

Workers Compensation Carve Out & Alternative Dispute Resolution Agreement

by & between

DMS Facility Services

and the

Service Employees International Union (SEIU) Local 1877

This Agreement is made and entered into this 8th day of September, 2007, by and between DMS Facility Services (hereinafter referred to as "EMPLOYER") and SEIU Local 1877 (hereinafter referred to as "UNION"). The term "parties" as used herein shall refer to Employer and Union.

ARTICLE I

PURPOSE

- 1.1 It is the intent of this Agreement to provide covered Employees who claim compensation for personal injuries and occupational diseases (hereinafter referred to as "injuries") under the California Workers' Compensation Law (hereinafter referred to as the "Law") with improved access to high-quality medical care, and to reduce the number and severity of disputes and provide an efficient and effective method of dealing with disputes resulting from such injuries by utilizing the provisions of SB 228 Chapter 639, §14.7 of the 2003 session of the State of California Legislature (Labor Code Section 3201.7) and SB 899 Chapter 34 of the 2004 session of the State of California Legislature (Labor Code Section 3201.7) to establish a system of medical care delivery and dispute prevention and resolution which may be used by any Employer working in the State of California who is signatory to this Agreement (or a Memorandum of Understanding agreeing to be bound by the terms of Agreement) and to a collective bargaining agreement with the Union in California.

ARTICLE II

SCOPE OF AGREEMENT

- 2.1 This Agreement shall apply only to injuries as defined by the Law sustained by employees covered by SEIU Local 1877 collective bargaining agreements ("Employee") during their employment by Employer during the term of this Agreement.
- 2.2 This Agreement represents the complete understanding of the parties with respect to the subject matter dealt with herein.
- 2.3 In any instance of conflict, the provisions of this Agreement shall take precedence over provisions of the Law, so far as permitted by the provisions of Labor Code 3201.7 of the State of California.
- 2.4 There shall be a labor-management safety and health committee established of four (4) members. The Employers shall appoint two (2) members of this Committee and the Union shall appoint two (2) members of this Committee. The terms of the appointees shall run concurrent with the term of this Agreement. The Committees shall promulgate rules for its operation.
- 2.5 The parties to this Agreement agree that it is in their mutual best interest to adopt the attached fee schedule (Attachment A) limiting the fees which may be charged for mediation, arbitration, medical treatment, attorneys fees, providing documents and narratives, and any other associated costs. The Board of Trustees of the Ross Pike Memorial Trust Fund may change, alter or amend the fee schedules established hereto at the Board's discretion. The Board of Trustees shall make this fee schedule available to all parties to this Agreement.
- 2.6 The term "claims administrator" as used herein shall refer to the workers' compensation insurer of Employer (if insured), to the third-party administrator of Employer (if self-insured), or to Employer itself (if self-insured and acting as its own administrator).

ARTICLE III

DELIVERY OF MEDICAL BENEFITS/AUTHORIZED MEDICAL CARE DELIVERY

- 3.1 All medical treatment required to be provided by Employer under workers' compensation law shall be furnished by physicians and other health care providers selected by Employee from an exclusive list of providers mutually agreed to by the parties to this Agreement (hereinafter referred to as "exclusive list of providers"). Selection shall be based on the physician's specialty or recognized expertise in treating Employee's particular injury.

- 3.2 In case of emergency when no authorized provider is available, Employee may seek treatment from a health care provider not otherwise authorized by this Agreement to provide treatment during the emergency. Responsibility for treatment shall be transferred by the claims administrator to an authorized provider as soon as possible, consistent with sound medical practice.
- 3.3 Questions, concerns, and disputes arising between Employee and treating physician as to whether medical tests or treatment are required under California workers' compensation law, between Employee and claims administrator as to whether medical tests or treatment are required, or between Employee and treating physician or between Employee and claims administrator over matters other than whether medical tests or treatment are required shall be resolved through the ADR processes set forth in Article IV.

