

**LABOR-MANAGEMENT WORKERS' COMPENSATION AGREEMENT**  
**COLLECTIVELY BARGAINED LABOR-MANAGEMENT WORKERS'**  
**COMPENSATION AGREEMENT PURSUANT TO THE PROVISIONS OF**  
**CALIFORNIA LABOR CODE SECTION 3201.7 INCLUDING PROVISIONS FOR AN**  
**ALTERNATIVE DISPUTE RESOLUTION ("ADR") PROCESS**

**BETWEEN**

**UFCW 8-GOLDEN STATE**

**AND**

**VFORCE SKILLED TRADES, LLC**

THIS LABOR-MANAGEMENT WORKERS' COMPENSATION AGREEMENT (hereinafter referred to as "the WCA") is made and entered into by and between UFCW 8-GOLDEN STATE (hereinafter referred to as "the Union") and VFORCE SKILLED TRADES, LLC (hereinafter referred to as "the Employer"). The term "parties," as used herein shall refer to the Union and the Employer and shall include reference to an Employee who has filed a claim for workers' compensation benefits and payments and the workers' compensation insurance company and its claims representative representing the Employer with respect to such claim, as the context so requires. The WCA has been negotiated separate and apart from any other collectively bargained agreement covering the affected employees.

**ARTICLE 1. INTENT, PURPOSE AND GOALS OF THE WCA**

1.1 It is the intent and purpose of the WCA to provide employees who claim workers' compensation for occupational injuries and diseases (hereinafter referred to as "injury" or "injuries") under California Workers' Compensation Law ("hereinafter referred to as "the law") with an alternative to the State's workers' compensation system and processes identified and referenced in Division 4 of the California Labor Code, as may be amended from time to time. California Labor Code section 3201.7 provides the underlying authority for the parties to negotiate, create, enter into, and operate the WCA, which shall have exclusive jurisdiction over such injury or injuries.

1.2 Among the many goals of the WCA are: (a) Improving access to high-quality medical care; (b) providing employees with a source of workers' compensation information to promote health, safety and avoid misunderstandings concerning workers' compensation benefits, payments, medical care, retraining, light duty, modified job, return to work, medical treatment and evaluations, and other workers' compensation terminology; (c) avoiding litigation by fostering cooperation between the parties; (d) promoting early return to work; (e) reducing delays that would otherwise be encountered in the State system administered by the California Division of Workers' Compensation (hereinafter referred to as "DWC"); and (f) providing an Alternative Dispute Resolution (hereinafter referred to as "ADR") Process to govern actual disputes between parties as disputed issues arise.

1.3 The parties to the WCA believe that adequately informing employees, employers, insurers, and other WCA stakeholders about the services available under the WCA is essential to achieving the goals of the WCA. Thus, the parties to the WCA shall ensure that promotional methods for providing appropriate contact information and describing the services available under the WCA include, but are not limited to, the following: (a) Printed materials in new-hire packets; (b) printed materials provided to an employee who reports a work-related injury or illness; (c) printed materials posted or displayed in areas conspicuous to employees at Union and Employer locations; (d) an intuitive website link on all Union and Employer websites that directs website visitors to the ADR website; and (e) any type of electronic communication (e.g., email, text, social media).

## **ARTICLE 2. SCOPE OF AGREEMENT**

2.1 The WCA, which was negotiated by the parties, shall apply to all organizations who sign either the WCA or a Memorandum Of Understanding to be bound by the WCA. The term "employer" as used herein, shall refer to any such organization.

2.2 The WCA shall apply only to injuries, as defined by Law, sustained by employees during the term of the WCA and covered by Union collective bargaining agreements during their employment by an Employer in California.

2.3 The WCA shall remain in effect for a period of three (3) years from the date of its execution by the parties. It shall automatically renew for continuing consecutive three (3) year periods thereafter, unless terminated by a party to the WCA in the manner provided herein. A party desiring to terminate the WCA must notify in writing the other parties to the WCA, and the Joint Labor/Management Committee established hereinafter, of its intent to terminate the WCA at least ninety (90) days prior to the date of termination. Any Employer wishing to withdraw from the WCA may do so upon its workers' compensation insurance policy renewal date, provided it notifies in writing the other parties to the WCA and the Joint Labor/Management Committee at least ninety (90) days prior to the policy renewal date. Upon termination or withdrawal, any claim involving a work injury claim that occurred during the term that the WCA was applicable to the Employer shall continue to be resolved subject to the terms of the WCA.

