

Contracts Governance

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Contact Information

Requestor Name: Suzette Fulton-Fike

Approver Name/Title*: Gordon Cunningham VP - Strategic Sourcing

Supplier Information

Supplier Name: Acrobat Outsourcing

Supplier Address: 665 3rd Street, Suite 415 San Francisco, CA 94107

General Contract Information

Contract Effective
Date (start):

1/6/2011
MM/DD/YYYY

Expiration
Date (end):

1/6/2014
MM/DD/YYYY

Contract Genesis**:

☒ Gap Inc. Standard Contract

☐ Non-Standard or Supplier-Provided Contract

Contract Type:

☐ Consulting Services Agreement (CSA)

☐ Master Services Agreement

☐ Product Supplier Agreement

☐ Purchase Order

☒ Other (Please Specify / List)

National Master Supplier Agreement for Temporary Personnel

Total Estimated Aggregate
Obligation (Spend):

\$225,000.00

Annual Estimated Aggregate
Obligation (Spend):

*Based on Board Of Directors approved signatory levels

**Gap Inc. contract / form is preferred and reduces the processing timeframe

For Gap Inc Internal Use Only

Payment Terms Net 30

Discount Terms N/A

Box Number August

Contract ID 41883848

Contract ID Bar
Code:



**NATIONAL MASTER SUPPLIER AGREEMENT
FOR TEMPORARY PERSONNEL**

THIS AGREEMENT is dated this 6 day of 01, 2011 ("Effective Date"), by and between ACROBAT OUTSOURCING with principal offices at 665 3RD ST STE 415 SF CA 94107 (hereinafter referred to as "Provider"), and The Gap, Inc., including its divisions, subsidiaries and affiliated entities, with its principal offices at Two Folsom Street, San Francisco, California 94105 (hereinafter referred to as "Customer").

WHEREAS, Customer requires flexible staffing; and

WHEREAS, Provider is in the business of providing such services and is willing to provide these services to Customer; and

WHEREAS, Customer has requested Provider to perform such services on Customer premises;

NOW THEREFORE, IN CONSIDERATION of the mutual agreements and covenants contained herein, Customer and Provider agree as follows:

1. **Term: Termination.** This Agreement shall commence as of the date set forth above and shall continue for a period of three (3) years, and shall only renew upon the mutual written agreement of the parties. Either party may terminate this Agreement if the other party breaches any material provision of the Agreement and fails to cure such breach within thirty (30) days of written notice thereof by the non-breaching party. Customer shall also have the right to terminate this Agreement immediately in the event of a breach of Sections 7, 11 or 13 without any obligation to provide Provider an opportunity to cure and with no monetary liability whatsoever to Provider. In addition, upon thirty (30) days' prior written notice to Provider, Customer may terminate this Agreement for convenience. Upon the termination or expiration of this Agreement, or upon Customer's earlier request, (i) each party shall promptly return to the other (or at the disclosing party's option, destroy) all Confidential Information of the other party in its possession (b) Provider shall return to Customer, in the format and on the media reasonably requested by Customer, all Customer Data and shall destroy all Customer Data in its possession or on its systems. Sections 2(c), 2(d), 3(c), 4(b), 7, 8, 9, 10, 11, 12, 13, and 16-25 shall survive any termination or expiration of this Agreement.

2. **Scope of Services.**

(a) This Agreement covers flexible staffing routinely performed by Provider, as further described in Attachment A-1 (the "Services"). The parties may add additional services to be provided under this Agreement by adding an additional Attachment A-x to this Agreement. Services shall be requested by way of a work order ("Work Order") and tracked through Customer's web based service ("Gap's Marketplace") managed by Gap's third party service provider ("Marketplace Service Provider").

(b) Upon request of Customer, Provider shall assign as many personnel requested by Customer, as are qualified and available for flexible staffing assignments ("Temporary Personnel"). Provider will use its best efforts to fill all orders with Provider's own employees. However, Provider may utilize an affiliate of Provider, where the affiliate is more than 50% (fifty percent) commonly owned by the same interest ("Affiliate Vendor") to provide Temporary Personnel to fill any assignment. Provider shall ensure that all Affiliate Vendors shall comply with the terms and conditions of this Agreement and any Attachments hereto, including performing the employer obligations pertaining to Temporary Personnel employed by them, as set forth herein, and Provider shall remain ultimately liable for the performance of the Services. Provider and Affiliate Vendors will screen, interview and reference check Temporary Personnel, and will comply with any other pre-assignment screening criteria mutually agreed to and set forth in subsection 2(d) below and Attachment B hereto. Customer shall have the right to approve in writing in advance all Affiliate Vendors.

(c) Provider and Affiliate Vendor will manage all employment aspects of its respective Temporary Personnel assigned to Customer, to include hiring, employment-based counseling, terminations, salary review, performance evaluations, work schedules, orientation and placement. Provider and Affiliate Vendor shall be solely responsible for the payment of wages to its respective Temporary Personnel for work performed on assignments hereunder, and will be solely responsible for withholding federal, state and local income taxes, paying social security taxes, unemployment insurance in an amount and under such terms as required by state law. Provider and Affiliate Vendor agree to comply with all laws regarding the employment and payment of wages to Temporary Personnel, including but not limited to those laws concerning the classification of employees as exempt, the payment of overtime, and any other provisions of law which concern the payment of wages. Provider and Affiliate Vendor shall verify the identity and right to work of each Temporary Personnel under the United States immigration laws.