ARTICLE IV

DISPUTE PREVENTION AND RESOLUTION

The parties hereto acknowledge that the provisions of California law governing the adjudication of disputed Workers' Compensation claims have resulted in delay, increased expense and other inefficiencies which result in undue detriment to employees and employers. In recognition of the foregoing, the parties hereby establish the exclusive alternate dispute resolution system set forth below.

- 4.1 The dispute prevention and resolution program established by this Agreement will consist of three components:

Ombudsman
Mediation
Arbitration

- 4.2 This program shall replace all dispute resolution processes provided by workers' compensation law to the maximum extent permitted pursuant to California Labor Code Section 3201.7, subject to the following exceptions:

Disputes between a party to this Agreement and a person or entity who is not subject to the provisions of this Agreement by subscription or law, unless such third party or entity agrees in writing to submit to the jurisdiction of this dispute prevention and resolution program.

All claims provided by workers' compensation law shall be subject to this Agreement to the maximum extent permitted by law, including, but not limited to, claims for increased compensation under Labor Code sections 4650 and/or 5614 due to delays by the claims administrator, and claims for increased compensation under Labor Code section 4553 where the employee was injured because of serious and willful misconduct. Any claim subject to this Agreement filed with the WCAB for resolution will immediately be removed and placed within the program established by this Agreement. This is the sole

means of dispute resolution and no dispute shall proceed to the California Workers' Compensation Appeals Board until it has completed the ombudsman, mediation and arbitration processes defined by this Agreement.

4.3 The Ombudsman will be selected and paid for by the Ross Pike Memorial Trust Fund.

The Ombudsman shall have experience and knowledge of the workers' compensation industry. The Ombudsman shall have the capacity to converse fluently and knowledgeably about workers compensation related matters in Spanish, or have a translation service that is workable and immediately accessible. The Employer shall report all lost-time injuries simultaneously to the Ombudsman and to the Employer's insurer. The Ombudsman shall contact the Employee within 24 hours of said notification. Any Employee with a work-related injury may initiate contact with the Ombudsman. The Ombudsman shall provide the Employee with orientation as to the mechanics of the ADR program and offer assistance in attempting to resolve any disputes with Employer or claims administrator subject to this Article. The Ombudsman shall present their response to the Employees in written terms readily understandable by the Employee in English and, where the Employee does not comfortably read English, in their primary language. The Ombudsman shall assist Employee in completing and filing requests for mediation and arbitration related to alleged work-related injuries subject to this Article and shall assist Employee with any other questions, concerns, or problems that arise related to Employee's claim. The Employer and claims administrator shall also be allowed to contact the Ombudsman to request information or assistance in resolving a dispute. A third party, not a party to this Agreement, may file a written request with the Ombudsman to assist in resolving dispute involving either or both of the parties hereto, provided the dispute is related to a claim of industrial injury covered by this Agreement.

4.4 If Employee disagrees with either the diagnosis or the treatment prescribed by the treating physician, Employee may switch to a different treating physician within the exclusive list of providers. Employee may also request a second opinion from a physician within the exclusive list of providers either after, or in lieu of, switching to a different treating physician. If Employee disagrees with the second opinion within the exclusive list of providers, Employee may obtain a medical evaluation outside the exclusive list of providers through the process set forth in Paragraph 4.7.

4.5 If Employee disagrees with a decision to modify, delay, or deny treatment recommended by the treating physician, Employee may obtain a medical evaluation outside the exclusive list of providers through the process set forth in Paragraph 4.7.

4.6 If Employee or the claims administrator disagrees with a medical determination made by the treating physician concerning any medical issue other than the diagnosis or the treatment prescribed by the treating physician, Employee or claims administrator may obtain a medical evaluation outside the exclusive list of providers through the process set forth in Paragraph 4.7.

