches, like AJB Job Scouts) that would run periodically and send e-mails to the job seeker about new job openings.

B. Employers: The following functionality and services will be available to employers using the national labor exchange:

1. Non-member employers that register on JobCentral from states that upload/download job orders will be encouraged to register with their home state workforce agency's job/resume bank to post jobs. DirectEmployers will work with state workforce agencies to facilitate that home state registration with the participating state workforce agencies.
2. Employers who have posted jobs with their state employment services will have their jobs displayed for free on JobCentral if their state workforce agency uploads jobs to JobCentral.
3. If the state does not have its own website and JobCentral hosts one for it, employers will register there and be able to post jobs and search resumes at no charge. All such jobs will be displayed on Job Central and the hosted state workforce agency sites and become part of the file available for download to all participating states.
4. Employers registered on a state self-service site will be able to search resumes from the JobCentral site and from all the state self-service sites at no charge once the employers are verified.
5. Talent scout (saved searches) will run periodically and send e-mails to the employer about new job seekers.

C. Veterans:

1. JobCentral will make service to veterans a priority.
2. Veterans will have their resumes included in a separate "Veterans" resume bank as well as in the main resume bank. The "Veterans" resume bank would be searchable for free by all employers through VetCentral.
3. Veteran resumes will be flagged (similar to the AJB flag icon) within the general resume search so that employers can easily spot which resumes are from veterans.

4. Veteran resumes matching the search criteria will be displayed at the top of the list.
5. Jobs that are entered into JobCentral by companies that are federal contractors and are required by law to provide affirmative action in hiring veterans will be flagged with a special icon indicating that the job listing is from a federal contractor.
6. As part of the VetCentral's Clearinghouse, newly listed federal contractor jobs will be sent to appropriate Local Veterans Employment Representatives (LVER) and Disabled Veteran Outreach Program (DVOP) through local One-Stop Centers integrated in the employment service delivery system to facilitate priority of service. DirectEmployers also will allow for a separate search of federal contractor jobs collected and distributed through the Clearinghouse.
7. Upon request, veterans will be linked to the appropriate LVER and DVOP during job seeker registration through local One-Stop Centers integrated in the employment service delivery system for additional service.
8. Veterans will be linked to appropriate sites to access labor market information and other veteran-centered job finding resources and tools.

D. Resumes: The following features will apply to resumes handled by the JobCentral national labor exchange:

1. Resumes entered through JobCentral and/or state self-service sites will be available in a "central repository" (JobCentral).
2. Resumes will be searchable by employers for free after registering on JobCentral or on a state self-service site and going through a verification process that will be determined with NASWA concurrence.
3. The resume input features are similar to the current AJB resume input, but do not include suggestions for such things as skills for a job title or a choice of resume styles upon completion.
4. JobCentral will link to the Resume Writer, the Resume Tutorial, and the Military Resume Writer in ACINET to provide additional resources for the job seeker.

E. Job Orders: The following features will apply to employer job orders handled by the JobCentral national labor exchange:

1. All jobs are viewable without registration.
2. Job order displays on JobCentral will consist of job titles with links to the full job order on its originating corporate website. JobCentral will include, on the state self-service sites, an interim page, which will give the job seeker the option to see more job detail.
3. Links to jobs imported from state employment systems will take the job seeker back to that state's workforce agency site. Whether registration is necessary to view the job on their site will be up to individual state workforce agencies.

4. Links to jobs on corporate sites will take the job seeker to that corporate employment site to view the complete job listing rather than just the spidered information. In most cases, registration is not necessary to view the complete job listing. *Note:* In virtually all cases, registration is required to apply for a job on a corporate website.
5. Spidered jobs and single postings on JobCentral will be updated every night. Assuming regular uploads from state workforce agencies, state jobs distributed to other states should never be less than 24 hours from last update.
6. DirectEmployers will make a good-faith effort to filter out duplicates when jobs are uploaded from state workforce agency sites.
7. JobCentral uses O\*NET Autocoder to assign occupational codes. It was originally developed for USDOL and the original version is now being distributed to the states through the Information Technology Support Center (ITSC). DirectEmployers uses a version that has been upgraded extensively since the original. DirectEmployers will not recode jobs uploaded from a state workforce agency site provided they have a valid SOC/O\*NET code assigned (DirectEmployers will crosswalk SS O\*NET codes - AJB coding structure - to O\*NET codes). DirectEmployers will code all other jobs using the Autocoder. Jobs downloaded to the states will have a SOC/O\*NET code assigned; however, state workforce agencies are free to change the code on their own sites.