2.4 The WCA represents the complete understanding of the parties with respect to the subject matter dealt with herein.

2.5 In any instance of conflict, the provisions of the WCA shall take precedence over provisions of the Law, so far as permitted by the provisions of California Labor Code section 3201.7.

2.6 The Joint Labor/Management Committee (hereinafter referred to as "the JLMC") is hereby established and shall also be deemed the joint labor management safety committee per Labor Code section 3201.7 (a)(3)(D). The JLMC shall be comprised of two (2) members appointed by the Union and two (2) members appointed by the Employer. The JLMC shall supervise all matters involving implementation and conformity with the provisions of the WCA and related rules and law. The JLMC shall have full power and authority to develop, adopt and

implement any rule and/or procedure the JLMC deems necessary to carry out and/or affect the purpose, intent, and goals of the WCA. The terms of the JLMC appointees shall run concurrent with the term of the WCA. In case a dispute arises between members of the JLMC and is deadlocked, the matter in dispute shall be referred to the American Arbitration Association for expedited adjudication. The Arbitrator's decision shall be final and binding on the parties.

2.7 The parties to the WCA hereby select American Ombudsman Enterprises (hereinafter referred to as "AOE") to provide the following: (a) General administrative services to the JLMC; (b) information services to employees and employers; (c) Ombudsman services; and (d) WCA ADR Court administrative services, including acting as Clerk of the WCA ADR Court. AOE has over twenty (20) years' experience providing such services to various collectively bargained workers' compensation programs and systems in California. The duties and responsibilities of AOE shall be overseen by the JLMC. AOE shall provide the day to day services as construed under the WCA and as may be modified and changed from time to time by the JLMC.

2.8 The term Employer shall also include an Employer's workers' compensation insurance carrier and/or Third Party Administrator (hereinafter referred to as "TPA") and/or the Employer as self-insured as the context so requires.

2.9 The parties to the WCA have developed an agreed upon exclusive list of AUTHORIZED MEDICAL PROVIDERS, which shall include those medical facilities referenced in Exhibit "A" attached hereto and incorporated herein by this reference as though fully set forth herein. The JLMC may modify the exclusive list of AUTHORIZED MEDICAL PROVIDERS by adding or deleting a medical provider. A properly designated Authorized Medical Provider shall be hereinafter referred to as an "AMP." Any AMP receiving a felony sentence for a California or Federal crime or sentenced or indicted on the grounds of committing workers' compensation fraud shall automatically be ineligible to serve in the capacity of an AMP.

2.10 Attorneys who are licensed and authorized to practice law in California are permitted to participate in the WCA ADR Process under the provisions of Labor Code section 3201.7. An attorney's participation during the stages of the WCA ADR Process is subject to the WCA and the rules adopted by the JLMC, as such may be amended from time to time. An attorney for any party shall not be recognized as an "attorney-of-record" until the attorney completes and files with the WCA ADR Court the WCA ADR Court's form of Notice Of Legal Representation And Attorney Fee Agreement, which shall be available from the WCA ADR Court Clerk.

2.11 Documents filed at local Offices of the Workers' Compensation Appeals Board (hereinafter referred to as "the WCAB") shall not be considered or recognized as filed within the jurisdiction of the WCA ADR Process and/or WCA ADR Court.

2.12 The employer has adopted a Return to Work Policy (hereinafter referred to as "the RWP") which provides for continued employment under certain conditions for an employee whose employment would otherwise be interrupted due to various reasons. The RWP shall apply to any employee filing a claim of industrial injury subject to the WCA. The RWP may be changed, amended and/or altered from time to time by the employer. The RWP is adopted by this reference as though fully set forth herein.

### **ARTICLE 3. INFORMATION FOR THE PARTIES**

3.1 The parties to the WCA believe that employees often have little or no understanding of workers' compensation prior to, or initially following, an occupational injury or disease. Thus, the parties to the WCA believe that to promote health and safety, avoid misunderstandings, help reduce delays, and avoid litigation that would otherwise be encountered in the State's system, the employee should have a source of information regarding workers' compensation.

3.2 AOE shall communicate directly with the parties to provide information regarding workers' compensation. Information provided shall include, but not be limited to, the following subjects: (a) Workers' compensation terminology; (b) filing an injury claim; (c) access to medical care from an AMP; (d) temporary disability (TD) and/or permanent disability (PD) indemnity payments; (e) retraining based on receipt of a Supplemental Job Displacement Benefit (SJDB); (f) return to work policies; (g) modified or alternative work; (h) medical Utilization Review (UR); and (i) various other aspects of workers' compensation.

3.3 The act of providing workers' compensation information under the WCA is intended to ensure that the parties have an impartial source for obtaining such information.