4.7 If Employee or claims administrator requests a medical evaluation in accordance with Paragraph 4.4, 4.5, or 4.6, the Ombudsman shall select the medical evaluator from the list

of authorized medical evaluators mutually agreed to by the parties to this Agreement. This list is attached hereto and marked Attachment B. As needed, this list may be modified by the board of the Ross Pike Memorial Trust Fund. The medical evaluator shall be paid for by the claims administrator. Only one such second opinion from a medical evaluator shall be permitted for any issue. In the event that no medical evaluator from the authorized list and from the appropriate specialty is available to render a second opinion, the Ombudsman shall in his or her sole discretion select another physician as the medical evaluator.

- 4.8 If Employee has a dispute regarding workers compensation benefits that cannot be resolved to the Employee's satisfaction within ten (10) working days of the claims administrator's denial of benefit, the Ombudsman shall assist with completion and filing of mediation request form. The Ombudsman shall file the mediation request form and explain the mechanics of the mediation process to the Employee (and to the claims administrator if requested). The Employee and claims administrator may extend the ten (10) working day period by mutual agreement. No issue will proceed to mediation without first being presented to the Ombudsman. The Ombudsman will maintain a log recording all Ombudsman activity, including the date of each notification and the date of each response.
- 4.9 Application for mediation shall be made not more than sixty (60) days after the Ombudsman's written response to notification of a claim by the Employee or claims administrator. Failure to mediate will bar any further right to adjudicate the issue. Any application for mediation shall be assigned to a mediator selected under this Agreement within three (3) working days of Ombudsman's receipt of a request. The mediator will contact the parties to the dispute, including the claims administrator, and shall take whatever steps the mediator deems reasonable to bring the dispute to an agreed conclusion. The Ombudsman will inquire with the Employee as to whether they feel they need interpretation services for the mediation and be responsible for securing certified interpreting services if the Employee so requests. Interpreter's fees will be paid for by the claims administrator.
- 4.10 The mediator subject to this Agreement shall be from the list mutually agreed to by the parties to this Agreement and shall have experience and knowledge of the workers' compensation industry. This list is attached hereto and marked Attachment C. As needed, this list may be modified by the board of the Ross Pike Memorial Trust Fund. The Mediator will be selected and paid for by the Ross Pike Memorial Trust Fund.
- 4.11 Mediation shall be completed in not more than ten (10) working days from the date of referral, except that in no event shall an issue be permitted to proceed beyond mediation until and unless the moving party cooperates with the mediator and the mediation process, or if both the Employee and claims administrator mutually agree to an extension.
- 4.12 Within thirty (30) calendar days after the completion of the mediation process, any party not satisfied with the outcome shall file with the Ross Pike Memorial Trust Fund (hereinafter "the Trust") a request that the matter be referred for arbitration. In all cases,

within ten (10) calendar days after completion of the mediation process, the Ombudsman will contact Employee by phone and regular mail to offer assistance in requesting arbitration if Employee so desires and to explain the mechanics of the arbitration process to Employee. Upon receipt of such a request for arbitration, the Trust shall immediately refer the matter for arbitration as provided herein. The arbitration date will be set with sufficient advance notice to permit the parties to retain and/or consult with legal counsel. The Arbitrator will be selected and paid for by the Ross Pike Memorial Trust Fund. The Ombudsman will inquire with Employee as to whether they feel they need interpretation services for the arbitration and be responsible for securing certified interpreting services if the Employee so requests. Interpreter's fees will be paid for by the claims administrator.

4.13 The Arbitrators shall have experience and be knowledgeable in the workers' compensation dispute process and shall have been at one time either a certified specialist in workers' compensation law or a California workers' compensation judge. The Trust or its designee shall assign the arbitrator for such purpose, from the list of Arbitrators agreed to by the Trust, a copy of which will be attached hereto and marked Attachment C. As needed, this list may be modified by the Trust. In any case which has been regularly assigned to an Arbitrator for hearing hereunder, 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 case. The decision of the Arbitrator is subject to review by the Workers' Compensation Appeals Board (WCAB) 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 workers' compensation judge.

