CITY OF NEW YORK
DEPARTMENT OF CONSUMER AFFAIRS

DEPARTMENT OF CONSUMER AFFAIRS, Complainant, – against – Ines Garcia -Romero /L & S SOLUTIONS 8020 ROOSEVELT AVE QUEENS NY 11372 718-424-6374 Respondent.	CONSENT ORDER Violation Number: PL 005287639 Violation Number: OL _____

1. Respondent acknowledges that the New York City Department of Consumer Affairs (the "Department") duly served Respondent with a Notice of Hearing on Mar 29, 2012 ("NOH") citing Respondent for operating as an employment agency without a license in violation of the New York State General Business Law Section 170, et seq. (the "Employment Agency Law"), and New York City Administrative Code ("Code") Section 20-101, et seq. (the "License Enforcement Law"), Code Section 20-700, et seq. (the "Consumer Protection Law"), and Title 6 of the Rules of the City of New York ("Rules").

2. Ines Garcia -Romero /L & S SOLUTIONS ("Respondent") consents to this final Consent Order (the "CO") to settle the above violation.

3. Ines Garcia-Romero, as representative of Respondent, represents and certifies that s/he is duly authorized to settle this violation and to enter into this CO with the Department on behalf of Respondent.

4. This CO shall apply to Respondent and any directors, officers, employees, agents, assignees, successors, or other business entities, whose acts, practices, or policies are directed, formulated, or controlled by Respondent. For the purposes of this CO, "employee" means any person employed for hire or permitted to work by Respondent including, but not limited to, any person who manages or oversees the work of another, any person whose main activity is the selling of goods or services for Respondent, and any person whose earnings are based in whole or in part on work performed for Respondent.

5. Respondent acknowledges that it is operating as an employment agency as defined by Section 171 of the GBL and Section 5-249 of the Rules.

6. Respondent acknowledges that Respondent's unlicensed operation of an employment agency is in violation of the Employment Agency Law, the License Enforcement Law, the Consumer Protection Law and the Rules.

A. Definitions

7. "Job applicant" means a person seeking employment.

8. "Advertisement" or "advertisements" mean all promotional materials, statements, visual descriptions, or other representations of any kind disseminated in print, orally, or electronically by or on behalf of Respondent to consumers including, but not limited to, mailings, flyers, hand-outs, brochures, business cards, classified ads, in-store and window signage, print advertisements, television advertisements, internet advertisements, and radio advertisements.

9. "Clear and conspicuous" and "clearly and conspicuously" mean that the statement, representation, or term (collectively, the "disclosure") is made in a manner that is readily apparent and understandable by an ordinary person from any distance from which a consumer is able to view the main message of the disclosure. Considerations relevant to whether a disclosure is clear and conspicuous include, but are not limited to, use of plain language, relative type size, font, and color contrast.

B. Injunctive Relief

10. Respondent shall immediately cease all unlicensed activity. Accordingly, Respondent shall cease all employment agency activity including, but not limited to, purporting to procure employment for applicants, advertising as an employment agency, providing information or services that result in employment for an applicant (as defined in Section 171 of the GBL and Section 5-249 of the Rules) representing to employers that it is an employment agency until Respondent receives an employment agency license from the Department.

11. Respondent shall submit to the Department a complete application for an employment agency license, including proof of having obtained a surety bond or third-party bond as required by Section 177 of the GBL, within 30 days of the date of execution of this CO.

12. Respondent shall comply with this CO, as well as all applicable laws and regulations, including the Employment Agency Law, the License Enforcement Law, the Consumer Protection Law and the Rules. Respondent acknowledges that all of the applicable laws and regulations are not fully detailed in this CO.

C. Documents Generally

13. Respondent shall provide all documents and forms to job applicants including, but not limited to, applications, contracts and receipts, in English and in every language in which Respondent advertises or conducts business with consumers in any way, whether by telephone, email, text message, social media, or in person.

14. Respondent shall clearly and conspicuously include the license number assigned by the Department on any advertisement, letterhead, receipt, contract, or other printed matter. Such license number must be clearly identified as a New York City Department of Consumer Affairs license number in compliance with Section 1-05 of the Rules.

D. Contracts

15. Respondent shall provide every job applicant with the Department's Model Contract.[1]

E. Fees and Refunds

16. Respondent shall charge a job applicant a fee only for job placement. Except as described in Section 185 of the GBL, Respondent shall not charge a job applicant a fee for any other goods or services including, but not limited to: (i) referring or promising to refer a job applicant to interviews or meetings with employers or prospective employers; (ii) training job applicants; or (iii) photographing job applicants.

17. Respondent shall not charge a job applicant a registration or application fee.

18. Respondent shall not charge a job applicant a fee higher than the maximum fee permitted in Section 185 of the GBL.

19. Respondent shall not collect an advance fee or deposit from any job applicant except for job applicants who seek work as domestic workers, household employees, manual workers, agricultural workers, non-professional skilled or trained industrial workers, mechanics, or other Class A or Class A1 workers, as defined in Section 185 of the GBL.