F. Verification and Validation of Employers and Jobs: DirectEmployers will utilize the following procedures to ensure that its job postings are real jobs from valid employers:

1. DirectEmployers will collaborate with state workforce agencies through NASWA to use procedures they may have established for this purpose, especially for jobs entered on the national site through “spidering” or posted through purchase by non-member employers.
2. Upon notification by a state workforce agency of a fraudulent employer or inappropriate job order in the JobCentral system, DirectEmployers will remove same from its system.
3. DirectEmployers verifies that DirectEmployers member-companies are valid employers and chooses appropriate industry codes for those employers. The same will apply for employers who have been “spidered” by DirectEmployers on the JobCentral site.
4. Non-member employers registering on the JobCentral site will be reviewed by DirectEmployers staff to ensure they agree to and meet the terms and conditions of JobCentral. Employers and jobs that cannot be verified as meeting those terms and conditions will not be registered in JobCentral.
5. Industry codes will be chosen by the employer upon registration using procedures agreed upon between DirectEmployers and NASWA.
6. Jobs uploaded through the state employment services are assumed to have gone through the

verification and validation process of each individual state and will not receive further review. Therefore, state workforce agencies with their own job/resume sites will continue managing the employer registration and job order review in accordance with their standard practices.

7. State workforce agencies using the free self-service sites provided by DirectEmployers will be able to review new employer registrations and the data associated with that registration (jobs or resume access) themselves in a manner similar to the current AJB employer approval queue.
8. State workforce agencies using the free self-service websites provided by DirectEmployers may delegate the task of reviewing new employer registrations and the data associated with that registration (jobs or resume access) to the DirectEmployers staff who will utilize the standard, agreed upon terms and conditions. Those that do not meet those conditions will not have their account approved and will not be able to post jobs or search resumes.
9. If, at any time, the state workforce agency has an issue with the employer it had approved or the data entered by that employer, that employer's access to the system will be terminated and any job postings will be removed until issues are resolved.

## **II. MENU OF SERVICES**

To replace and enhance the functionality that AJB provided to the state workforce agencies, DirectEmployers, via JobCentral, will offer NASWA's state workforce agency members the following services free of charge:

- A. State-sponsored websites: DirectEmployers will provide an interchange service allowing for the upload and download of job orders between state-sponsored websites and JobCentral.
  1. DirectEmployers will match every format that is currently used for upload from the state workforce agencies to AJB and for download from AJB to the state workforce agencies.
  2. DirectEmployers will work with state consortia and/or service providers (Geographic Solutions, America's Job Link Alliance, AOSOS, and others) should they desire to upgrade/improve those formats.
  3. DirectEmployers' interchange service will allow state workforce agencies to:
    - a. Upload their job orders on a nightly basis (or more frequently if state workforce agencies so desire) and have those job orders displayed in the JobCentral national collection.
    - b. Jobs uploaded by the state workforce agencies will be treated with the same priority in terms of display in job search results as DirectEmployer member-company jobs.
    - c. Jobs posted by a state workforce agency will direct the job seeker to apply for employment on the state workforce agency site;
    - d. DirectEmployers will download all or part of the JobCentral national collection, including jobs posted by JobCentral member-employers or by companies buying the \$25 per job / per

month posting service, jobs spidered from non-member companies, and jobs spidered at the request of states, and jobs from other states that have been uploaded to the JobCentral site.

- i. The download will be performed daily and states will be able to choose the categories of jobs they wish to have included.
  - ii. Jobs from federal contractors will be flagged in the download to allow state workforce agencies to distinguish those orders.
  - iii. The federal contractor designation will be based on self-attestation by the employer.
  - iv. Jobs included in the download will be from employers who have gone through a validation process. The nature of that validation process will vary among state agencies. DirectEmployers, like AJB, will not separately validate the flow of jobs coming from large employers once they have validated those employers; it does, however, validate individually posted jobs). As with AJB, JobCentral will assume that the state process will deliver a valid job listing from a valid employer into the download pool. As with AJB, one state workforce agency effectively approves an employer for nationwide access.
4. DirectEmployers, with the permission of state workforce agencies who operate their own web-based job banks, can use JobCentral to spider jobs from those state-operated web-based job banks.
  - a. Job seekers will be directed back to the state site when selecting a job that has been spidered from a state-operated web-based job bank.
5. To facilitate transfers, the following are the expected common fields for jobs that will be moving from state-sponsored website to JobCentral:
  - a. Common Job Fields
    - i. Job Title
    - ii. Unique Job ID
    - iii. Job URL (allowing DirectEmployers to point job seekers directly back to the state display of that job)
    - iv. How to apply (for states using DE-provided self-service systems)
    - v. Employer Name
    - vi. Industry code (NAICS)
    - vii. Job Description (including, if stated, qualification requirements, duties, wages, benefits)
    - viii. Job Location (City, State, Zip, Country)
    - ix. Date Job was Acquired
  - b. Optional Common Job Fields
    - i. Company size and description

