

Placement Services - Terms & Conditions

Provision of Permanent & Fixed-Term Resource

Human Capital Ventures Inc., a Michigan corporation with its principal place of business located at 900 Wilshire Drive, Suite 202, Troy, Michigan 48307 through its branch offices, subsidiaries, and affiliates (collectively, "HCV") these Placement Services Terms and Conditions ("T&Cs"). All introductions of Candidates whether in reply to a specific request by the Company or those presented by HCV as likely to be of interest to the Company will be subject to these T&Cs. All capitalized terms used in these T&Cs are defined below.

Any act by the Company including, contacting HCV for Candidates, acceptance of Candidate Referrals from HCV, use in any way of information relating to Candidates, interviewing of Candidates, or the direct or indirect employment or Engagement of any Candidates Referred by HCV shall constitute an agreement of the Company to be bound by and subject to the T&Cs.

1. DEFINITIONS

- A. **Candidate** - means any person, whether employed or self-employed, or an entity through which a person is offering services, whose skills or services, and whose information is provided to the Company by HCV.
- B. **Company** - means any entity which is the recipient of information regarding Candidates from HCV including such entity's parent, subsidiaries, and affiliates.
- C. **Compensation** - means the Candidates total first year wages including estimated commissions and bonuses, signing bonus, in addition to the financial value of other specialized prerequisites such as the use of a Company vehicle, transportation allowance, and all other specialized prerequisites (i.e. club memberships, etc.).
- D. **End User** - shall have the meaning set forth in Section 2.C.(ii).
- E. **Engagement** - means a work relationship of any description under which a Candidate is to provide any services for the benefit of the Company including, but not limited to, an engagement as an independent contractor or employment which is temporary, project or direct hire ("permanent"/regular basis) whether directly or indirectly by the Company or an End User, through an intermediary, by contract through a third party or otherwise. "Engage" and "Engaged" shall have corresponding meaning.
- F. **Fee** - shall have the meaning set forth in Section 2.A.(i).
- G. **Fee Period** - means any time during the twelve (12) month period following the Referral of the Candidate.
- H. **Fixed Term Basis** - means when the Candidate is Engaged by the Company for a fixed period of time of less than twelve (12) months."
- I. **Guarantee Period** - means the time from the actual start date of a Candidate Engaged by the Company until a date which is ten (10) calendar weeks from that start date.
- J. **Prime Rate** - means the prime rate most recently calculated and reported by the Wall Street Journal (or its successor) a certain date.
- K. **Referred** - means the providing of information by HCV or by a Candidate in any manner or means of communication, whether or not such information includes the Candidate's name, which enables the Company to identify a Candidate or relate such information to a Candidate, already identified and whether or not provided in response to a request from the Company or an unsolicited submission HCV believes to be of interest to the Company. "Refer" and "Referral" shall have corresponding meaning.
- L. **Refund Period** - shall have the meaning set forth in Section 3.
- M. **Replacement Period** - shall have the meaning set forth in Section 3.

2. FEE PROVISIONS

A. Fees and Expenses:

- (i) The Company agrees to pay a placement fee to HCV in the amount of [REDACTED] % of the Candidate's total first year's Compensation (the "Fee"). In the event that the Candidate is Engaged by the Client on a Fixed Term Basis, HCV shall adjust its Fee on a pro rata basis to reflect the fixed term. If thereafter the fixed term is extended, or the nature of the Candidate's Engagement is changed to a regular basis, HCV shall be entitled to receive an additional Fee up to the amount that would have been charged had the Candidate initially be Engaged on a regular basis.
- (ii) The Company will be obligated to pay the Fee whenever a Candidate Referred to the Company by HCV is directly or indirectly Engaged by the Company or an End User for any position, whether as an

