

TERMS OF SERVICE AGREEMENT

This Terms of Service Agreement (“Agreement”) is between the Client specified in any written and agreed upon Proposal and People Performance Resources, LLC (“PPR”). This Agreement shall govern the relationship between Client and PPR. Client and PPR may each be individually referred to as a “Party” or collectively as the “Parties.”

1. DEFINITIONS. As used in this Agreement, the following terms shall have the meanings set forth below:

- a. **“Agreement”** means this Terms of Service Agreement and all signed Proposals, Engagement Letters and Statements of Work as amended from time to time.
- b. **“Candidate”** means any individual Referred to a Client.
- c. **“Confidential Information”** means any information that is: (i) a party’s (or its affiliates) internal and/or proprietary information including without limitation, bids, proposals, pricing, financials, procedures, business operations, and Candidate(s); or (ii) clearly marked or identified in writing as being “confidential” or “proprietary” that one party (the discloser) may disclose to the other party (the recipient) in connection with this Agreement or the services. The term Confidential Information shall not include information: (x) in the public domain through no fault of the recipient; (y) which is first received by the recipient from a third party who and not in breach of any contractual, legal or fiduciary obligation to keep such information confidential; and (z) that is independently developed by the recipient without use of or reference to any confidential information of the discloser.
- d. **“Deliverables”** means documents created by PPR in conjunction with the Services provided under this Agreement and includes but is not limited to new hire paperwork, onboarding and offboarding checklists, training documents, performance review forms, disciplinary forms, Employee Handbooks and other forms and policies.
- e. **“Proposal”** means the document signed (electronically or otherwise) or authorized by the Client that identifies the type of Services being requested and the associated fees. The Proposal is effective and binding once signed or authorized by a Client.
- f. **“Referred”** means any manner or means of communication of a Candidate’s identity.
- g. **“Services”** means the services (whether human resources consulting services or talent acquisition services) described in and agreed upon in any Proposal.
- h. **“Talent Acquisition Fee”** means fees associated with Talent Acquisition and is based on a candidate’s Total Compensation and further defined in the Proposal
- i. **“Total Compensation”** means the Candidate’s annual base salary plus bonus at time of hire.

2. SERVICES.

- a. The scope of services to be performed by PPR shall be defined in a written Proposal to be signed or authorized by the Client. Each Proposal shall describe the work to be performed by PPR, the deliverables, if any, as well as the fees for such services. Once a Proposal is signed, it may only be amended by a written instrument executed by the Parties.
- b. Notwithstanding the Services being performed by PPR, Client remains solely responsible for managing its own business and is the sole employer of its employees. PPR has no duty or right to direct, control, supervise or manage Client’s business operations or employees,

and Client remains solely responsible for all decisions and actions taken with respect to its employees. PPR is not a co-employer or joint employer of the employees.

- c. Client is responsible for and shall pay all legal fees and other costs incurred in connection with any investigation of or defense against any Client conduct related to its employees by a governmental or regulatory agencies including without limitation, any fines, penalties, agreed upon settlements, mediations, or lawsuits. .
- d. PPR's services are not legal advice. Client should consult an attorney regarding their rights under the law.

3. FEES AND PAYMENT TERMS. PPR will submit all invoices to Client via electronic mail to an email address specified by Client. Client agrees to pay all fees upon receipt of invoice. Interest of 1% per month will be charged on unpaid fees of more than thirty (30) days past due. Client agrees to reimburse PPR for all reasonable costs of collection, including mediator, arbitrator and attorney fees.

- a. **HR Consulting Fees.** Hourly fees associated with HR Consulting Services will be billed based on all hours worked on behalf of Client, and include but are not limited to time spent working on deliverables, drafting documents, researching, strategy development, communications with employees and other parties on behalf of Client, providing updates, attending meetings, travel to meetings or other events and all other time spent working on behalf of Client. Fees will be billed in .25-hour increments.
- b. **Talent Acquisition Fees.** Client agrees to pay Talent Acquisition Fees in accordance with the Client's executed Proposal. Client will be obligated to pay the Talent Acquisition Fee(s) when, during the search or within two years from its completion or termination,
 - i. A Candidate Referred to Client by PPR is hired, directly or indirectly, for any position, as an employee, consultant, or independent contractor, by Client, its affiliates, parents, or subsidiaries, or
 - ii. A Candidate Referred to Client by PPR is Referred by Client to another employer or recruiting firm and the candidate is hired, directly or indirectly, for any position, as an employee, consultant, or independent contractor, by such employer or through such recruiting firm.
- c. **Expenses.** Client will be responsible for the payment of all reasonable out of pocket costs incurred in connection with work for Client, which may include but is not limited to, copies, delivery fees, courier services, postage, travel expenses, food and lodging out of North Texas, expert or consultant fees, professional fees and other costs incurred on Client's behalf. Any expenses incurred by PPR will be added to the Client's invoice in the month in which such expenses are recorded in PPR's billing system. These expenses will be identified on PPR's invoice sufficiently to allow Client to determine the nature of the expense.
- d. **Retainer Fees.** PPR will submit an invoice to Client for a prorated retainer fee upon acceptance of a Proposal and at the beginning of every month thereafter. Unused retainer fees cannot be converted into cash upon termination of agreement.

