

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 for potential employment.
- c. **“Confidential Information”** means any information that is: (i) PPR’s internal and/or proprietary information including without limitation, bids, proposals, pricing, financials, procedures, business operations, names or identity of Candidate(s); (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; or (iii) the Client business plans, developments, operations and strategies, hiring and recruiting information, employee data, personnel records, payroll records, performance management records, workplace investigations, employment policies, procedures, and agreements, legal claims, demands, actions, or strategy, and/or any other human resource-related information learned, observed, or acquired by PPR by virtue of the Services being performed for Client. 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 (as defined below) 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 and its terms shall be incorporated herein by reference.
- f. **“Referred”** means any manner or means of communication of a Candidate’s identity.
- g. **“Services”** means the HR Consulting and/or Talent Acquisition/Executive Search services described in, and agreed upon, in the executed Proposal. For purposes of this Agreement HR Consulting services shall include human capital and human resource consulting, HR audits, special fee projects, compensation analysis, executive succession planning, executive coaching, and/or any other HR-related services as defined in the Proposal. Talent Acquisition/Executive Search services shall include retained for fee candidate searches.

- h. **“Talent Acquisition/Executive Search Fees”** refer to third-party fees associated with Talent Acquisition/Executive Searches 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 and any addendum thereto 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 and timing of payment for such services. Once a Proposal is signed, it may only be amended by a written instrument executed by the Parties.
- b. PPR is an independent contractor. Nothing herein shall be construed to create or imply the relationship of principal and agent, employer and employee, partner, joint venture, joint employment, or any other combined, affiliate, or related entity relationship between PPR and Client. PPR shall hold no authority, express or implied, to commit, obligate, or make representations on behalf of the Company and shall make no representations to the contrary. Client remains solely responsible for managing its own business and is the sole employer of its employees. Although PPR may provide certain Services, 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 Client’s 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 agency including without limitation, any fines, penalties, agreed upon settlements, mediations, or lawsuits.
- d. The manner in which the Services are rendered shall be within PPR’s sole control and discretion. 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, but not limited to mediator, arbitrator and attorney fees and costs.

- a. **HR Consulting Fees.** Client agrees to pay the fee structure applicable to the Services being provided, including, but not limited to, monthly retainer, flat fees, special project fees, and/or the hourly fees in accordance with the Client’s executed Proposal and/or any addendum. Any 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/Executive Search Fees and Expenses.** Client agrees to pay Talent Acquisition/Executive Search Fees and Administrative Expenses in accordance with the Client's executed Proposal. Client will be obligated to pay the Talent Acquisition/Executive Search Fee(s) when, during the search or within two years from its completion or termination:
- i. Any 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, regardless of whether the resulting position was part of the assignment or otherwise open or available when the search began; or
 - ii. Any 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;
 - iii. Multiple Candidates Referred to Client by PPR, are hired, directly or indirectly, for any positions with Client. or any other third-party that Client referred Candidates to, regardless of whether the resulting positions were part of the assignment or open or available when the search began.

In addition to the Talent Acquisition/Executive Search Fees, Client will be responsible to pay certain Talent Acquisition/Executive Search Administrative Expenses for third-party services related to the search assignment as set forth in the Proposal. Talent Acquisition/Executive Search Administrative Expenses will be billed as set forth in the Proposal and shall be in addition to the Out-of-Pocket Expenses defined below. Talent Acquisition/Executive Administration Expenses shall include, but are not limited to, those expenses that cannot be allocated to a particular client due to their membership, license, or subscription fee model, including, without limitation, access to electronic databases or platforms used to conduct research on prospects, candidates, and competitors, such as applicant tracking systems, LinkedIn, LEXIS, Hoovers, etc.

- c. **Out-of-Pocket 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, candidate education verification, license and certification, skill assessments, press checks in local, regional, and national and worldwide web publications, background investigation, and research costs. Client also will be responsible for copies, delivery fees, courier services, postage, mileage and travel expenses, food and lodging out of North Texas, expert or consultant fees, professional fees and other costs reasonably 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. **Billing Disputes.** If Client disputes the accuracy or timing of any invoice, Client shall, within thirty (30) days of receipt, deliver a written notice and detailed explanation of such dispute to PPR. If notice is not received within this period, the accuracy and proper timing of such invoice shall be final and Client shall have waived any objections thereto and its right to dispute the charges in said invoices. This notice requirement is a condition precedent to Client bringing any action disputing the charges and fees contained in said invoices. If notice is timely received, PPR shall meet with a representative of Client within fifteen (15) days to verify the accuracy of the invoice. Any errors shall be corrected by a debit or credit to the Client's next invoice after resolution of the disputed amount, or by refund to Client if there is no next invoice.

4. **CONFIDENTIALITY.** PPR acknowledges that it may be given access to or acquire Client Confidential Information or other information which is deemed proprietary or confidential to Client or its affiliated companies and their clients and customers. PPR agrees to hold such information in strict confidence and not to disclose such information to third parties or to use such information for any purposes whatsoever other than the providing of services to Client. PPR agrees to direct its employees to keep such information confidential.