### **ARTICLE 4. AUTHORIZED MEDICAL PROVIDERS**

4.1 All medical and hospital services required by employees who are subject to the WCA, as the result of a compensable injury, shall be furnished by an AMP.

4.2 In case of emergency, when no AMP is available, the employee may seek treatment from a health care professional or facility, not otherwise authorized by the WCA, to provide treatment during the emergency. Responsibility for treatment shall be transferred to an AMP as soon as possible, consistent with sound medical practices. The parties shall cooperate and do what is necessary to effectuate such transfer of care.

4.3 The initial AMP shall be the Primary Treating Physician (PTP) of the employee. After receiving medical treatment from the initial AMP the employee may change one time to another AMP to serve as the new PTP by coordinating such change with the insurer. Additional changes of the PTP will only be allowed with written consent of the insurer.

4.4 When referred by the PTP to a secondary treating physician (STP) in a particular specialty, the STP shall also be an AMP. The employee may change once to another STP AMP in such specialty by coordinating the change with the insurer. Additional changes of the STP will only be allowed with written consent of the insurer.

4.5 Neither the employer nor its insurance carrier shall be responsible for the cost of medical services furnished by a health care professional or facility not authorized pursuant to the WCA. Nothing in this Article shall be construed to create a right for an employee to receive medical care at the expense of the employer or its insurance carrier which is not reasonably required to cure or relieve a work related injury.

4.6 The exclusive list of Authorized Medical Providers shall include medical providers in the specialties of Cardiology, Chiropractic, Dermatology, General Practice, Internal Medicine, Neurosurgery, Neurology, Occupational Medicine, Oncology, Ophthalmology, Orthopedics, Psychiatry, Pulmonary/Respiratory, Radiology and others as deemed appropriate by the JLMC.

4.7 All prescription medicines required by virtue of injury subject to the WCA shall be furnished by the insurer through a prescription medicine provider service selected or agreed to by the insurer except in those instances whereby the PTP and/or STP determines that due to time constraints or other valid medical reasons, use of another prescription provider/source is required.

#### **ARTICLE 5. MEDICAL EVALUATIONS BY A QUALIFIED MEDICAL EVALUATOR (QME) OR AGREED MEDICAL EVALUATOR (AME)**

5.1 The insurer and/or the employee may request to select a State certified QME to confirm or deny the opinions of the PTP. Only one QME selection in the appropriate medical specialty shall be allowed to a party for addressing a particular medical issue. In cases where one party has received the written report of its selected QME, the other party may continue to rely upon the opinions of the PTP or may object to the PTP opinions and the opinions of the other party's selected QME and request an opinion of a State certified QME to confirm or deny the opinions of the PTP or the QME selected by the other party. Among other things, the rules adopted by the JLMC shall establish the QME selection procedures.

5.2 The insurer and the employee shall be bound by the opinions of their respective selected QME(s).

5.3 By mutual agreement, the parties may select an AME at any time to address a single medical issue or multiple medical issues.

5.4 It is essential and necessary for a medical provider to have a complete medical file for the person being treated and/or evaluated. The insurer is the designated depository for the complete medical file. The insurer shall formally request the employee claiming injury to provide a complete list of previous medical providers. The employee shall provide the requested list and shall authorize the insurer to obtain such medical records from the employee's previous medical providers. Upon request of the employee claiming injury, the insurer shall provide the employee with a complete copy of the employee's medical records in the insurer's possession. The parties to the WCA believe that cooperating without delay by providing expeditious authorization and collection of previous medical records will avoid significant delays in making informed decisions related to medical treatment.

#### **ARTICLE 6. ADR PROCESS**

6.1 The parties to the WCA acknowledge that the State's administrative and statutory provisions governing the adjudication of disputed workers' compensation issues have resulted in unnecessary delays, increased expenses, employee dissatisfaction, and wide scale abuses by

unscrupulous service providers. In recognition of the foregoing, the parties hereby establish the exclusive ADR Process set forth in the remaining sections of this Article.

6.2 Per Labor Code section 3201.7, the WCA ADR Process for a particular disputed issue is activated by the filing of such dispute by a party.

6.3 The ADR Process consists of the following three (3) stages: (a) Ombudsman; (b) Mediation; and (c) Arbitration.

6.4 A claim of injury, subject to the WCA, filed with a WCAB local office shall not be deemed as concurrently filed or otherwise filed within the jurisdiction of the WCA. The employee who is the subject of the claim of injury filed at the WCAB, shall cause the WCAB filed claim to be dismissed as to the WCA participating employer/insurer and shall provide a copy of the Order of Dismissal to the insurer and the WCA ADR Court Clerk. The ADR Process is the sole means of dispute resolution and no disputed issue shall proceed to the WCAB unless it has completed the Arbitration stage of the ADR Process.

