

# OMNI<sup>®</sup> HOTELS & RESORTS

## SERVICE AGREEMENT

This Service Agreement (hereinafter the "Agreement") is made and entered this 23 day of July, 2018 (hereinafter the "Effective Date"), by and between **SE SECHER CORP, d/b/a Acrobat Outsourcing** (hereinafter the "provider") having its principal place of business at 665 Third Street, Suite 415, San Francisco, CA 94107 and **LC Investment 2010, LLC d/b/a Omni La Costa Resort & Spa by, its agent Omni Hotels Management Corporation**, (hereinafter "Customer"), for services at **2100 Costa Del Mar Road, Carlsbad, CA 92009**.

### **PURPOSE:**

This Agreement is entered into specifically for the limited purpose of Provider's arranging for "Workers" to provide certain services at the Customer's place(s) of business such as: Hospitality staffing including Banquet staff, Culinary Staff, Stewarding, Housekeeping and any other necessary services.

### **DURATION:**

This Agreement shall become effective as of the Effective Date and shall continue for an initial term of one year.

### **TERMINATION:**

Notwithstanding any other provision contained in this Agreement, either party may terminate this agreement, for any reason and without penalty, upon thirty (30) days written notice sent to the other by registered mail, return receipt and/or a mail delivery service.

### **TERMINATION FOR CAUSE:**

In the event either party breaches a provision of this Agreement, the non-defaulting party may terminate this Agreement by giving ten (10) days written notice.

In the event this Agreement is terminated for cause, Customer shall only be obligated to pay for the services actually provided to Customer as of the termination date.

### **INDEMNIFICATION:**

Provider hereby agrees to indemnify, defend and hold harmless the Customer, its parent company, affiliates, subsidiaries, assigns, officers, directors, employees, and agents from and against any and all claims, expenses, judgments, damages, fines, and penalties, and whether by reason of death or injury to any person or loss of or damage to any property or otherwise, arising out of or in any way connected with this Agreement, services provided by Provider or any subcontractor of Provider hereunder or any related act or failure to act by Provider, its agents, subcontractors, servants, employees, licensees or invitees and whether or not occurring during the term heretofore occasioned or contributed to by negligence of Customer, its agents or employees.

Provider shall comply with all federal, state, and local laws prohibiting unlawful discrimination or harassment of any individual on any of the proscribed bases. Provider will indemnify, defend, protect, and hold harmless Customer, its shareholders, directors, officers, employees, and agents from any and all claims, actions, damages, losses, charges, costs, liabilities and expenses (including judgments, fines, penalties, amounts paid in settlement, and reasonable attorneys' fees), resulting from any charge or complaint that Provider failed to comply in any

respect with laws prohibiting discrimination or harassment. Provider agrees to implement an Equal Employment Opportunity/Nonharassment Policy advising Provider Workers that discrimination and harassment are prohibited forms of conduct which could lead to the termination of their assignment. Such Policy shall also contain a complaint procedure to advise Provider Workers of the process they should follow with respect to notifying Provider (without fear of retaliation) in the event they believe they are the victims of discrimination/harassment while assigned to perform services for the Customer. Provider agrees to notify the Customer's Human Resources Department immediately if any Provider Worker advises Provider of any such complaint so that the matter can be promptly investigated by the Customer and resolved. The parties agree to mutually cooperate with one another in attempting to resolve any allegations of harassment or discrimination which may be brought against the Customer and/or the Provider, including cooperating with any investigations being conducted.

Provider shall also be responsible for and shall bear all costs associated with ensuring that all requirements of the Americans with Disabilities Act ("ADA") are satisfied with respect to all Provider Workers. This obligation includes but is not limited to, ascertaining whether there is any need for Customer to make reasonable accommodations for any Provider Worker, advising Customer if Provider believes Customer needs to make reasonable accommodations and paying all costs and expenses incurred by Customer or which are otherwise associated with making any reasonable accommodation for any Provider Worker, with the exception of any costs incurred by Customer in connection with making its facilities accessible to the disabled in accordance with the accessibility provisions of the ADA.

#### **INSURANCE:**

Prior to commencement of this Agreement, Provider shall provide Customer with the certificate of insurance evidencing the existence of valid and enforceable policies as follows:

Commercial General Liability coverage containing bodily injury and property damage limits of \$1,000,000.00 per occurrence. Such insurance shall name Customer as additional insured.

Worker's Compensation insurance in limits not less than prescribed by State Law and Employers Liability insurance with limits of not less than \$1,000,000 bodily injury by accident each accident, \$1,000,000 aggregate bodily injury by disease, and 1,000,000 each employee bodily injury by disease. Such insurance shall name Customer as an additional insured and will include a waiver of subrogation in favor of customer. In the event that Provider fails to obtain Worker's Compensation as required by this Agreement, Provider agrees to be solely responsible for all costs, penalties, awards, and other monetary or non-monetary damages resulting from such failure, and to indemnify Customer for the same.

All policies shall be specifically endorsed to provide that the coverage obtained by the virtue of this Agreement will be primary and that any insurance carried by the Customer shall be excess and non-contributory. All policies shall be specifically endorsed to provide that such coverage shall not be cancelled or materially changed without at least thirty (30) days prior written notice to the Customer. Evidence satisfactory to Customer will be delivered to Customer at the time this agreement is signed and at least 10 days prior to any renewal thereof.

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## **WORKERS:**

Provider shall comply with and abide by and cause its workers, agents or subcontractors to comply and abide by the rules, statutes, regulations and ordinances of all Government units having jurisdiction over them (including any requirements of Immigration Services and Internal Revenue Services). Provider is an independent contractor and the Workers serving at Customer's place of business are not employees of Customer. Therefore there will be no common personnel records between Provider and Customer. Customer may provide aid to direct the Workers on the tasks they are to perform.