(d) Provider represents and warrants that prior to the time that any Temporary Personnel of Provider or Affiliate Vendor commences Services under this Agreement, Provider or the respective Affiliate Vendor shall have completed a criminal background check, reference check and drug screening concerning such Temporary Personnel's previous work and personal history, to the extent such investigations, reference checks and screenings are consistent with applicable federal and state laws, are non-discriminatory and do not constitute an unwarranted intrusion into such Temporary Personnel's personal life. Furthermore, Provider and Affiliate Vendor shall comply with all legal requirements in performing such investigations, checks and screenings, including but not limited to, any notice to Temporary Personnel required by law. Provider shall bear all costs associated with such criminal background checks, reference checks and drug screenings concerning Temporary Personnel. In rendering Services under this Agreement, Provider shall provide only Temporary Personnel who have not been convicted on a charge of either (i) fraud, deceit, theft or related charges involving intent to deceive, including but not limited to embezzlement; or (ii) assault or battery, or any more serious charge of physical harm. In the event that any Temporary Personnel provided by Provider or an Affiliate Vendor is the only Temporary Personnel available that is capable of rendering the Services, Customer may terminate the Agreement, without any liability. Furthermore, Provider shall take whatever steps necessary to ensure that throughout the course of this Agreement, all Temporary Personnel providing Services meet the criteria set forth in (i) and (ii) above. Provider's failure to comply with its obligations under this provision of the Agreement shall constitute a material breach which allows Customer to terminate the Agreement immediately, and/or invoke its indemnity rights under this Agreement. In the event of termination for any reason, Customer reserves its right to all other legal and equitable remedies available to Customer, including the right to indemnification under the indemnification provisions of this Agreement.

(e) Provider will administer orders from Customer for flexible staffing assignments. Customer shall provide sufficient information about its specific needs so that Provider can match the skills and experience of Temporary Personnel to those needs. Customer will control the details of the work and will be responsible for the work product of Temporary Personnel.

(f) Provider and Affiliate Vendor represent and warrant that they each will require their respective Temporary Personnel to comply with, and to the extent indicated or required, sign Customer's Supplier Policies as contained in the Gap Supplier Policies Manual, which may be updated by Customer from time to time.

3. Customer Obligations.

(a) Customer will notify Provider of any problems regarding Temporary Personnel. In the event Customer is dissatisfied with the performance or conduct of any Temporary Personnel, Customer may require Provider to remove such person from its premises. Customer will make available to Provider copies of all non-privileged documentation about problems or incidents in which Temporary Personnel are involved.

(b) Customer will not substantially change the assignment or job duties of Temporary Personnel without prior approval of Provider, which approval shall not be unreasonably withheld.

(c) Customer agrees to verify the hours worked by Temporary Personnel. In the event of a conflict between the number of hours reported via Customer's automated Time-Keeping System (as defined in Section 12) and the number of hours reported by Provider, the number of hours in Customer's Time-Keeping System will control. Customer will provide training on how to use such Time-Keeping System to all Temporary Personnel.

(d) The Temporary Personnel shall perform work at Customer's location(s) and under Customer's direction. Provider will not provide office space, equipment or other materials required for the performance of work by Temporary Personnel assigned to Customer hereunder.

(e) Customer agrees that temporary bookkeepers, financial analysts, bankers, mortgage brokers and other finance-related personnel (collectively, "Finance Personnel") shall not sign any accounting or other financial related opinions or other related documentation. In addition, Finance Personnel shall not sign any documents which are going to be filed with any federal, state or local governmental agency including, without limitation, any financial statements which are attached and incorporated into the public filings of publicly traded companies with the Securities and Exchange Commission.

4. Rates and Invoicing.

(a) The rates and fees for the Services shall be as set forth in the applicable Attachment A and shall apply to all Affiliate Vendors as well as to Provider. Provider and Affiliate Vendor agree and acknowledge that the rates specified in Attachment A may be modified to the extent that the Services specified herein are provided pursuant to the Gap's Marketplace. In the event that Customer requires Provider to invoice Customer directly, Provider will

invoice Customer weekly for Services and each invoice shall specifically refer to this Agreement and shall contain the information specified by Customer in Attachment C. Any extraneous terms on invoices shall be void and of no effect. Customer shall not be obligated to pay any invoice issued more than ninety (90) days after completion of the relevant services by Provider. Payments of all undisputed portions of any invoices will be made via electronic funds transfer by Customer within forty-five (45) days of invoice date. If any amount claimed by Provider in any invoice is disputed by Customer, the parties shall negotiate in good faith to resolve the dispute. A charge is not "disputed" until Customer provides Provider with a written explanation of the disputed charge.

(b) Each party shall be responsible for any personal property taxes on property it owns or leases, for franchise and privilege taxes on its business, and for taxes based on its income and receipts. Provider shall be responsible for any national, state and local sales, use, excise, ad valorem, value-added, services, consumption, and other taxes and duties on any goods or services used or consumed by it in providing the Services. Customer shall be responsible for any national, state and local sales, use, excise, ad valorem, value-added, and other similar taxes and duties imposed on the consumption of the Services. Provider shall separately itemize on the applicable invoice to Customer any taxes that under this Section are the responsibility of Customer and which Provider has the legal obligation to collect and remit to the appropriate jurisdiction. With respect to such taxes, Provider shall be responsible for the timely filing of returns and the timely remission of the tax.

6. Records and Audits. Provider shall maintain complete and accurate accounting records in accordance with sound accounting practices and all applicable laws so as to substantiate Provider's Services to Customer. Such records shall include Temporary Personnel W-2s and background check and drug screening records. Provider shall preserve such records for a period of at least two (2) years after completion of the pertinent work. Customer shall have access to such records for purposes of audit through an accounting firm selected and paid for by Customer. Any such review of Provider's records shall be conducted at reasonable times, and no more than once annually, during normal business hours, unless Customer has a legitimate business need for a more frequent audit.