- ii. Occupational code (SOC O\*NET ) Note: jobs without O\*NET codes are run through Autocoder software
- iii. Employer Type (Direct or Staffing)
- iv. Federal Contractor indicator (Y/N)

B. Free self-service websites: DirectEmployers will provide interested state workforce agencies that do not have state-sponsored website with a free self-service website. The website will have links to other state services that parallel the functionality of the current state sites provided by AJB. Unlike AJB which provided a state site for all states, JobCentral only will provide a site to those state workforce agencies that request it.

1. Self-Service websites will allow:
  - a. employers to post and manage job orders; search resumes posted, and establish resume agents (like AJB talent scouts);
  - b. job seekers to search for jobs, establish a job agent (like AJB job scouts), and post a resume;
2. Each state workforce agency will be able to customize portions of its free self-service site using its own content. Each state workforce agency with a self-service website will have final approval of the content on its site.
3. Jobs and resumes on such sites will be automatically included on the national labor exchange site.
4. The JobCentral site and the self-service sites will provide bilingual (English/ Spanish) functionality. Jobs viewed on employers' sites cannot be translated.
5. Tools will be provided for the "home page" customization necessary for the self-service sites, including several templates where little additional work will be required. A DirectEmployers staff member, specifically assigned to assist in the use of these tools, will be available to the state workforce agency should assistance be required.
6. DirectEmployers will conduct an extended job search results process which will pull in job openings from Internet search engines, job aggregator sites, and other similar sites for state workforce agencies with hosted free self-service sites. This feature, which will allow state workforce agencies to avoid the expense of purchasing a separate job consolidation service, will be available even though it is not currently offered through AJB.
7. If self-service states want a job matching feature it will be developed and implemented before July 1, 2008. DirectEmployers will provide an O\*NET-based job matching tool for the self-service sites.
8. To facilitate transfers, the following are the expected common fields for jobs that will be moving from a state self-service site to JobCentral:

- a. Common Job Fields

- i. Job Title
- ii. Unique Job ID
- iii. Job URL (allowing DirectEmployers to point job seekers directly back to the state display of that job)
- iv. How to apply (for states using DE-provided self-service systems)
- v. Employer Name
- vi. Industry code (NAICS)
- vii. Job Description (including, if stated, qualification requirements, duties, wages, benefits)
- viii. Job Location (City, State, Zip, Country)
- ix. Date Job was Acquired

b. Optional Common Job Fields

- i. Company size and description
- ii. Occupational code (SOC O\*NET ) Note: jobs without O\*NET codes are run through Autocoder software
- iii. Employer Type (Direct or Staffing)
- iv. Federal Contractor indicator (Y/N)

c. Common Resume Data

- i. Highest Education level
- ii. Has Certifications (Yes/No)
- iii. Has Professional Experience (Yes/No)
- iv. Willingness to Relocate
- v. Preferred Locations
- vi. US work Authorization
- vii. Includes Visa types necessary or obtained
- viii. Work Type Requested
- ix. Contact information
- x. Resume Title
- xi. Resume
- xii. Resume Builder available, but data is not fielded once resume is created
- xiii. Potential Start Date
- xiv. Resume ID number (from its home system)
- xv. Staffing Firms and/or Direct Employers

xvi. Confidential (presumed)

xvii. Is Veteran

C. Job Spidering: DirectEmployers will offer free spidering functionality to states hosting their own state-sponsored websites and states using self-service websites.

1. DirectEmployers spiders its member companies and other websites (with permission) to gather jobs using functionality in JobCentral. DirectEmployers will use the same JobCentral functionality to conduct free spidering on behalf of a state workforce agency where the state workforce agency has obtained permission to spider from an employer. DirectEmployers and NASWA, through the governance process, will establish parameters for this service in terms of size of employers to be spidered and priority for new spidering requests.
  - a. DirectEmployers will create a simple permission form that can be used by state workforce agency staff and include it within the state's own job bank or made part of the free self-service site.
  - b. Employers are offered a procedure to withdraw their permission to spider at any time.
2. Jobs collected through the spidering process will be added to the free self-service sites (if applicable) and the national labor exchange database. They also will be included within the nightly downloads. DirectEmployers will ensure that updates will occur at least once every evening of the week.
3. If the employer the state has requested to be spidered cannot be effectively spidered, DirectEmployers will arrange to upload their jobs to the appropriate site(s).
4. DirectEmployers will spider the following job data:
  - a. Job Title
  - b. Unique Job ID
  - c. Job URL (how to apply)
  - d. Employer Name
  - e. Industry identifiers
  - f. Company size
  - g. Job Description (including, if stated, qualification requirements, duties, wages, benefits)
  - h. Job Location (City, State, Zip, Country)
  - i. Date Job was Acquired
  - j. Employer Type (Direct or Staffing)
  - k. Occupational code