- employee, consultant, independent contractor, or otherwise provides services to the Company. The T&Cs shall apply and the Fee is payable by the Company even if the entity that Engages the Candidate is different than the entity to which the Referral was initially sent if such Engagement directly or indirectly resulted from or arises out of the Referral. All Fees and expenses will be subject to any applicable federal, state and local taxes. In the event the actual first year's Compensation of a Candidate placed by HCV exceeds the original Compensation upon which the Fee was based, the Company shall notify HCV within thirty (30) days of such determination and HCV be entitled to charge an additional Fee based on such increased Compensation and calculated at the same percentage as the original Fee charged for the placement of the Candidate. This additional Fee shall be paid in accordance with the payment terms set forth in these T&Cs.
- (iii) The Company shall keep HCV promptly informed of its intentions regarding Engaging and retaining each Candidate throughout the relevant Fee Period. If the Company makes an offer to Engage the Candidate, the Company shall promptly notify HCV of all offers. The Company will promptly, and in no event more than seven (7) days after acceptance of an offer by the Candidate, advise HCV of the acceptance, the amount of the first year's Compensation, and the start date. HCV reserves the right to request supporting documentation of the Candidate's Compensation including, but not limited to, copies of signed offer letters, employment agreement, and paystubs. If requested, such additional documentation shall be supplied by the Company to HCV within seven (7) days from the date requested. In the event that HCV later determines that the information provided by Company was inaccurate, it reserves the right to invoice the Company for a supplemental Fee and the Company agrees to pay such additional invoice in accordance with the payment terms set forth in these T&Cs.
- (iv) The Company shall reimburse HCV or otherwise provide for previously approved reasonable travel expenses for Candidates to attend in-person interviews and the cost of overnight accommodations, if required. Provided that the Company has agreed with HCV in advance regarding the reimbursement of pre-employment screening and other expenses incurred by HCV at the Company's request, the Company will timely pay such approved expenses upon invoicing by HCV.
- B. The Company agrees to pay all Fees and related expenses within thirty (30) days after the earlier of Candidate's start date with the Company (or End User), the change in an Engaged Candidate's first year's Compensation, or receipt of an invoice from HCV. Such Fee and expenses are due whether or not HCV has submitted an invoice for the Fee and expenses. Any Fees or expenses remaining unpaid more than thirty (30) days after the earlier of the date of the invoice, the start date of the Candidate, or the due date of the Fee will incur a late fee on the past due amount of the lesser of four (4%) percent per annum above the Prime Rate as determined as of the business day immediately following the due date of the invoice or the highest rate permitted by applicable law. If for any reason, a Fee remains unpaid after the due date, the Company shall be liable for all fees, costs, expenses, collection agency fees, and attorney's fees incurred by HCV in obtaining payment of the amount due, whether or not litigation is commenced.

- C. HCV'S Fee is earned and payable by the Company to whom the Candidate was Referred if, a Candidate as a result of HCV's Referral or otherwise:
- (i) Accepts an Engagement with the Company in any capacity, as employee, consultant, or independent contractor (regular, temporary, seasonal, or otherwise) directly or through a third party within the Fee Period; or
 - (ii) A Candidate Referred to the Company by HCV is Referred by the Company to another employer ("End User") and the Candidate is Engaged, directly or indirectly, for any position (regular, temporary, seasonal or otherwise), as an employee, consultant, or independent contractor, by such End User or through a third party, other than HCV (for the End User), within the Fee Period.
- D. If HCV Refers a Candidate who: the Company has already interviewed, scheduled an interview, or the Company has been introduced directly or by another party within the six (6) months immediately preceding HCV's Referral, the Company will not owe HCV a Fee in the event the Company directly or indirectly Engages the Candidate, **provided that**, within three (3) business days following the Referral, the Company advises HCV, in writing, of its prior knowledge of such Candidate and includes supporting documentation. In the absence of such notification and documentation, if the Candidate is Engaged by the Company (or by an End User) in any capacity then, HCV shall be entitled to its Fee and the Company waives any right to rely upon any prior knowledge of the Candidate as a reason for non-payment of HCV's Fee. **It is the sole responsibility of the Company to determine whether or not a Candidate was previously introduced to it and to notify HCV in a timely manner.**

- E. Under no circumstances will the Company require any Candidate to pay or reimburse the Company for any Fee or expense due or paid to HCV.