4. CONFIDENTIALITY. Neither party shall disclose the other party's Confidential Information to any third party without the prior written consent of the discloser. The recipient may use the

discloser's Confidential Information solely for the purposes of fulfilling its respective obligations under this Agreement. Notwithstanding the foregoing, recipient may disclose discloser's Confidential Information to the extent necessary to comply with a subpoena, court order, or other governmental agency or as may be necessary for the purpose of reporting or investigating a violation of law.

5. **CONFIDENTIALITY OF REFERRALS.** All Candidate referrals made by PPR are strictly confidential and Client shall defend, indemnify, and hold PPR harmless from any and all claims, losses, damages, or liability, including costs of court and reasonable attorney's fees resulting from Client's unauthorized disclosure or misuse of information regarding any Candidates or their candidacy.
6. **TERM, TERMINATION, AND SURVIVAL.** This Agreement may be terminated by either Party at any time upon thirty (30) day written notice to the other Party. In the event of termination, Client's obligation to pay Fees and expenses for services or Deliverables provided to Client up until the effective date of the termination shall survive any such termination.

This Agreement shall terminate immediately upon occurrence of the following: (i) where a Party becomes insolvent or fails to pay its bills when due (ii) makes an assignment for the benefit of creditors; (iii) files a petition for bankruptcy; (iv) or ceases to exist as a going concern.

Any provision that, in order to give proper effect to its intent, should survive expiration or termination of this Agreement shall survive such expiration or earlier termination of this Agreement. Surviving provisions include, without limitation, indemnification obligations, payment of fees, confidentiality obligations, non-solicitation, choice of law, and venue.

7. **NON-SOLICITATION.** During the term of this Agreement and for one year thereafter, neither Party, through any individual or entity, directly or indirectly, shall: (i) solicit, induce or attempt to induce away from employment or association with a Party any officer, director, employee, independent contractor, consultant, agent or other personnel or representative of the other Party; or (ii) otherwise intentionally disrupt, impair, damage or interfere with any relationship between a Party and any of its then-current officers, directors, employees, independent contractors, consultants, agents or other personnel or representatives.
8. **OWNERSHIP OF DELIVERABLES AND INTELLECTUAL PROPERTY.** Except as may be agreed upon in a Proposal, PPR retains ownership of the Deliverables. Provided Client has paid all Fees owed under any respective Proposal and is not otherwise in breach of the Agreement, PPR grants to Client a limited license for internal business use of the Deliverables, including the ability to make copies of the Deliverables, to modify the Deliverables (including the ability to incorporate portions of the Deliverables into new materials created by Client), and to distribute the Deliverables internally to Client's employees, agents, and contractors. While PPR maintains ownership of the Deliverables, including copyrights, PPR acquires no rights in or claim to any proprietary materials or Confidential Information provided to PPR by Client ("Client Materials"). PPR may use such

Client Materials solely for the limited purpose of creating the Deliverables and otherwise fulfilling its obligations under any respective Proposal.

Client agrees and acknowledges that PPR provides the same or similar services to other clients, and notwithstanding PPR performing services for Client or by entering into to any Proposal or this Agreement, nothing shall be deemed to prevent PPR from performing the same or similar services for other clients, including clients who may be in competition with Client.

- 9. LIMITED WARRANTY AND REMEDY.** PPR warrants that the Services and/or Deliverables shall be performed or developed (as applicable) in a professional and skillful manner.

PPR does not guarantee the performance of any candidate or the accuracy of information provided regarding a candidate. PPR urges Client to conduct such investigations, as it deems necessary, to verify candidate information or to obtain such other information, as it may deem relevant. Client releases PPR from any and all claims that result from the Candidate(s)'s acts or omissions.

Placement Guarantee: Provided Client is not in breach of its obligations under this Agreement, including any obligation to pay Fees when due, a 60-day placement guarantee will be in effect (the "Guarantee Period") for Talent Acquisition Services. In the event Client's employment of a Candidate is terminated during the Guarantee Period, PPR shall endeavor to locate a replacement at no additional cost to the Client ("Replacement Warranty"). The Replacement Warranty shall not apply where a Candidate's termination is due to: (i) reorganization or merger; (ii) reduction of force; (iii) material change in hired Candidate's position or compensation; or (iv) hired Candidate resigns due to Client's violation of law. The above Replacement Warranty is Client's sole and exclusive remedy for any alleged breach of warranty by PPR.

