



Payroll and Human Capital Management Services Agreement

This Payroll and Human Capital Management Services Agreement (“PHCMSA”), effective as of the date of Client’s signature below (“Effective Date”), is by and between Paycom Payroll, LLC, a Delaware limited liability company whose corporate headquarters is located at 7501 W. Memorial Road, Oklahoma City, OK 73142, United States of America, and its applicable affiliates (hereinafter “Paycom”) and the undersigned Client (hereinafter “Client”).

Paycom and Client agree that this PHCMSA, the General Terms and Conditions (www.paycom.com/agreements), as may be amended from time to time as provided for therein (the “GTC”), and all of the applicable service component Schedules (www.paycom.com/agreements) (“Schedules”) shall apply to all services provided by Paycom to Client except for certain standalone services governed by separate agreements. The GTC and the applicable Schedules are incorporated by reference herein as if fully set forth herein. All of Paycom’s services provided to Client, but excluding the background screening services, shall be and are collectively referred to as the “Services.” This PHCMSA, the GTC and the applicable service component Schedules shall be and are collectively referred to as the “Agreement.”

Subject to the terms and conditions of the Agreement, Paycom agrees to perform and Client hereby engages and hires Paycom to perform on Client’s behalf each of the Services indicated on proposal(s) acknowledged by Client and as more specifically described in this Agreement. The final version(s) of such proposal(s) acknowledged by Client are incorporated by reference herein as if fully set forth herein.

Subject to the terms and conditions of this Agreement, Paycom shall make available to Client each service component of the Services promptly after Client provides Paycom with the information and documents that Paycom requires to begin performing the subject Services.

Paycom’s Services are based upon information and instructions provided by Client. Client is solely responsible for the accuracy and completeness of all information and instructions provided to Paycom. Notwithstanding anything to the contrary in this Agreement, Paycom shall not be liable or responsible for errors or omissions arising from Paycom’s reliance upon Client’s instructions or incorrect or incomplete information, designations, elections, or instructions provided by Client.

Notwithstanding anything to the contrary in this Agreement, the Services provided by Paycom expressly do not include the rendering of legal, tax, accounting, or investment advice to Client or Client’s employees.

LIMITATIONS OF LIABILITY. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, BUT EXCEPT AS TO THOSE MATTERS PROVIDED FOR IN SECTIONS 12 AND/OR 24 OF THE GENERAL TERMS AND CONDITIONS, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL, PUNITIVE OR SPECIAL DAMAGES (INCLUDING BUT NOT LIMITED TO DAMAGES TO LOST ANTICIPATED SAVINGS), WHETHER FORESEEABLE OR NOT AND HOWEVER CAUSED, EVEN IF SUCH PARTY IS ADVISED OF THE POSSIBILITY THAT SUCH DAMAGES MIGHT ARISE. NOTWITHSTANDING ANYTHING TO THE CONTRARY HEREIN, EXCEPT AS LIMITED FURTHER BY THE AGREEMENT AND EXCEPT FOR THE ITEMS DESCRIBED IN SECTIONS 24.1 THROUGH 24.8 OF THE GENERAL TERMS AND CONDITIONS, THE AGGREGATE LIABILITY OF EACH PARTY TO THE OTHER FOR ANY OR ALL LOSSES OR INJURIES FROM ANY ACTS OR OMISSIONS UNDER THIS AGREEMENT OR FROM ANY SERIES OF BREACHES ARISING OUT OF THE SAME OR SUBSTANTIALLY THE SAME ERROR(S), ACT(S), INCIDENT(S), OR OMISSION(S), REGARDLESS OF THE NATURE OF THE LEGAL OR EQUITABLE RIGHT CLAIMED TO HAVE BEEN VIOLATED, SHALL UNDER NO CIRCUMSTANCES EXCEED AND SHALL BE LIMITED TO AN AMOUNT EQUAL TO THE FEES AND CHARGES PAID BY CLIENT TO PAYCOM UNDER THIS AGREEMENT DURING THE TWELVE MONTH PERIOD IMMEDIATELY PRECEDING THE FIRST OCCURRENCE OF THE ALLEGED BREACH, OR SERIES OF BREACHES ARISING OUT OF THE SAME ERROR, ACT, INCIDENT, OR OMISSION, FOR THE SERVICE COMPONENT(S) WHICH IS/ARE THE SUBJECT OF THE ALLEGED BREACH. CLIENT ACKNOWLEDGES THAT PAYCOM IS NOT AN INSURER OF CLIENT’S POTENTIAL LOSSES AND THAT THE FEES AND CHARGES PROVIDED FOR HEREIN ARE NOT SUFFICIENT TO RENDER PAYCOM AS CLIENT’S INSURER. THESE LIMITATION OF LIABILITY PROVISIONS, INCLUDING THE AGGREGATE CAP, ARE MATERIAL PROVISIONS OF THIS AGREEMENT THAT HAVE BEEN MATERIALLY AND SPECIFICALLY RELIED UPON BY PAYCOM WITH RESPECT TO DEFINING ITS SERVICES, ITS OBLIGATION AND ITS PRICING IN THIS AGREEMENT.