20. Respondent shall make any refund required under Section 186 of the GBL to a job applicant within seven (7) days after a job applicant requests a refund, regardless of whether the job applicant requests the refund orally or in writing. Refunds shall be issued in cases of excessive fees, failure of a job applicant to report to accepted employment, termination of employment without the employee's fault, and termination under all other circumstances, as set forth in Section 186 of the GBL.

21. Respondent shall maintain on its premises a register (log book), in the English

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[1] Available at: http://www.nyc.gov/html/dca/downloads/pdf/ea_model_contract_english.pdf and http://www.nyc.gov/html/dca/downloads/pdf/ea_model_contract_spanish.pdf.

language, of all fees, deposits and other money charged and/or collected. Each entry in the register shall include all of the following:

a. the name and address of every job applicant;
b. the date and amount of money charged;
c. the date and amount of money paid;
d. the name of the person making the payment;
e. the purpose of the payment;
f. the date the job applicant started work, if any;
g. the date, amount, and reason the job applicant requested a full or partial refund, if any; and
h. the date, amount, and reason Respondent refunded money to the job applicant, if any.

F. <u>Job Orders</u>

22. Respondent shall maintain on its premises a register, in the English language, (in the same log book or separate from the fee register log book, described above in section E) that includes all of the following:

a. the name and address of every employer who pays a fee;
b. the name and address of every employer to whom an applicant paying a fee is referred;
c. the date each employer requested or assented to the furnishing of applicants;
d. the kind of positions for which applicants are requested;
e. the names of the applicants paying a fee who were sent to the employer, including a designation of the applicant hired;
f. the amount of the fee charged; and
g. the rate of wages or compensation agreed upon.

23. Respondent shall only send or refer job applicants to legitimate job openings which are (i) obtained from a representative of the employer and reflect an actual job opening and (ii) verified by you as a current job opening no less than once every seven (7) days.

G. <u>Receipts</u>

24. Whenever Respondent receives any deposit, fee or other money from a job applicant, Respondent immediately shall provide the job applicant a written receipt that complies with Section 181 of the GBL, and is substantially similar to the Department's "Model Receipt."[2] The receipt shall:

a. have the word "Receipt" written clearly and conspicuously at the top;
b. state the name of the applicant;

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[2] Available at: http://www.nyc.gov/html/dca/downloads/pdf/ea_receipt_english.pdf and http://www.nyc.gov/html/dca/downloads/pdf/ea_receipt_spanish.pdf.

c. state the name and address of the employment agency;
d. state the date and amount of the fee;
e. state the reason for the fee;
f. include the DCA license number;
g. contain a written confirmation that any and all fees that the employment agency requires job applicants to pay are consistent with the law; and
h. include the signature, printed name, and title of the person receiving the deposit, fee, or other charge on behalf of the employment agency.

H. Signs

25. Respondent shall display conspicuously in the main room (*i.e.*, the reception or waiting area) of its place of business: (i) the poster provided by the Department (the "DCA Law Card") containing Sections 178, 181, 185 and 186 of the GBL; (ii) the U.S. Anti-Discrimination Poster; (iii) and the New York State Anti-Discrimination Poster Respondent. Respondent may obtain these posters from the Department's Licensing Center located at 42 Broadway, 5th Floor, New York, NY 10004.

26. Respondent shall display conspicuously in the main room of its place of business the License provided by the Department, as required by Section 1-03 of the Rules.

27. Respondent shall display conspicuously in the main room of its place of business a "complaint sign," as required by Section 1-03 of the Rules.

I. Advertisements

28. Respondent shall not publish, or cause to be published, any false, fraudulent or misleading information, representation, promise, notice, or advertisement.

J. Statement of Employee Rights Regarding Employment Agencies

29. Before any discussion with job applicants seeking employment as domestic or household workers, Respondent shall give to the job applicants a readable copy of the Department's "Domestic or Household Employees: Statement of Employee Rights and Employer Responsibilities."[3]

K. Compliance and Training

30. Respondent shall maintain a record of all employees including their name, address, phone number, employment responsibilities, and employment start date.

31. Respondent shall train all new employees on the requirements of this CO, and all applicable laws and regulations (*i.e.*, the License Enforcement Law, the Employment

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[3] Available at: http://www.nyc.gov/html/dca/downloads/pdf/employmentagency_english.pdf and http://www.nyc.gov/html/dca/downloads/pdf/employmentagency_spanish.pdf.

Agency Law, the Code and the Rules), within two (2) days of an employee's start date. Respondent shall distribute materials to employees that include, at a minimum, this CO.

32. Respondent shall notify the Department within ten (10) days of receipt of any (i) complaints filed against you by consumers in any forum, including state and federal courts, the Better Business Bureau, the Office of the Attorney General of the State of New York, the New York State Division of Human Rights, the New York City Commission on Human Rights, the New York State Workers' Compensation Board, the New York State Department of Labor, the Equal Employment Opportunity Commission, or any other agency or association, and (ii) actions, proceedings or investigations by any government agency against you; (iii) results of any actions, proceedings or investigations against you that resulted in the revocation or suspension of a license, the imposition of fines or restitution, a voluntary settlement, a court order, a criminal guilty plea, or conviction.