6.5 All disputed issues shall be filed with the Ombudsman to initiate the ADR Process for each disputed issue. The Ombudsman shall attempt to resolve each disputed issue with the parties to the dispute(s).

6.6 All parties to the disputed issue(s) shall cooperate with the Ombudsman by providing all information and documents the Ombudsman deems necessary to address the disputed issue(s). If the disputed issue(s) cannot be resolved within ten (10) working days of receipt of all necessary information and documents, the Ombudsman will complete an Ombudsman Report And Recommendation and provide the parties with notice of Mediation rights. No disputed issue(s) will proceed to Mediation without first being presented to the Ombudsman, and Mediation shall be limited to the disputed issue(s) that were addressed by the Ombudsman and not resolved. The Ombudsman shall maintain a confidential log recording all Ombudsman activity, including the date of each notification and the date of each response.

6.7 Within twenty-five (25) days after service of the Ombudsman Report And Recommendation on the parties, any dissatisfied party shall timely file with the WCA ADR Court Clerk a properly completed Request For Mediation on the form available from the WCA ADR Court Clerk. Failure to timely file a properly completed Request For Mediation with the WCA ADR Court Clerk shall be a bar to adjudication at Arbitration of the unresolved disputed issue(s) identified in the Ombudsman Report And Recommendation. Upon timely receipt, the Request For Mediation shall be assigned to a Mediator within five (5) days of receipt by the WCA ADR Court Clerk. The Mediator will contact the parties to the dispute and take whatever steps the Mediator deems reasonable to resolve the dispute. A Mediation shall be telephonic and involve one or more of the parties as the Mediator deems appropriate. Mediation shall be completed in not more than ten (10) working days from the date of referral and receipt of all information and documents the Mediator deems necessary to complete the Mediation assignment. No unresolved issue(s) will be permitted to proceed beyond Mediation to Arbitration unless and until the Mediation requestor cooperates with the Mediator in good faith.

The Mediator shall be selected from the list of Mediators attached as Exhibit "B" and incorporated herein by this reference.

6.8 Within twenty-five (25) days after service of the Mediator's Statement Of Completion And Result on the parties, any dissatisfied party shall timely file with the WCA ADR Court Clerk a properly completed Request For Arbitration on the form available from the WCA ADR Court Clerk. Failure to timely file a properly completed Request For Arbitration with the WCA ADR Court Clerk shall be a bar to adjudication at Arbitration of the unresolved disputed issue(s) that were eligible to be addressed by the Mediator during the Mediation stage. Upon timely receipt of a properly completed Request For Arbitration, the WCA ADR Court Clerk shall refer the matter for Arbitration.

6.9 The Arbitrator shall have experience in workers' compensation matters and shall have been at one time a California Workers' Compensation Judge or equivalent thereto. The Arbitrator shall be assigned from the list of approved Arbitrators, attached hereto as Exhibit "C" and incorporated herein by this reference. The Arbitrator shall have full power, jurisdiction, and authority to hear and determine all issues of fact and law presented, and to issue interim, interlocutory and final orders, findings, decisions, and awards as may be necessary to the full adjudication of the disputed issue(s) presented at Arbitration. The decision of the Arbitrator is final and binding, subject to review by the Commissioners of the Workers' Compensation Appeals Board (hereinafter referred to as "the Board") in the manner required by Labor Code section 3201.7 and shall have the same force and effect as an award, order, or decision of a judge of the WCAB.

6.10 Arbitration shall be conducted pursuant to the WCA and the Rules adopted by the JLMC, and shall be limited to the issues in dispute that were eligible to be addressed by the Mediator at the Mediation stage and not resolved. The Arbitrator shall set the Trial or Hearing date within sixty (60) days of the Arbitration assignment and the WCA ADR Court Clerk shall issue the appropriate Notice of Trial/Hearing and serve it on the parties and attorneys-of-record. No written or oral settlement offer, finding, or recommendation made during Mediation by any party or the Mediator shall be admissible in an Arbitration except by mutual agreement of the parties. However, the Arbitrator shall review the Ombudsman Report And Recommendation and the Mediator's Statement Of Completion And Result to confirm the disputed issue(s) that is/are eligible to be addressed at Arbitration. The parties to the WCA believe that the ADR Process is intended to achieve expeditious and complete resolution of the disputed issue(s) and toward that end, continuances of scheduled Arbitration Trials/Hearings are not favored. Any request for a continuance shall be submitted in writing setting forth facts and law in support of the request and filed with the Arbitrator and WCA ADR Court Clerk, and served on all parties not less than ten (10) days prior to the scheduled Arbitration Trial/Hearing. The Arbitrator shall expedite a decision with respect to granting or denying any request for continuance. The Arbitrator shall issue an Arbitrator's decision within ten (10) working days of completion of the Arbitration proceedings and of issuance of the Arbitrator's notice that the matter has been submitted for decision.