4.14 Arbitration will be conducted pursuant to the rules of the American Arbitration Association, or such other rules agreed to by the Trust, using the Arbitrator assigned by the Trust. Unless this parties to the matter otherwise agree, arbitration proceedings shall be completed within thirty (30) days after referral, and an arbitration decision rendered within ten (10) working days of the completion of the proceedings. The Arbitrator's decision shall be written in a form consistent with the WCAB practices.

4.15 No written or oral offer, finding or recommendation made during the mediation process by any party or mediator shall be admissible in the arbitration proceedings except by mutual agreement of the parties.

4.16 The Mediator or Arbitrator may in his sole discretion appoint an authorized health care professional from the list of authorized medical evaluations mutually agreed to by the parties to this Agreement, attached hereto and marked as Attachment B, to assist in the resolution of any medical issues, the cost to be paid by the claims administrator, unless voluntarily paid by the Ross Pike Memorial Trust Fund.

4.17 The parties may submit a proposed settlement to the Trust at any time for assignment to an Arbitrator for expeditious issuance of award and/or order. Any such settlement shall be in the form of a Compromise and Release Agreement or in the form of Stipulation

with Request for Award. The settlement shall be filed on a pre-printed form approved by Trust. The Trust may create a separate list of Arbitrators to handle settlements under separate contract(s), and change such list at the Trust's discretion.

- 4.18 All parties involved in a claim or dispute subject to this Agreement shall have the right to retain legal representation at their own expense.
- 4.19 It is agreed that the Ross Pike Memorial Trust Fund may assign Ombudsmen, Mediators and Arbitrators to geographical areas in order better to serve Employees.

ARTICLE V

TRUST FUND

- 5.1 There shall be a statewide Board of Trustees for the Ross Pike Memorial Trust Fund (identified above as "the Trust" and referred to in the alternative herein as "the Board"). The Board shall have two (2) members representing EMPLOYERS and two (2) members representing the Union. The Board shall select from its membership, but not both from the representatives of the same party, a Chairman and a Secretary who shall retain voting privileges. The Board shall meet at least twice per year and also when called by the Chairman.
- 5.2 The Board shall supervise all matters involving implementation and conformity with the provisions of this Agreement and California Workers' Compensation laws and labor codes. The Board shall have full power and authority to develop and implement any procedures the Board deems necessary to carry out or affect the purpose and scope of this Agreement. In case of deadlock, the matter in dispute shall be referred to the American Arbitration Association for expedited adjudication. The arbitrators' decision shall be final and binding upon both parties hereto.
- 5.3 The Board is hereby instructed and authorized to employ an administrator and an Ombudsman staff at such time as is possible and practical. The Board shall delegate to the administrator the responsibility and authority deemed necessary by the Board.
- 5.4 The parties recognize that adequate funding is essential in assuring the success of this Agreement. The administrators, mediators and arbitrators appointed pursuant to this Agreement shall serve as independent contractors and there is a need to pay the expenses incurred in the conduct of arbitration proceedings. There is a further need to pay the administrative expenses that flow from the duties of the administrator of the Ross Pike Memorial Trust Fund under this Agreement. In order to provide adequate funding for this alternative dispute resolution system administration of the Agreement, the Employers signatory hereto agree to pay to the Ross Pike Memorial Trust Fund a monthly contribution of \$0.02 per payroll hour for every Employee. The Employer agrees to supply such documentation of its hourly payroll records as to satisfy the parties. Failure

to supply satisfactory documentation or to pay the \$0.02 per payroll hour shall be grounds for the Board of Trustees to terminate this Agreement with the Employer.

5.5 The Ross Pike Memorial Trust Fund shall segregate such contributions on the books and records of the Ross Pike Memorial Trust Fund and shall segregate the expenses of this alternative dispute resolution system on the books and records of the Ross Pike Memorial Trust Fund.