If the performance of any Provider worker is unsatisfactory to Customer, Customer shall notify Provider and may ask the worker to leave the Customer's premises. Provider will replace the Worker within 24 to 48 hours.

All workers will be interviewed and screened to make sure that they are in accordance with our strict labor standards. A criminal background check and/or drug testing will be provided if required at Providers expense.

## **PAYMENT AND BILLING:**

Provider will submit invoices upon completion of work. Customer has the right to inspect all time records and billings. Service Charges received by the customer will not be transferrable to the provider or any of the workers assigned from the provider.

## **COMPLIANCE WITH ALL LAWS:**

Provider agrees to comply with any and all applicable federal, state or local regulatory requirements and to secure such licenses as may be required for its employees and to conduct business in the state, municipality, province, or location. Provider also agrees to comply with all federal, state and local laws, rules and regulations, applicable to its performance under this Agreement, including but not limited to, all state Workers' Compensation laws, the provision or payment of unemployment insurance and benefits including FUTA, the withholding and payment of employment taxes including FICA, the payment of wages including compliance with the Federal Fair Labor Standards Act and applicable state wage and hour laws, the Family and Medical Leave Act and applicable state family leave laws, civil rights laws, including Title VII of the Civil Rights Act of 1964, the Americans With Disabilities Act, the Age Discrimination in Employment Act, and any other federal, state or local law or ordinance, the National Labor Relations Act, the Occupational Safety and Health Act, the Immigration Reform and Control Act, the Fair Credit Reporting Act, and the Employee Retirement Income Security Act of 1974, all applicable federal and state laws with respect to the drug testing pursuant to this Agreement.

**To the extent not exempt, Provider and Customer shall comply with Executive Order 11246 and shall abide by the requirements of 41 CFR Parts 60-1 through 60-60, including 41 CFR §§ 60-1.4(a), 60-300.5(a) and 60-741.5(a) at 29 CFR Part 471, Appendix A. These regulations prohibit discrimination against qualified individuals based on their status as protected veterans or individuals with disabilities, and prohibit discrimination against all individuals based on their race, color, religion, sex, sexual orientation, gender identity, or national origin. Moreover, these regulations require that covered prime contractors and subcontractors take affirmative action to employ and advance in employment individuals**

**without regard to race, color, religion, sex, sexual orientation, gender identity, national origin, protected veteran status or disability.** Provider agrees to indemnify and hold harmless Customer for any violations of same including payment of legal fees.

Provider further agrees to allow Omni Hotels Management Corporation, its present, past and future affiliate companies and divisions, subsidiaries and each of its and their present, past and future officers, directors, members, shareholders, agents, employees, attorneys, predecessors, successors and assigns the right to audit payroll and payroll tax filings to ensure above mentioned federal, state and local regulatory requirements are being satisfied, in particular minimum wage and overtime requirements are being met.

**PARAGRAPH HEADINGS:**

The paragraph headings throughout this Agreement are for convenience and reference only, and the words contained herein shall in no way explain, modify, amplify or aid in the interpretation, construction or meaning of the provisions of the Agreement.

**INVALIDITY OF PARTICULAR PROVISIONS AND CHOICE OF LAW:**

If any term or provision of this Agreement or the application thereof to any person or circumstances shall, to any extent be deemed invalid or unenforceable, for the remainder of this Agreement, the application of such term or provision to persons or circumstances other than those under which it was held invalid or unenforceable, shall not be affected thereby, and each such term and provision of this Agreement shall be valid and enforced to the fullest extent of the law. The parties agree that this Agreement shall be interpreted according to Texas law without regard to its conflict of laws principles. In the event litigation is initiated to enforce any part of this Agreement the prevailing party is entitled to recover the expenses of litigation, including reasonable attorney's fees.

**PRIOR AGREEMENTS**

This Agreement supersedes and replaces any and all prior written or oral agreements between the parties.

**AGREEMENT ON OVERTIME PAY:**

Provider understands that Customer does not wish for Workers to work overtime and that overtime assignments should be rare and advance approval in writing from Customer is required. Provider is to pay the legal overtime directly to Workers and invoice Customer.

Provider agrees that Customer will only pay for overtime if Workers work more than forty (40) hours in a work week, or as otherwise provided by applicable state law, for Customer. Provider is solely responsible for all overtime incurred by Workers who work more than forty (40) hours in a work week, or as otherwise provided by applicable state law but who do not work more than forty (40) hours in a work week or as otherwise provided by applicable state law for Customer.



**SE SECHER CORP,  
d/b/a Acrobat Outsourcing**

By:   
 Marc Caplan  
 Name: \_\_\_\_\_  
 Title: VP of Sales

**LC Investment 2010, LLC  
d/b/a Omni La Costa Resort & Spa**

By: Omni Hotels Management Corporation,  
its agent

By:   
 Paul Guccini  
 Name: \_\_\_\_\_  
 Title: Director of Finance

**ADDENDUM "A"**  
**TO PROVIDERS SERVICE AGREEMENT**  
 Hourly Rates for Workers by Department

LABOR DESCRIPTION	Hourly Rate
Housekeeper	22.95/hr.
Lead Housekeeper	24.95/hr.
Houseman	22.95/hr.
Banquet Server	25.95/hr.
Bartender	25.95/hr.
Laundry Worker	22.95/hr.
Dishwasher	22.95/hr.
Banquet Setup	22.95/hr.
Cook 1	24.95/hr.
Cook 2	25.95/hr.
Lobby Attendant	19.95/hr.

Porter	<b>19.95/hr.</b>
Lead Porter	<b>23.95/hr.</b>