3. REPLACEMENT GUARANTEE

The Company is responsible to keep HCV informed throughout the Guarantee Period of its intentions regarding the Candidate. If the Candidate's Engagement is terminated for any reason, except as otherwise provided below, during the Guarantee Period the Company must notify HCV in writing within seven (7) days of such termination including the reason for the termination. If the Company timely notifies HCV in writing of the termination; and **provided that** all Fees and expenses relating to such Referral were timely paid to HCV, HCV will attempt to Refer a replacement Candidate that is reasonably acceptable to the Company for the same position. The Company shall be responsible for any pre-approved expenses incurred by HCV or a replacement Candidate in such recruitment effort. If the replacement Candidate chosen by the Company will be paid higher Compensation than the initial Candidate, the Company shall pay HCV the difference between the Fee for the replacement Candidate (calculated in accordance with the T&Cs) and the prior Fee paid by the Company. There shall be no Fee refund if the replacement Candidate's Compensation is lower than the initial Candidate. If HCV is unable to locate a replacement Candidate within thirty (30) days after timely receipt of notice of termination (the "Replacement Period"), HCV shall, within thirty (30) days after the end of the Replacement Period (the "Refund Period"), refund a pro rata portion of the Fee paid by the Company to HCV for such Candidate.

The pro rata refund, if due, shall be as determined as follow:

<u>Proportion of Fee Refunded</u>	<u>Week of Termination of the Engagement</u>
100%	1-2 (if Engagement ends 1-2 weeks after it began 100% of the Fee will be refunded to the Company)
75%	3-6 (if Engagement ends 3-6 weeks after it began 75% of the Fee will be refunded to the Company)
50%	7-10 (if Engagement ends 7-10 weeks after it began 50% of the Fee will be refunded to the Company)
0%	After 10 weeks on the Engagement there is no refund

Notwithstanding the foregoing, the Company shall not be entitled to a replacement Candidate or a pro rata refund if the Company Engages a replacement from any other source during the Refund Period, or if the Company is no longer actively seeking to fill the position. Further, this Section 3 shall not apply if the Candidate is terminated for lack of work, the Company's financial reasons, or the Candidate resigns because the Company has significantly modified the Candidate's job duties, pay, or assigned him or her to another position.

4. CONFIDENTIALITY OF REFERRALS

All confidential and proprietary information of the Company obtained by or disclosed to HCV by the Company shall not be disclosed by HCV to any third party without the Company's prior written consent; provided however, that the foregoing shall not restrict HCV from discussing with any prospective Candidate such confidential and proprietary information relating to the Company. All information submitted to the Company by HCV regarding a Candidate, including the identity of the Candidate, the Candidate's curriculum vitae, and references are confidential and proprietary and shall not be disclosed by the Company to any third party. If the Company Refers the Candidate, or provides information concerning the Candidate, to an End User, resulting in the hiring of that Candidate by such End User, then the Company shall be liable to HCV for the Fees described in Section 2 above with respect to such Candidate as if the Company had directly Engaged such Candidate. The Company shall hold HCV harmless from any liability resulting from the Company's unauthorized disclosure or misuse of information regarding any Candidates or their candidacy.

5. DISCLAIMER

HCV does not guarantee the performance any Candidate in, or suitability for, the position at the Company or the accuracy of information provided regarding a Candidate. The Company must determine the actual skill level, the competency of the Candidate and the accuracy of the information provided by the Candidate. HCV disclaims any and all responsibility for any and all claims, losses, or liabilities resulting from a Candidate's acts or omissions. HCV urges the Company to conduct such background checks, investigations, and testing as it deems necessary to verify Candidate information or to obtain such other information as it may deem relevant.