6. Safety. The parties shall comply with all applicable laws and ordinances relating to work site health and safety. Customer shall provide a safe place to work, adequate supervision, and all necessary site-specific information, training, instructions, and safety equipment. Where Temporary Personnel will be operating forklifts (powered industrial trucks) Customer agrees to comply with the OSHA Powered Industrial Truck standard. Customer agrees to include Temporary Personnel in any Customer safety program and hazardous communication training program and to cover the cost of any safety or personal protective equipment, special badges, location-specific garments or uniforms.

7. Security of Customer Data. All data and information submitted by Customer to Provider in connection with the Services ("Customer Data") shall remain property of Customer. Customer Data shall not be used by Provider other than in connection with the provision of the Services. Customer Data shall not be (a) disclosed, sold, assigned, leased or otherwise provided to third parties by Provider, or (b) commercially exploited by or on behalf of Provider, its employees or agents. All Customer Data must be stored in a physically and logically secure environment that protects it from unauthorized access, modification, theft, misuse and destruction.

8. Warranties and Representations.

(a) Provider represents and warrants that it is liable for the performance of its employees and the performance of Affiliate Vendor employees who will perform Services for Customer and that those employees shall be bound by the terms of this Agreement.

(b) Provider warrants that the Services will be performed in a professional manner consistent with the level of care, skill, practice and judgment exercised by other professionals in performing Services of a similar nature under similar circumstances by personnel with requisite skills, qualifications and licenses needed to carry out such work. In addition, the Services shall conform to all proposals, descriptions and specifications, if any, supplied by Customer, or supplied by Provider and approved by Customer.

(c) Each party represents and warrants to the other that the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been duly authorized by requisite corporate action on the part of each party.

(d) Each party represents and warrants to the other that the execution, delivery, and performance of this Agreement by it will not constitute a violation of any applicable federal, state or local laws, regulations, ordinances or codes; a violation of any judgment, order or decree; a default under any contract by which or any of its assets are bound; or an event that would, with notice or lapse of time, or both constitute such a default.

9. Indemnification and Limitation of Liability.

(a) Provider Indemnity. Provider shall, at Provider's expense, defend, indemnify and hold harmless (including payment of reasonable attorneys' fees and costs) Customer and its respective officers, directors, agents, insurers and employees (the "Indemnified Parties") against all claims, demands and judgments made or recovered against them for (i) damages to real or tangible personal property, (ii) bodily injury or death to any person arising out of, or in connection with, this Agreement, (iii) breach of Section 11 (Proprietary Information) below, to the extent that such damage, injury or death was caused by the negligence or wrongful acts of employees, affiliated companies or agents of Provider, and/or (iv) claims, allegations or charges alleging that Temporary Personnel were misclassified or for failure to comply with any other legal obligation under the California Labor Code or Wage Orders concerning the payment of wages, overtime or classification of employees; provided, however, that such indemnification and hold harmless obligation shall not apply to the extent such damages arise from the negligence or wrongful acts of the Indemnified Parties or any of them, as finally determined by a court of competent jurisdiction; and, provided, further, that such indemnification and hold harmless obligation is expressly conditioned on the following: (i) that Provider shall be notified in writing promptly of any such claim or demand, (ii) the Indemnified Parties shall cooperate with Provider in a reasonable way and at Provider's expense to facilitate the settlement or defense of such claim or demand and (iii) any settlement or compromise which requires contribution from the Indemnified Parties or any use or mention of the Indemnified Parties' name(s) shall be approved by the Indemnified Parties. The Indemnified Parties may, at their expense and option, use counsel of their choosing to observe the defense of any such claim.

(b) Limitation of Liability. EXCEPT FOR THE INDEMNIFICATION OBLIGATIONS HEREIN (INCLUDING THOSE IN ANY ATTACHMENT TO THIS AGREEMENT) OR FOR LIABILITY ARISING AS A RESULT OF A BREACH OF SECTION 7 OR SECTION 11, IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY INCIDENTAL, CONSEQUENTIAL, OR SPECIAL DAMAGES OR EXPENSES OR LOST PROFITS (REGARDLESS OF HOW CHARACTERIZED AND EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES) UNDER OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE FORM OR ACTION (WHETHER IN CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE).

10. Insurance.

(a) Provider shall, at its sole cost and expense, maintain in effect at all times during the performance of the Agreement all the insurance specified below with insurers having a Best's rating of at least A-, Class X, ~~under forms of policy satisfactory to Customer.~~

I. Commercial General Liability Insurance with at least \$2,000,000 Combined Single Limit Bodily Injury and Property Damage written on an Occurrence form which shall extend to liabilities arising under this Agreement.

II. Owned, Non-Owned and Hired Automobile Liability Insurance with at least \$12,000,000 Combined Single Limit Bodily Injury and Property Damage.

III. Full statutory coverage for Workers' Compensation and Employers Liability with limits of at least \$1,000,000 and ~~Disability Insurance~~ for all its employees as required by law including all employees assigned to work for Customer. The Workers' Compensation and Employers Liability policy will be endorsed to include the Alternate Employer Endorsement naming Customer as "Alternate Employer". For the avoidance of doubt, the term "Alternate Employer" does not mean nor shall it be construed to create any kind of co-employment relationship between Customer and Provider. These policies will contain waivers of the insurer's subrogation rights against Customer where permitted by law.