6.11 The Mediator or the Arbitrator, may, in their sole discretion, appoint an Independent Medical Evaluator (IME) to assist in the resolution of any medical issue, the cost to be paid by

the employer/insurer. The Arbitrator may attribute to the IME opinion whatever evidentiary weight the Arbitrator deems appropriate.

## **ARTICLE 7. SETTLEMENTS**

7.1 The parties may submit an executed settlement to the WCA ADR Court Clerk for review and submission to an Arbitrator for expeditious issuance of Award/Order/Decision. Any such settlement shall be in the form of a Compromise And Release Agreement (hereinafter "C&R") or in the form of Stipulations With Request For Award (hereinafter "Stips"). The C&R or Stips settlement shall be prepared using the WCA ADR Court C&R or Stips form available from the WCA ADR Court Clerk and shall be accompanied by supporting documentation.

7.2 In cases where the employee wishes to enter into a C&R whereby the employee gives up any and all rights to future medical treatment for a cash payment, there may be a requirement that the future medical treatment value in the form of a Medicare Set-Aside (hereinafter referred to as "the MSA") be submitted to the Center for Medicare Services (hereinafter referred to as "CMS"). The employee shall provide the workers' compensation insurer and/or its agent with authorization directed to the Social Security Administration and/or CMS to release any information necessary for determination of the MSA.

## **ARTICLE 8. MISCELLANEOUS**

8.1 The parties to the WCA recognize that adequate funding is essential in assuring a successful implementation and application of the WCA.

8.2 The Mediators and Arbitrators appointed pursuant to the WCA shall serve as independent contractors whose fees shall be paid by the employer's workers' compensation insurance carrier and allocated to the particular injury claim for which the services are necessary. In addition, any fees for a court reporter for a particular Arbitration shall be paid by the employer's workers' compensation insurance carrier. Such payments shall be made timely by the insurer so as not to incur unnecessary expenses associated with unpaid bills (e.g., late fees).

8.3 All payments required to be made by the employer pursuant to the WCA in accordance with law, shall be made by the employer's workers' compensation carrier or the TPA. Similarly, all actions required by law to be undertaken by the workers' compensation insurance carrier or TPA rather than the employer, shall be performed by the employer's workers' compensation carrier or the TPA.

8.4 JLMC appointees shall not be responsible for any payments for services required under the WCA. The employer is the designee of the JLMC for making timely payments to AOE.

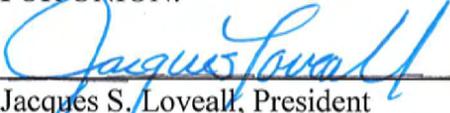
8.5 Upon termination of the WCA, the parties shall take whatever steps are necessary to insure that all obligations under the WCA are fulfilled until all claims, subject to the WCA, are resolved.

8.6 In the event of legal action contesting the legality of the WCA, or any portion of it, the Union and the Employer shall share equally the cost of defending the WCA, shall actively assist in such defense, and shall solicit the participation and financial assistance of other interested parties in such defense.

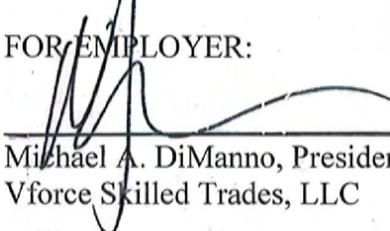
8.7 If any provisions of the WCA or its application to any person or circumstance are held invalid, the invalidity shall not affect any other provisions or applications of the WCA that can be given effect without the invalid provisions or applications, and to this end the provisions of the WCA are declared to be severable.

EXECUTED THIS 13<sup>th</sup> DAY OF May, 2016 BY THE  
AUTHORIZED REPRESENTATIVES OF THE PARTIES AS SET FORTH BELOW:

FOR UNION:

  
\_\_\_\_\_  
Jacques S. Loveall, President  
UFCW 8 – Golden State

FOR EMPLOYER:

  
\_\_\_\_\_  
Michael A. DiManno, President  
Vforce Skilled Trades, LLC