The Agreement will begin on the Effective Date and continue through the Initial Term End Date listed on Client’s proposal signed in connection with this Agreement (“Initial Term”). After the Initial Term, any renewal period shall equal the length of the Renewal Term indicated on Client’s proposal signed in connection with this Agreement (a “Renewal Term”). After the Initial Term or after any Renewal Term, the Agreement shall automatically renew for a successive Renewal Term unless either Party notifies the other Party with a written or electronic notice of non-renewal of the party’s intent not to renew the Agreement at least ninety (90) days prior to expiration of the then-effective Initial Term or Renewal Term, with *time being of the essence*. The Initial Term and Renewal Term, if any, together shall be considered the term (“Term”).

In consideration of Client’s commitment to use Paycom through the Initial Term, Paycom’s fee rates for its Services shall be limited during the Initial Term. During the Initial Term, Paycom may only increase its fee rates by up to 0% in year 1, 2% in year 2, and 4% in the remainder of the Initial Term after 2 years. For the sake of clarity, Paycom’s fees may be subject to fluctuation depending upon the extent to which Client uses Paycom’s Services (i.e. if Client’s employee count increases during this time period, Paycom’s fee rates will be as stated but the fees will increase as a result of the additional employee check processing quantities). Moreover, if during the Initial Term, the Client elects to receive additional service offerings or additional software functionality, then Client will be charged for any such additional services or functionality. Further, this price lock shall not apply to any additional processing fees or pass-through charges.

In the event that: (i) Client terminates this Agreement prior to the expiration of the Term; (ii) during the Term, Client ceases to exclusively use Paycom’s Services; or (iii) Paycom terminates the Agreement pursuant to Section 8 of the GTC during the Term; then Client agrees that Client shall be liable to Paycom for an early termination fee, which is computed as follows:

Business tax identification number (FEIN in USA): _____

The average monthly Paycom fee amount assessed against Client (by averaging all Paycom monthly fees and charges assessed against Client throughout the most recent prior six (6) full calendar months of Client's use of Paycom's Services as its exclusive provider); multiplied by the number of months remaining in the Term. In the event Client does not initially use Paycom's Services for six full months, then the average monthly Paycom fee shall be computed based upon the estimated average monthly fee calculated on the proposal(s) signed by Client. In the event Client does not process a first payroll with Paycom, the termination fee will be equal to the average monthly fee calculated on the proposal(s) signed by Client multiplied by 36.

Paycom's right to recover an early termination fee shall be in addition to any other rights Paycom may have against Client under any other applicable agreement (including Paycom's right to recover any unpaid fees or charges for Services rendered). The Parties agree that Paycom's pricing to Client was based upon a multi-month commitment and that the early termination fee constitutes the Parties good faith liquidated estimate of Paycom's actual damages in the event of early termination and is not intended as any sort of penalty.

Notwithstanding the foregoing, Client shall not be liable to Paycom for an early termination fee, as described above, in the event Client ceases to use Paycom's services as a result of a material breach by Paycom of Paycom's obligations under this Agreement that remains uncured within a reasonable time after Client provides Paycom with written notice of material breach of Paycom's alleged breach and a reasonable opportunity to cure such breach.

All issues and questions concerning the construction, validity, enforcement, performance and interpretation of the Agreement, the parties' business dealings now or hereafter, and the parties' corresponding, contemporaneous and/or subsequent agreements shall be governed by, and construed in accordance with, the laws of the State of Oklahoma, United States of America. Any claim arising out of or related to this Agreement, including without limitation claims related to the Parties' negotiations and inducements to enter into this Agreement, shall be submitted to mandatory, binding arbitration under the auspices of the American Arbitration Association (the "ADR Association"), in a mutually agreeable location, with the parties sharing equally the costs of arbitration. Arbitration will proceed according to the commercial rules of the ADR Association. This section does not limit either Party's right to provisional or ancillary remedies from a court of competent jurisdiction before, during, or after the pendency of any arbitration, and the exercise of any such remedy does not waive either Party's right to arbitration. Judgment on an arbitration award may be entered by any court with competent jurisdiction.

The PHCMSA, GTC and any applicable Schedule are intended to contain supplemental and complementary terms and conditions. In the event of a direct conflict between the terms of the PHCMSA, the GTC and any Schedule such conflict shall be resolved in the following order, from highest priority to lowest priority: (1) PHCMSA; (2) GTC; and (3) the applicable Schedule. Notwithstanding the foregoing sentence, any terms in such Schedule that are specific to the service provided in the Schedule, as distinguished from general contract terms, shall control over (1) and (2).

Client and the undersigned individual each represent that the signatory to this Agreement is authorized to enter into such agreement on behalf of Client. By signing below, Client agrees that it has (1) received the Agreement, (2) had an opportunity to read the Agreement and (3) agrees to be bound by the terms of the Agreement.

IN WITNESS WHEREOF, Paycom and Client have executed this Agreement as of the Effective Date.

AGREED AND ACCEPTED BY CLIENT:

City of Tomball
COMPANY LEGAL NAME

TYPE OR PRINT NAME TITLE

AUTHORIZED SIGNATURE Date

PAYCOM PAYROLL, LLC d/b/a PAYCOM, for itself
and its applicable affiliates

AUTHORIZED SIGNATURE

Randy Peck

TYPE OR PRINT NAME

Reporting Agent
TITLE

Business tax identification number (FEIN in USA):