IV. Fidelity Coverage naming customer as obligee or loss payee, insuring loss(es) due to the dishonest acts, including but not limited to Computer Fraud, of Provider's employees with limits of at least \$500,000.

V. Employment Practices Liability coverage with a limit of at least \$2,000,000 per each claim and \$2,000,000 annual aggregate. Workplace torts shall include but not be limited to discrimination, wrongful termination, sexual harassment, libel, slander, defamation, invasion of privacy, infliction of emotional distress, and mental anguish. If coverage is written on a claims-made form, Provider agrees to maintain continuous coverage in effect from the date of the beginning of services to at least three years beyond the termination of services under any contract or agreement through continuous renewal of the same policy or purchase of extended discovery period or retroactive insurance dated back to at least the date of the beginning of services.

(b) Customer, its officers, directors, employees, representatives, its subsidiary and affiliated companies shall be named as an "Additional Insured" under Commercial General Liability Insurance and Automobile Liability Insurance. All policies maintained by Provider shall be written as primary policies, not contributing with and not supplemental to coverage Customer may carry. Certificates of Insurance evidencing all these coverages shall be

provided to Customer upon execution of this Agreement. Provider shall provide Customer with thirty (30) days written notice of cancellation, intent to non-renew, or adverse material change.

(c) None of the requirements contained herein as to types, limits and approval of insurance coverage to be maintained by Provider are intended to and shall not in any manner limit or qualify the liabilities and obligations assumed by Provider under this Agreement. Receipt of any certificate showing less coverage than requested is not a waiver of Provider's obligation to fulfill its requirements. Provider may utilize reasonable deductibles given its size and financial stability. Provider will be responsible to pay any loss amount which lies within its deductible, up to the maximum amount of the deductible.

11. Proprietary Information.

(a) The term Confidential Information shall include any non-public information, whether in written, oral, graphic, electronic or any other form, including without limitation, Customer Data, sales, cost and other unpublished financial information, product and business plans, business projections, pricing, and marketing data, business, financial, technical and information, user manuals, forecasts, analyses, software and processes, which information is marked or indicated at the time of disclosure or observation as being "Confidential" or "Proprietary," or which would be deemed by a reasonable person to be confidential or proprietary in nature. This Agreement shall be treated as Confidential Information.

(b) Each party shall maintain the confidentiality of the other party's Confidential Information using at least the same efforts as it uses to maintain the confidentiality of its own Confidential Information, but no less than reasonable care. Each party shall ensure that access to the other party's Confidential Information shall only be provided to those individuals who need access to such information in order to fulfill their obligations hereunder. The confidentiality restrictions and obligations imposed by this Section 11 shall terminate three (3) years after the expiration of the relevant Attachment A or termination of this Agreement, whichever occurs first. In the event that Provider is in or reasonably believes itself to be (or to have been) in breach of this Section 11, it shall immediately advise Customer and take steps to remedy such breach (if not already remedied), including but not limited to protecting Customer and its employees against the consequences of any disclosure or use of Confidential Information in violation of this Agreement.

(c) Confidential Information shall not include information that (a) is in or enters the public domain without breach of this Agreement, (b) the receiving party receives from a third party who is entitled to disclose such information to receiving party without restriction on disclosure and without breach of a nondisclosure obligation, (c) the receiving party knew prior to receiving such information from the disclosing party or (d) the receiving party develops independently without reference to or use of the disclosing party's Confidential Information. Nothing in this Agreement shall prevent the receiving party from disclosing Confidential Information to the extent the receiving party is legally compelled to do so by any governmental investigative or judicial agency pursuant to proceedings over which such agency has jurisdiction; provided, however, that prior to any such disclosure, the receiving party shall (i) assert the confidential nature of the Confidential Information to the agency; (ii) immediately notify the disclosing party in writing of the agency's order or request to disclose; and (iii) cooperate fully with the disclosing party at the disclosing party's expense, in protecting against any such disclosure and/or obtaining a protective order narrowing the scope of the compelled disclosure and protecting its confidentiality.

12. Time Keeping System. Provider will ensure that its Temporary Personnel use Customer's designated system to capture and report work hours of Temporary Personnel, which system shall include hardware, software, swipe cards, wands or other data input devices which belong solely to Customer or its suppliers ("Time Keeping System"). Upon termination of this Agreement for whatever reason Provider will return the Time Keeping System to Customer. Provider agrees that all use of Customer's Time Keeping System will be pursuant to the terms of this Agreement and the terms of Attachment C (as applicable).

13. Compliance with Law.

(a) Each party shall, at its own expense, comply with all laws, orders and regulations of federal, state and municipal authorities (as may be amended), and with any lawful direction of any public officer, which shall impose any duty upon that party regarding the performance under this Agreement. The parties further agree to comply with all applicable state and federal employment laws (as may be amended), including, but not limited to, Title VII of the Civil Rights Act, the Americans with Disabilities Act, the Age Discrimination in Employment Act, the Fair Labor Standards Act, the California Labor Code and Wage Orders and the National Labor Relations Act.

(b) Provider understands that Gap is committed to full compliance with all anti-corruption laws, including the U.S. Foreign Corrupt Practices Act ("FCPA"). Provider certifies and agrees that, in connection with this Agreement, it

will not pay, offer, promise, or authorize the payment of money or anything of value, directly or indirectly, to any (i) official, agent, or employee of a government or of any department agency, or instrumentality thereof; (ii) political party official, political party or candidate for political office; (iii) official, agent, or employee of a public international organization; or (iv) employee of any enterprise (without prior written consent from Gap) in order to secure any undue or improper advantage or benefit for it or Gap in connection with this Agreement. Provider further warrants that Provider will not take any action in connection with this Agreement that would create liability for Gap under any applicable law or regulation, including the FCPA. Provider further understands that Gap prohibits Gap's employees from accepting any gifts, gratuities or anything of more than nominal value in any form that would compromise the objectivity of business decisions. The acceptance by Gap employees of cash gifts is strictly prohibited. Any Provider or any Provider affiliate that violates such policy by offering to any Gap employee cash or any form of gift that would compromise the objectivity of business decisions may be subject to termination of all existing and future business.