5.6 The administrator of the Ross Pike Memorial Trust Fund shall advise the parties hereto quarterly of contributions received and expenditures made related to this alternative dispute resolution system. Should the administrator advise the parties hereto that the contributions are not sufficient to pay the costs of this alternative dispute resolution system, the parties agree to meet and negotiate solely for the purpose of negotiating a further contribution sufficient to pay the expense of the alternative dispute resolution system. Should the parties be unable to negotiate a contribution sufficient to pay the expense of this alternative dispute resolution system, this alternative dispute resolution system shall be suspended until such time as the parties are able to negotiate a sufficient contribution.

5.7 During the period of any such suspension, Employees covered by this Article and insurers of Employees covered by this Article shall utilize the dispute resolution system set forth in the California Labor Code and the Rules and Regulations adopted related thereto.

5.8 In no event shall the Trust Fund be liable for the expenses of Employer, Employee, or insurance carrier.

ARTICLE VI

MISCELLANEOUS ISSUES

6.1 All payments required of the Employer pursuant to this Agreement in relation to the injury-related claims of Employees shall, in accordance with California law, be made by the workers' compensation insurance carrier. Similarly, all actions required by law to be undertaken by the insurance carrier rather than the Employer shall be performed by the Employer's workers' compensation insurance carrier.

6.2 Upon termination of this Agreement, the parties and the Employer shall take whatever steps are necessary to ensure that all obligations under this Agreement are fulfilled until all claims subject to this Agreement are resolved.

6.3 In the event of legal action contesting the legality of this Agreement, or any portion of it, the Ross Pike Memorial Trust Fund shall pay the cost of defending this Agreement and shall actively assist in such defense, and shall solicit the participation and financial assistance of other interested parties in such defense.

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

ARTICLE VII

TERM OF AGREEMENT

This Agreement shall become effective as of the first day of October, 2007 and shall remain in effect until September 30, 2008, and shall continue from year to year thereafter; provided, however, that each party reserves the right to give notice to the other at least sixty (60) days prior to September 30, 2008, or prior to September 30 of any subsequent year, of its desire to change or modify this Agreement. Notwithstanding the foregoing, either party to this Agreement may terminate this Agreement with a sixty (60) day written notice to the other.

FOR THE EMPLOYER

DMS FACILITY SERVICES

By: *Paul R. [Signature]*

By: _____

By: _____

By: _____

Date: _____

FOR THE UNION

SERVICE EMPLOYEES INTERNATIONAL
UNION, LOCAL 1877

By: *Charles [Signature]*

By: _____

By: _____

By: _____

Date: _____

Attachment A

FEE SCHEDULES

ATTORNEY'S FEE SCHEDULE

The Arbitrator shall award the appropriate attorney fee. The attorney's fee shall be the reasonable fee as determined by the arbitrator or an amount not greater than 12% of the permanent disability award, whichever is less.

MEDICAL TREATMENT FEE SCHEDULE

All medical treatment fees and costs shall not exceed those authorized by the State of California Official Medical Fee Schedule or an amount agreed upon between the Authorized Provider and the Preferred Provider Network.

MEDICAL-LEGAL FEE SCHEDULE

All costs and charges for medical-legal expenses as defined in Section 4620 of the California Labor Code shall not exceed those authorized by the State of California or an amount agreed upon between the authorized Provider and the Employer or Third Party Administrator, whichever is less.

MEDIATOR AND ARBITRATOR FEES AND EXPENSES

All costs and charges for mediation and arbitration shall not exceed those provided for pursuant to contract between the Trust and the mediator, arbitrator or entity providing mediation and arbitration services.

COPIES OF DOCUMENTS

The Board of Trustees of the Ross Pike Memorial Trust Fund shall establish a schedule of reasonable fees and charges for the furnishing of copies, certified or otherwise, of related documents and writings.