D. Data transfer interfaces: DirectEmployers will provide various interfaces for the transfer of data both from state workforce agencies to JobCentral and from JobCentral to the state workforce agencies. DirectEmployers will work with state workforce agencies to select the interface(s) that would result in the most efficient data transfer:

1. Interfaces may include bulk file uploads and downloads, APIs, and/or Web Services.

2. Depending on the task to be accomplished, interfaces may be scheduled or accessible in real time, and may be either available in multiple formats or a format specified in a XML Document Type Definition.

### **III. Transition Activities**

#### **A. Administrative Functionality for Participating State Workforce Agencies:**

1. DirectEmployers will work closely with NASWA and the participating states to ensure as little additional work as possible is required of the state workforce agencies to transition services to the national labor exchange.
2. DirectEmployers will assist state workforce agencies should they be interested in migrating job order information currently in AJB.
3. DirectEmployers will run the national labor exchange parallel to AJB for as long as possible.
4. Basic backend functionality will be provided to state workforce agencies as part of the self-service system, including review of registrations/postings, reporting of job and resume statistics, a report writer, etc.
5. Additional functionality may be agreed upon after discussion NASWA, DirectEmployers, and the participating state workforce agencies.

### **IV. New System Functionality For Future Consideration And Implementation.**

#### **A. The following additional system features will be explored by DirectEmployers, NASWA, and the participating state workforce agencies through the national labor exchange Operations Committee after implementation of the system and during the second contractual year:**

1. A way for the JobCentral job search to be incorporated into state managed job and talent banks.
2. Ways that resumes may be shared between the sites.
3. Ways to allow state managed job and talent banks to include searches of the national resume database.
4. DirectEmployers will work with NASWA and the states with self-service sites to expand/alter the current JobCentral resume data to fit their needs, keeping in mind the experience of the job seeker.

## **Addendum B**

### **SERVICES PROVIDED BY AJB**

America's Job Bank performed the "interstate clearance" function for the US Department of Labor and did so in a way that allowed for direct customer access (business and job seeker) to the information. In performing that function it provided the following services to the states and the general public.

#### *State Services:*

- Allowed for a nightly upload of job orders that the state wanted to have available to the national audience through the [www.ajb.org](http://www.ajb.org), a state audience through the [www.ajb.org/stateinitial](http://www.ajb.org/stateinitial) site, and/or to neighboring states through a download file.
- Allowed for a nightly download of jobs to the state system (internal or Internet) that could include jobs posted by neighboring states and jobs posted by companies directly to America's Job Bank.
- Provided each state with a state logo Internet job bank ([www.ajb.org/stateinitial](http://www.ajb.org/stateinitial)) which allowed job seekers to search for jobs and post a resume and which allowed employers to post jobs and search for resumes. That type of site was available to all states and for a number of states it was their only Internet job/talent bank presence.
- At the state's option, AJB provided two services related to employers: 1) it reviewed the requests by employers to establish a registered account, and 2) it reviewed jobs for appropriateness when posted by the employers through the Internet site.
- Allowed for multi-state employers to have a single point of contact where jobs in any State could be posted through one interface (the AJB Public Interface or PI process).

#### *Services to Job Seekers and Employers:*

- Free search of job listings by job seekers nationwide through the main site and through any of the state initial sites. The search could be done with or without registration on the site.
- Free resume posting by registered job seekers through one of the state Initial sites. The resumes would be available to registered employers in any state. The job seeker had the option to make the resume confidential (searchable but contact information hidden), not searchable (but available for use in replying to job postings), or open to a search by employers with contact information available.

- Job scouts (saved searches) that would run periodically and send e-mails to the job seeker about new job openings.
- Free job posting for registered employers. The posting would be available to nationwide search.
- Free resume search for registered employers. Search would be of any resume posted to AJB nationwide.
- Talent scout (saved searches) that would run periodically and send e-mails to the employer about new job seekers.