14. Assignment. Provider may not, without the prior written consent of Customer assign this Agreement or delegate the performance of all or part of its obligations and duties hereunder. Nothing in this Agreement, whether express or implied, is intended to confer any rights or remedies under this Agreement on any person or party other than the parties hereto and their permitted successors and assigns.

15. Non-Exclusivity; Minimum Commitment. The relationship between Provider and Customer pursuant to this Agreement is non-exclusive. Therefore, nothing in this Agreement shall be construed to create an exclusive relationship between Provider and Customer or limit Customer's ability to seek and employ third parties for these exact services during the duration of this Agreement. Furthermore, nothing in this Agreement shall obligate Customer to place any minimum level of orders for flexible staffing assignments with Provider during the Term of the Agreement.

16. Governing Law; Severability. Provider expressly agrees that any claim, controversy, dispute and/or litigation arising from or related in any way to this Agreement shall be governed by the laws of the State of California, exclusive of any choice of law rules, and shall be resolved exclusively by the federal and state courts in the State of California. Provider waives any objections against and expressly agrees to submit to the personal jurisdiction of the Municipal and/or Superior Courts of the State of California, County of San Francisco, and the U.S. District Court for the Northern District of California. Provider hereby waives the right to raise any objection or defense it may have based upon an inconvenient forum. The United Nations Convention on Contracts for the International Sale of Goods shall not apply to this Agreement. If any provision of this Agreement is for any reason found to be unenforceable, the remainder of this Agreement will continue in full force and effect.

17. Fees. If Customer seeks to enforce any of its rights and obligations hereunder by legal proceedings and prevails, Customer shall be entitled to recover from Provider any and all costs and expenses incurred by Customer, including, but not limited to all attorneys' fees, court costs, and expert fees.

18. Waivers. No waiver of any provision of this Agreement shall be effective unless it is in writing, signed by the party against whom it is asserted, and any such written waiver shall only be applicable to the specific instance to which is related and shall not be deemed to be a continuing or further waiver.

19. Severability. Each and every covenant and agreement herein shall be separate and independent from any other and the breach of any covenant or agreement shall in no way or manner discharge or relieve the performance of any other covenant or agreement. The unenforceability, invalidity or illegality of any provision of this Agreement shall not render the other provisions unenforceable, invalid or illegal.

20. Notices. All notices or other communications shall be deemed given by: (1) personal delivery, or (2) telephone facsimile, or overnight courier, and such notice is followed up by certified mail, return receipt requested, or (3) a written notice mailed via certified mail, return receipt requested; such notices to be addressed to the parties at the addresses set forth below:

If to Customer: The Gap, Inc.
Two Folsom Street
San Francisco, CA 94106
Attn: _____

With a copy to: General Counsel

If to Provider: _____

With a copy to:

21. **Independent Relationship.** Both parties agree that this Agreement is not intended to create nor shall be deemed or construed to create any relationship between the parties other than that of independent entities contracting with each other solely for the purpose of effecting the provisions of this Agreement. Neither the parties hereto, nor any of their respective employees, shall be construed to be the agent, employer, employee or representative of the other, nor will either party have any express or implied right of authority to assume or create any obligation or responsibility on behalf of or in the name of the other party. Provider shall pay all necessary employment taxes required by law. Provider also agrees to report employees' income and withhold all required taxes from such income, as may be required by law. Provider and Temporary Employees will not be entitled to receive any vacation or illness payments, or to participate in any plans, arrangements, or distributions by Customer pertaining to any bonus, stock option, profit sharing, insurance or similar benefits for Customer employees. In addition, Provider agrees that it will provide for Workers' Compensation, unemployment, disability and all other coverage required under applicable local, state or federal law. Provider further agrees that it will defend (including payment of all attorneys' fees) and indemnify Customer against any claim asserted against Customer for Provider's failure to comply with its obligations under the paragraph. Provider hereby waives any and all rights to any of the above Customer employment benefits even if Provider or Temporary Employees are later reclassified to be a common law employee.

22. **Force Majeure.** A delay by either party in the performance of its obligations under the Agreement shall not be deemed a default of the Agreement to the extent that such delay is attributable to a Force Majeure Event and could not have prevented by the non-performing party by means of the exercise of reasonable precautions or can not reasonably be circumvented by the non-performing party including through the use of alternate sources or work-around plans. A party shall notify the other within five (5) business days following the occurrence of a claimed Force Majeure Event. If a Force Majeure Event prevents, hinders or delays for more than thirty (30) consecutive days performance of Services Customer reasonably believes to be necessary for the performance of critical functions, Customer may procure such Services from an alternate source of at reasonable charges and Provider shall promptly reimburse Customer for such charges. If such delay continues for more than thirty (30) consecutive days, Customer may terminate the affected part of the Agreement or the entire Agreement. The term "Force Majeure Event" shall mean an act of war or terrorism, a riot, civil disorder, or rebellion, a fire, flood, earthquake, or similar act of God or a strike, lockout or similar labor dispute that is beyond the reasonable control of the affected party.