Similarly, Client agrees that during the term of the Agreement, it may be given access to, acquire information regarding, PPR's Confidential Information which provides PPR with a competitive advantage. Both Parties agree to use due care and diligence to prevent any unauthorized use or disclosure of the other Party's Confidential Information. 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. In such event, PPR and/or the Client agree to provide the other with reasonable advance notice of such legally required disclosure and to cooperate in any efforts to seek protective treatment of such information and to provide no greater portion of the legally-required information required to be disclosed.

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 includes, without limitation, non-refundable retainers as well as any payment for the pro-rated portion of the work performed through termination of the Agreement.

This Agreement shall terminate immediately upon occurrence of the following: where a Party (i) 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) ceases to exist as a going concern; (v) fails to correct a material breach of this Agreement within 10 calendar days' notice of such breach.

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.

Any Client Confidential Information not otherwise owned by PPR shall be returned to Client within two weeks of termination of this Agreement.

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, or hire any current officer, director, employee, independent contractor, consultant, agent or other personnel or representative of the other Party or otherwise induce the an individual to modify or terminate their employment or business relationship with a 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, unless this restriction is waived in writing by PPR in its sole discretion.

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.

While PPR strives to refer and direct only the most qualified Candidates, PPR does not warrant or guarantee the performance of any candidate, including whether the Candidate will produce any particular result or solutions to Client's needs, or the accuracy of information provided regarding a candidate. PPR urges Client to conduct such investigations, as it deems necessary, to verify candidate information, skills, and competency, 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/Executive Search Services. In the event Client's employment of a Candidate is terminated during the Guarantee Period, PPR shall endeavor to locate a replacement with no additional service fees 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 material breach of any agreement and/or policy or violation of law. If there are material changes to the Candidate specification or market conditions, the original Talent Acquisition/Executive Search Fees will be applied as a credit toward any additional fees due. The Client shall remain responsible for the payment of any Talent Acquisition/Executive Search Administrative Expenses and Out-of-Pocket Fees incurred in any new talent search conducted as part of the Replacement Warranty. The above Replacement Warranty is Client's sole and exclusive remedy for any alleged breach of warranty by PPR and PPR shall not be liable for any consequential or other damages resulting from the termination or resignation of a hired Candidate.

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.** CLIENT HEREBY WAIVES AND RELEASES PPR, ITS REPRESENTATIVES, EMPLOYEES, DIRECTORS, OFFICERS, ATTORNEYS, INSURERS, AND AGENTS FROM ANY AND ALL POSSIBLE CLAIMS, DEMANDS, SUITS, AND CAUSES OF ACTION FOR ANY CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, TREBLE OR OTHER SIMILAR STATUTORY OR ENHANCED DAMAGES, INCLUDING ANY DAMAGES FOR BUSINESS INTERRUPTION, LOST PROFITS, LOSS OF USE, REVENUE OR PROFIT, WHETHER ARISING OUT OF OR RELATED TO ANY ACT OR OMISSION OF PPR'S EMPLOYEES OR PPR'S PERFORMANCE OR ALLEGED BREACH OF THIS

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

NOTWITHSTANDING THE ABOVE, 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 ("Force Majeure Event").
- b. **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.
- c. **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.
- d. **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 from Burdin Mediation. The Parties agree to bear their own costs associated with the mediation and to equally share any mediation fees (other than mediation related to a billing dispute). 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 then existing Commercial Arbitration rules of the American Arbitration Association. The administrative cost of the arbitration and the arbitrator's fees shall be shared equally by the Parties. In such arbitration, the arbitrator shall have no authority or power to amend, modify, or in any other way change any of the terms of this Agreement. All decisions of such arbitrator shall be final and binding upon both parties. The prevailing party in such Arbitration as

determined by the arbitrator in his or her decision shall be awarded an amount equal to its reasonable attorney's fees incurred in connection with such arbitration, in addition to what other relief may be awarded. Judgment upon any award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

Notwithstanding the above, the Parties acknowledge that a breach Sections 4, 5, and 7 of this Agreement (confidentiality and non-solicitation provisions) will cause substantial and irreparable harm for which money damages would be an inadequate remedy. Accordingly, in such event, the Parties shall be entitled to obtain injunctive and other forms of equitable relief to prevent such breach and to recover from the other Party all costs (including without limitation reasonable attorneys' fees) incurred in connection with enforcing this Agreement, in addition to any other rights or remedies available at law, in equity or by statute. After a court has issued a ruling concerning the emergency or temporary injunctive relief, the Parties are required to submit the dispute to mediation and arbitration pursuant to this Agreement.

- e. **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.
- f. **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.
- g. **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.
- h. **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).
- i. **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.
- j. **Assignability.** Client may not assign, transfer, or delegate its rights or obligations under this Agreement without the prior written consent of PPR's President & CEO. PPR reserves

the right to assign its rights or obligations under this Agreement without Client's consent in connection with the merger or consolidation of PPR, the sale of all or a portion of its assets, or a sale in the majority interest in Company ownership. This Agreement shall be binding upon and inure to the benefit of the Parties and their respective successors and permitted assigns.

- k. **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.