33. This CO does not resolve any consumer complaints against Respondent that are filed with, or otherwise brought to, the attention of the Department and does not waive the Department's right to seek relief on behalf of aggrieved Consumers.

34. Respondent shall in good faith make all reasonable efforts to resolve any consumer complaints filed with the Department within twenty (20) days of receipt of a complaint. In all instances, Respondent shall respond in writing to the Department regarding a consumer complaint within twenty (20) days of receipt of any complaint as required by Section 1-13 of the Rules.

35. Respondent shall maintain for inspection by the Department files of all consumer complaints it receives from any state or local agency, including the Department, in a manner that is organized and readily accessible on the premises.

36. Within 10 days of licensing, Respondent shall provide the Department with copies of documents required by this CO including, but not limited to, the contracts, receipts, registers, job orders, and evidence of proper signage, as described above in Sections C through H.

37. Nothing in this CO shall lessen or abrogate requirements under the Licensing Law or Rules with regard to production or maintenance of records.

L. <u>Identity Theft and Privacy</u>

38. Respondent shall dispose of records containing personal identifying information such as social security numbers, driver's license numbers, non-driver identification card numbers, mother's maiden name, financial services account numbers or codes, savings account numbers or codes, checking account numbers or codes, debit card numbers or codes, automated teller machine numbers or codes, electronic serial numbers, and/or personal identification numbers by:

a. Shredding the records before disposal;

b. Destroying the personal identifying information contained in the record; or
c. Modifying the record to make the personal identifying information unreadable.

39. Respondent shall shorten (truncate) the account information on electronically printed credit and debit card receipts given to job applicants. Respondent shall not include more than the last five digits of the credit card number and shall delete the card's expiration date.

40. Nothing in this CO shall be construed as waiving or abrogating Respondent's responsibilities under federal, state or local law concerning record-keeping or record maintenance.

M. Fines and Other Penalties

Respondent agrees to pay a fine in the amount of $ 250.00_____ by Mar 16, 2012____. If the Respondent's payment is late, the Department shall add a late fee of $100.00 to the amount owed by the Respondent and the entire balance (including late fee) due under this settlement agreement shall be due immediately. Failure to submit payment for this settlement agreement may result in the suspension or revocation of the respondent's license(s) with the Department.

41. Respondent agrees to waive any further right to a hearing or appeal on the above-referenced citation under Section 20–104 of the Code or under Article 78 of the New York State Civil Practice Law and Rules, Sections 7801-7806.

42. If at any time Respondent engages in any unlicensed activity, fails to maintain its license for the duration of its business practice, or files a license application (including an application for renewal) that is denied, the Department shall be entitled to: (i) seal Respondent's business premises; (ii) impose fines of up to one hundred dollars ($100.00) per day for each day of unlicensed activity or $10,000.00, whichever is more; and (iii) remove, seal, or make inoperable any items or goods sold, offered for sale, available for public use, or utilized in the operation of the unlicensed activity.

43. In the event Respondent is found to be operating without a license at any time after the execution of this CO, Respondent agrees that there shall be a presumption of continuous unlicensed activity from the date alleged in the underlying NOH charging the above referenced violation. Respondent also shall be liable for the maximum penalties allowable by law.

44. Respondent acknowledges that any breach of this CO by Respondent or its agents shall, upon issuance of a new violation and hearing thereon: (i) be deemed grounds for suspension or revocation of Respondent's license; (ii) be assessed at the maximum penalties allowed by law; (iii) be deemed a separate, knowing violation of the Consumer Protection Law subject to the maximum penalties defined therein; (iv) be deemed proof that any person with an equity interest of ten (10) percent or more, or with significant managerial responsibility for the operation of Respondent's business, is not possessed of the integrity,

honesty, and fair dealing required to hold a license issued by the Department; and (vi) require payment by Respondent of all costs and expenses associated with the Department's investigation and prosecution of the new violation.

45. Upon the termination of a license by revocation, expiration, denial, or surrender, Respondent shall immediately cease employment agency activities.

46. The acceptance of this CO by the Department shall not be deemed approval of any of Respondent's business practices, and Respondent shall make no representation to the contrary.

47. This matter will be considered settled upon execution of this CO and payment of the settlement sum as set forth above.

DATE: Mar 8, 2012

Accepted for Respondent

Ines Garcia -Romero /L & S SOLUTIONS by:

Ines Garcia-Romero
Name

representative
Title

Signature

Accepted for Jonathan Mintz,
Commissioner of Consumer Affairs
for the City of New York by:

G.TORRES,SETTLEMENT OFFICER
Name and Title

Signature

Emailed to Enforcement

Businesses licensed by the Department of Consumer Affairs (DCA) must comply with all relevant local, state and federal laws. Copies of New York City licensing and consumer protection laws are available in person at DCA's Licensing Center, located at 42 Broadway, 5th Floor, New York, NY, by calling 311, New York City's 24 hour Citizen Service Hotline, or by going online at www.nyc.gov/consumers. License application requirements for employment agencies are available at www.nyc.gov/html/dca/html/licenses/034.shtml.