23. **Equitable Remedies.** Because the Services are personal and unique and because Temporary Personnel will have access to Confidential Information of Customer, Customer will have the right to enforce this Agreement and any of its provisions by injunction, specific performance or other equitable relief without prejudice to any other rights and remedies that Customer may have for a breach of this Agreement.

24. **Use of Customer Name.** Provider shall not, without the prior written consent of Customer, use any Customer corporate name, trademark or logo, including but not limited to Gap, GapKids, babyGap, GapBody, GapMaternity, Banana Republic, Old Navy, Old Navy Maternity, Athleta or Piperlime, for any purpose, including by way of illustration but not of limitation, advertising, publicizing, marketing or selling the services and/or products provided hereunder, except in connection with the prosecution or defense of claims, lawsuits or governmental or regulatory audits or investigations, or except as may otherwise be required by law. In that event, Provider shall provide Customer with notice of such request in a timely manner sufficient to allow Customer an opportunity to object prior to such disclosure.

25. **Entire Agreement.** This Agreement constitutes and represents the entire Agreement between the parties hereto and supersedes any prior understandings or agreements, written or oral, between the parties hereto respecting the subject matter herein. This Agreement may only be amended by an agreement in writing executed by all of the parties hereto. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective heirs, personal representatives, successors and assigns, subject, however, to the limitations contained herein.

IN WITNESS WHEREOF, the parties have hereunto set their hands on the day and year first above written.

PROVIDER

By: [Signature] STEVESCHER

Title: OWNER

Date: 6/01/2011

THE GAP, INC.

By: [Signature] G. Cunningham

Title: VP Strategic Sourcing

Date: 6/24/11

Attachment A -1
Flexible Staffing Services.

1. Rates and Invoicing.

(a) The rates and fees for the Services shall be as set forth in the applicable Work Order generated through Gap's Marketplace. Invoicing shall be performed by Customer's Marketplace Service Provider.

(b) Provider will be charged a management fee based on the following table for participating in Gap's Marketplace. Such fee shall not be in addition to the bill rate specified in any Work Order but shall reduce the invoiced amount paid to Provider.

<u>Category of Spend</u>	<u>Management Fee</u>
(1) Light Industrial and Kitchen Staff	2.00%
(2) Administrative Support Services, Professional Services (Creative, Finance/Accounting, Human Resources, Legal, Marketing) and Information Technology Services	2.50%

(c) If Provider expects to assign any Temporary Personnel to Customer where Provider would be required by law to pay such Temporary Personnel overtime premium pay for hours worked and if Provider intends to pass along the cost of such overtime hours billed, then Provider shall notify Customer of the bill rate for both regular and overtime premium rate prior to the time that Customer executes the Work Order. If Provider fails to provide Customer notice of its intent to bill Customer a premium rate for overtime hours, then Provider shall bear all such costs. Customer expects Provider to fully understand the duties and functions performed by each Temporary Personnel, and on that basis, Provider is solely responsible for determining whether any Temporary Personnel is covered by the Fair Labor Standards Act and/or any applicable State law.

(d) All hours worked in excess of standard work hours in a work week or work day, as defined by applicable labor law (the "Standard Hours") will be paid at the bill rate designated on the applicable Work Order less 5%. Customer shall reduce all invoices for these hours by 5% prior to payment to Provider.

2. Fee Reduction. Provider agrees and acknowledges that Customer is using Gap's Marketplace for the procurement of the Services and that the agreed upon bill rate will be reduced by the amount specified in Section 1(b) above to the extent the Gap's Marketplace is used in connection with the procurement or tracking of the Services. The fee reduction will be deducted from Provider's payment and will be retained by Customer's Marketplace Service Provider in consideration of their services provided to Customer and benefiting Provider. The fee reduction will be computed weekly based on the total number of hours billed for Provider as supplied by the Time Keeping System (as defined in Section 12 of the Agreement) and will be applied prior to any discount provided to Customer by Provider.

3. Calculation Example. Just for illustrative purposes, this calculation shows how the fee reduction in Section 2 above would apply. In this example, if the fee billed to Customer is \$100 and if Customer's Marketplace Service Provider retains a 2.5% fee, then Customer's Marketplace Service Provider retains \$2.50 from the billed amount of \$100, and Customer pays Provider a net amount of \$97.50.

4. Guarantee Period. Provider agrees that the Services will be performed to the satisfaction of Customer. If Customer notifies Provider within the first five (5) days of an assignment that the Services provided by a Temporary Personnel are not satisfactory, and Provider is unable to resolve the issues after a counseling session with such Temporary Personnel, Provider will remove such Temporary Personnel and Customer will not be charged for such Services performed during the first ten (10) days of the assignment.

5. Volume Rebate. Provider shall provide a tiered volume rebate based on total spend with Customer during each Customer fiscal year. Payment to Customer will be made no later than thirty (30) days after each fiscal year end.

<u>Volume</u>	<u>Volume Rebate %</u>
0	0 %
\$ 500,001	2.0%
\$ 1,000,001	3.0%

\$ 1,500,001	And Up	5.0%
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As an example only: based on a \$600,000 spend by Customer during its fiscal year, the rebate to Customer would be as follows:

Spend	Rebate
\$600,000 x 2% =	\$ 12,000

6. Conversion Fees.

Fees associated with the placement of Temporary Personnel at Customer shall be as follows:

Administrative Support Services, Light Industrial, Kitchen Staff

0 – 30 Days of Service (Based on annual starting base salary)	Greater than 30 days
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15%	0%
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Professional Services (Creative, Finance/Accounting, Human Resources, Legal, Marketing) and Information Technology Services

0 – 90 Days of Service (Based on annual starting base salary)	Greater than 90 days
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15%	0%
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Days of service are accumulated from the start date at Customer of the applicable Temporary Personnel to the conversion date and will include all days of service at Customer with current Provider. This will allow for breaks in service (non-contiguous time) provided all service is with the current Provider.