With respect to Deliverables, PPR does not warrant the accuracy of the Deliverables or that the Deliverables will be error free. **EXCEPT AS EXPRESSLY SET FORTH HEREIN, PPR MAKES NO OTHER WARRANTIES, EITHER EXPRESS OR IMPLIED, OF ANY KIND OR NATURE, INCLUDING WITHOUT LIMITATION, FITNESS FOR A PARTICULAR PURPOSE OR THAT ANY PARTICULAR RESULT WILL BE OBTAINED FROM ITS SERVICES.**

- 10. COMPLIANCE WITH LAWS.** Client shall comply with all federal, state, and local laws, rules, ordinances (collectively "Laws"), applicable to its selection, hiring, and treatment of prospective employees and employees it elects to hire. PPR shall comply with all Laws applicable to its performance under this Agreement.
- 11. LIMITATIONS ON LIABILITY. IN NO EVENT SHALL EITHER PARTY OR ANY OF ITS RESPECTIVE REPRESENTATIVES OR EMPLOYEES BE LIABLE UNDER THIS AGREEMENT TO THE OTHER PARTY OR ANY THIRD PARTY FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, TREBLE OR OTHER SIMILAR STATUTORY OR ENHANCED DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE,**

REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE AND WHETHER OR NOT EITHER PARTY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

CLIENT AGREES THAT IN NO EVENT SHALL PPR'S LIABILITY UNDER THIS AGREEMENT FOR ANY CAUSE OF ACTION OR REMEDY, REGARDLESS OF WHETHER SAME ARISES UNDER TORT, NEGLIGENCE, CONTRACT, OR OTHER THEORY OF LIABILITY, INCLUDING STRICT LIABILITY, EXCEED THE FEES PAID FOR THE SERVICES GIVING RISE TO THE CAUSE OF ACTION.

12. MISCELLANEOUS PROVISIONS.

- a. **Force Majeure.** Neither Party shall be deemed in default of this Agreement to the extent that any delay or failure in the performance of its obligations (except for the payment of monies owed) results, without its fault or negligence, from any cause beyond its reasonable control, such as acts of God, acts of civil or military authority, terrorism, embargoes, epidemics, pandemics, war, riots, insurrections, fires, explosions, earthquakes, floods, adverse weather conditions, strikes, or lockouts, acts of governmental agencies or officials, and changes in laws, statutes, regulations or ordinances.
- b. **Independent Contractor.** The Services provided by PPR under this Agreement are provided as an independent contractor. Nothing in this Agreement shall be construed as creating the relationship of principal and agent, joint venturers, or employer and employee between PPR and Client.
- c. **Binding Agreement; No Third-Party Beneficiaries.** The Agreement will be binding upon and enforceable only by the Parties, their respective successors and permitted assigns. The Parties specifically acknowledge that this Agreement is not intended to create any rights in or for any third party.
- d. **Integration.** This Agreement and any signed Proposal incorporating the terms of this Agreement constitutes the entire agreement between the Parties relating to the subject matter contained herein, and there are no other written or oral agreements or understandings between the Parties, express or implied.
- e. **Governing Law; Dispute Resolution Process; Jurisdiction and Venue.** The laws of the State of Texas shall govern the enforcement and interpretation of this Agreement without regard to any conflicts of laws principles that may refer any matter to another jurisdiction for resolution. Any claim or controversy arising from or related to this Agreement or either Party's rights, obligations or performance under this Agreement which cannot be first resolved by mutual agreement of the Parties shall be submitted to mediation in Dallas County, Texas, utilizing the services of a mutually agreed upon mediator who is an attorney. In the event that mediation is not successful at resolving the claim or controversy, the Parties agree to submit such claim or controversy before a single arbitrator of the American Arbitration Association located in Dallas or Tarrant County in the State of Texas. Parties agree the arbitration will be conducted in accordance with the rules of the American Arbitration Association.
- f. **Attorney Fees.** In any formal proceeding by which one Party either seeks to enforce its rights under this Agreement or seeks a declaration of any rights or obligations under this Agreement, the prevailing Party shall be awarded its reasonable attorney fees, costs and expenses incurred.

- g. **Remedies Cumulative.** No remedy referred to in this Agreement is intended to be exclusive, but each shall be cumulative and in addition to any other remedy referred to in this Agreement or otherwise available under law.
- h. **Waivers.** The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted, and no waiver is valid unless in writing and signed by the Party making such waiver.
- i. **Notices.** All notices, requests, consents, claims, demands, waivers and other communications hereunder (each, a "Notice") shall be in writing and addressed to the parties at the addresses set forth on the Proposal (or to such other address that may be designated by the receiving party from time to time in accordance with this section). All Notices shall be delivered by personal delivery, nationally recognized overnight courier (with all fees pre-paid), facsimile or certified or registered mail (in each case, return receipt requested, postage prepaid).
- j. **Severability.** Each provision of this Agreement is severable from the others such that if any portion of this Agreement is declared to be invalid or unenforceable, such provision shall be ineffective only to the extent required by law, without invalidating the remainder of such provision or the remainder of this Agreement. Further, to the extent permitted by law, any provision found to be invalid or unenforceable shall be deemed automatically redrawn to the extent necessary to render it valid and enforceable consistent with the Parties' intent.
- k. **Assignability.** Neither Party may assign its rights or obligations under this Agreement without the other Party's written consent, such consent not to be unreasonably withheld. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.
- l. **Conflicts.** In the event of a conflict between any provision of this Terms of Service Agreement and any Proposal, the terms of this Terms of Service Agreement shall control unless the Parties specifically agree in the Proposal that such provision shall control notwithstanding the foregoing.