Days of Service: For purposes of calculating Days of Service in accordance with the charts above, Days of Service will accumulate beginning as of the effective date of the respective Initial Start Date, as defined below, at Customer and shall continue for all future assignments related to such Temporary Personnel; provided however that all services provided by such Temporary Personnel are provided through his/her same respective Provider. If prior to Customer hiring a Temporary Personnel, a break in service occurs the following will apply as applicable:

(a) Temporary Personnel ceases performing services through his/her Initial Provider, and begins providing services through a different Provider, the Days of Service shall revert back to zero, and shall be recalculated as described above; or

(b) If the Temporary Personnel completes an assignment and has a break in service of one (1) year or more, the Days of Service shall revert back to zero and shall be recalculated as described above, even if with the same Provider.

Temporary Personnel's Start Date: The time of service is calculated based on the Initial start date at Customer through the date of Customer's hire and will include all calendar days of service at Customer as an employee of the current Provider.

Attachment B
Drug Screening and Background Check Requirements

Drug Screening:

9 panel drug screen

Background Check:

County criminal (counties lived in the past 7 years)
SSN Validation
Name and Address History Trace
NRMA (Retailer's database)
OFAC (Office of Foreign Assets Control) Database

Employment and education checks are not required.

Grading criteria is as set forth in Exhibit 1 to Attachment B attached hereto.

Do not grade off for charges or warrants; it must be a conviction within the last 7 years. An NRMA hit with a written admission statement on file shall score a Fail. If Provider receives a hit in the OFAC database, this should be put into Review status and Provider should contact Customer for further grading direction.

Customer may be contacted at Background_Screening@gap.com for all drug screening and background check related inquiries.

Exhibit 1 to Attachment B

**Gap Inc.
Background Screening
Grading Guidelines
February 1, 2010**

SSN TRACE (U.S. APPLICANTS ONLY)

Score as PASS if any of the following conditions exist:

- The SSN trace confirms the name and SSN provided by the applicant.
- The SSN trace confirms the applicant-provided SSN, and it is reasonable to assume that the applicant's last name is different because it is her married/maiden name.
- The SSN trace confirms the applicant-provided SSN, and the applicant's name appears to be only slightly misspelled.

Score as REVIEW if any of the following conditions exist:

- The SSN trace results state "no hit" or "no record found."
- 2 or more names (in addition to the applicant's) appear on the SSN trace.
- Applicant's name does not appear on the SSN trace.
- The SSN trace results state "Social Security# xxx-xx-xxxx is invalid according to the most recent SSA Information, however, the group has been identified for 'state' and may be included in future monthly SSA updates."

Score as FAIL if any of the following conditions exist:

- The SSN trace states that the applicant-provided SSN has not been issued.
- The applicant cannot provide valid evidence of SSN (e.g., Social Security card, passport, military I.D., etc.) even after being provided a reasonable opportunity to do so.
- The SSN trace states that the applicant-provided SSN belongs to a deceased person.
- The Social Security Administration states that the information provided by the applicant and the information in the SSA's database do not match. (INTERNAL APPLICANTS ONLY.)
- The SSN trace states that the applicant-provided SSN was issued prior to the applicant's date of birth.

U.S. & CANADIAN CRIMINAL CONVICTIONS (FEDERAL & COUNTY)

Score as PASS if any of the following conditions exist:

- No record found.
- No matching identifiers.
- Any felony or misdemeanor conviction over 7 years old.
- **Misdemeanor or felony** records (or, in Canada, **summary or indictable** offense records) with dispositions of:
 - Not guilty
 - Nolle prosequere
 - Nolle prosequi
 - Adjudication withheld
 - Dismissed
 - Expunged
 - Sealed
 - Impounded

- Erased
- Pardoned
- No Information filed
- Probation before judgment
- Deferred adjudication
- Dismissed with leave
- Waived
- Pending disposition or outstanding warrant
- Possible match
- Possible record in another county or court
- GEORGIA ONLY: First offender's conviction
- NEW YORK ONLY: Stand-alone drug-related convictions.

Score as REVIEW if any of the following conditions exist:

- Any record that does not clearly fall under either the **PASS** or **FAIL** categories.
- In Canada, any **indictable** and **summary** offenses marked with dispositions of:
 - Guilty within the last 7 years
 - Conviction within the last 7 years
 - No Contest within the last 7 years
 - Nolo Contendere within the last 7 years
 - Responsible

Score as FAIL if any of the following conditions exist:

- All **felonies** and **misdemeanors** marked FAIL in the chart below with dispositions of:
 - Guilty within the last 7 years
 - Conviction within the last 7 years
 - No Contest within the last 7 years
 - Nolo Contendere within the last 7 years
 - Responsible

Score as PASS, REVIEW or FAIL according to the following chart:

P = PASS F = FAIL R = REVIEW

CONVICTION (FELONY / INDICTABLE OR MISDEMEANOR / SUMMARY)	FIELD (Non-NY)	DC (Non-NY)	HQ (Non-NY)	FIELD (NY)	DC (NY)	HQ (NY)
Abduction				R	R	R
Abuse				R	R	R
Aggravated Vehicular Homicide	R	R	R	R	R	R
Arson						
Assault						
Assault and/or Battery on Police Officer						
Assault with a Deadly Weapon						
Assault with Intent to Kill						
Attempted Murder						
Auto Theft						
Battery						
Battery on a Schoolteacher						
Breaking and Entering						
Burglary						
Child Abuse		R			R	

Child Endangerment	R				R	
Child Enticement	R				R	
Child Molestation	R				R	
Concealing Merchandise						
Corporal Injury to Spouse						
Corruption of a Minor	R				R	
Counterfeiting						
Credit Card Fraud						
Credit Card Theft						
Criminal Confinement						
Dishonesty						
Domestic Battery						
Drug Related (FELONY ONLY)						
DUI Causing Injury or Death	R	R	R	R	R	R
Eluding						
Embezzlement						
Falsification of Business Records						
Forgery						
Fraud						
Fraudulent Bill / Claims						
Grand Theft						
Homicide						
Identity Theft						
Inciting Riot Resulting in Death				R	R	R
Indecent Liberties with a Child	R				R	
Involuntary Manslaughter (UNLESS ATTACHED TO DRIVING-RELATED OFFENSE BY APPLICANT FOR NON-DRIVER POSITION)						
Issuing Unauthorized Money						
Kidnapping				R	R	
Larceny						
Manslaughter (FELONY ONLY)						
Medicaid Fraud						
Misuse of a Credit Card (FELONY ONLY)						
Felony Money Laundering						
Murder						
Negligent Homicide (UNLESS ATTACHED TO DRIVING-RELATED OFFENSE BY APPLICANT FOR NON-DRIVER POSITION)						
Organized Crime						
Possession of Child Pornography	R				R	
Possession of Firearm by Felon						
Possession of Stolen Property						
Possession of a Weapon						
Possession of a Weapon on Campus						
Possession of Weapon of Mass Destruction						
Prostitution	R			R		
Purchase of Stolen Vehicle						
Rape						
Resisting an Officer (NOT ATTACHED TO ANY OTHER DRUG, THEFT OR VIOLENCE RELATED CONVICTION)						
Retail Theft						
Robbery						
Robbery of Handicapped						

Sexual Abuse						
Sexual Assault / Battery						
Sexual Assault of Child / Minor					R	
Sexual Imposition						
Sexual Conduct / Misconduct with a Minor		R			R	
Sexual Conduct/Misconduct	R	R	R	R	R	
Shoplifting						
Sodomy						
Stalking						
Statutory Rape		R				R
Terrorist Threats						
Theft						
Theft from Elderly						
Theft of Services						
Trafficking Stolen Property						
Trafficking in Stolen Identities						
Unauthorized Use of Property						
Unemployment Fraud						
Unlawful Restraint						
Unlawful Sexual Intercourse (NOT ACCOMPANYING NON-STATUTORY RAPE)				R	R	R
Use of a Dangerous Weapon						
Vandalism						
Vehicular Homicide (APPLICANT FOR NON- DRIVER POSITION)	R	R	R	R	R	R
Violence						
Weapons						
Witness Tampering						

Attachment C
Invoice Requirements

All information must be correct or processing will be delayed.

Invoices should be addressed to the entity ordering the Services, but mailed to:

The Gap, Inc.
Attn: CSSC-AP
P.O. Box 27808
Albuquerque, NM 87125-7808

- i. Provider will only invoice Customer for costs related to Services agreed to herein with Customer's written approval. Any such written approval will be in the form of a Customer Purchase Order. Without such written approval as demonstrated by a Customer Purchase Order, Customer shall not be liable for any costs incurred by Provider.
- ii. Payments will be made to a Valid Invoice with a unique non-recurring invoice number and valid Customer Purchase Order number appropriately referenced on the face of the invoice for each Provider. Invoices received without a Customer Purchase Order number or with a duplicate invoice number but for separate services will be returned to Provider to be reissued with appropriate information.
- iii. Invoice numbers will be input to the Accounts Payable according to Customer's keying standards. Additional information may be added to the ending of the Provider's invoice number if the invoice number has been keyed in Customer's payment system before.
- iv. Payments will not be made (or received by Provider) as "on account". Provider must apply the payment received to the Invoice/Purchase order number specified on the remittance advice and may not apply any payment to either a running balance, or to any payable item not listed as paid on the associated remittance advice (e.g. the oldest invoice shown by the Provider to be outstanding).
- v. Payments will be made only for the amount shown as current charges. Customer will not pay a payment request's "total amount due" that includes any amount shown as "running balance", "balance forward", or "past due amount".
- vi. Provider does not have the authority to apply credits to Customer's open Invoices or to other outstanding or future charges. Decisions on where and how to apply credits belong solely to Customer's Accounts Payable Service Center.
- vii. Overpayments that are identified must immediately be either returned to Customer via check, offset on next payment to Provider, or pay upon Customer demand.
- viii. All requests for payment will be archived for seven (7) years.
- ix. Invoices must meet Customer's Invoicing requirements including, without limitation, accurately reflecting all required data free of accounting errors, with clear and accurate invoice numbers reflected on statements.
- x. Provider agrees to comply with all Customer's Oracle 11.i or any other billing requirements including, but not limited to, completing EDI or other electronic formats, maps, and/or templates. Provider must be able to receive purchase orders and/or be able to submit invoices in a standard agreed upon EDI or other electronic format, the nature and structure of the EDI map and format are subject to change depending on the current business needs, efficiencies and controls. Provider is responsible for all costs required to remain in compliance and or to complete the billing information and subsequent reports. Provider understands failure to transmit invoice data within Customer's requirements shall result in delayed payment until such data meets Customer's standards.