6. NON-CIRCUMVENTION

During the Fee Period for a Candidate, neither the Company nor an End User Shall Engage such Candidate without prior written notification to HCV and the payment to HCV of the Fees as set forth in Section 2 above.

7. NON-DISCRIMINATION

HCV does not discriminate in Referrals on the basis of age, race, color, religion, disability, sex, national origin, veteran status or any other class protected by applicable federal, state or local law, rules or regulations. The Company warrants that it will not engage in unlawful discrimination against any Candidate Referred in violation of applicable federal, state, or local laws, rules, or regulations.

8. TERMINATION AND SURVIVAL

The T&Cs may be terminated by either party upon 30 days' written notice to the other party. However, the Company shall remain liable to HCV for all Fees and expenses due under these T&Cs for any Candidate Referred to the Company or by the Company to an End User prior to expiration of any applicable Fee Period even if it occurs after termination of these T&Cs. All provisions of these T&Cs that by their terms extend beyond the termination of these T&Cs shall survive such termination and remain in full force and effect.

9. MISCELLANEOUS PROVISIONS

- A. The relationship of the parties to each other is that of independent contractors. Neither party shall be deemed to be the legal representative of the other nor shall either party act for or on behalf of the other party without the express prior written approval of the other party. Nothing contained in these T&Cs is intended to, or should be construed to, create a partnership, agency, joint venture or employment relationship between the Parties.
- B. These T&Cs constitutes the entire agreement between the parties relating to the Referral of Candidates and supersedes any and all agreements, either oral or written, between HCV and the Company with respect to the services provided by HCV hereunder including, the Referral of Candidates, and contains all of the covenants and agreements between HCV and the Company with respect to the rendering of such services. These T&Cs consists of severable and independent undertakings; therefore, the invalidity or unenforceability of any part or parts thereof shall not render any other part or parts invalid or unenforceable.
- C. Any waiver by HCV of any part of the T&Cs shall not be construed as HCV's waiver of any other parts of these T&Cs, or as waiver of HCV's right to subsequently enforce the same part of these T&Cs. Only a written instrument provided to the Company by HCV may modify these T&Cs; provided that such modification will only apply to Referrals of Candidates made after the effective date of such modification. (The Company may not modify these T&Cs without HCV's written acceptance of the modification.) The article and section headings contained in these T&Cs are inserted for convenience only and shall not affect in any way the meaning or interpretation of the T&Cs.
- D. These T&Cs and all of its provisions are binding on and shall inure to the benefit of HCV and the Company and their respective successors and permitted assigns, but neither these T&Cs nor any of the rights, interests, or obligations hereunder may be assigned by either party without the prior written consent of the other except that HCV may assign any or all of its rights and delegate its duties under these T&Cs without the consent of the Company to any subsidiary or affiliate of

- HCV, to the purchaser of all or substantially all of HCV's assets or stock, or any other successor to HCV's business.
- E. Any notice or communication with respect to the T&Cs shall be in writing sent by personal delivery; by nationally recognized overnight delivery service; or United States mail, postage prepaid, registered or certified mail return receipt requested addressed to:
- (i) the Company at the address that HCV has on record or to such person and address as the Company shall designate to HCV in a writing sent in accordance herewith; and
 - (ii) HCV to the attention of the President and sent to the address set forth in the introduction to these T&Cs or such other address or person as HCV shall designate to the Company in a writing sent in accordance herewith. Any such notice or communication shall be deemed to have been given either at the time of personal delivery or, in the case of delivery service or mail, as of the date of first attempted delivery at the address and in the manner provided herein.
- F. These T&Cs are made as the result of continual and ongoing negotiation between the parties; and the parties have arrived at these T&Cs through the exercise of equal bargaining power. No portion of these T&Cs shall be construed against HCV as the drafter of this document and instead these T&Cs shall be construed as if the Company and HCV jointly participated in the drafting of the T&Cs.
- G. These T&Cs shall be governed by, and interpreted and construed in accordance with, the laws of the State of Michigan, without regard to conflicts of law principles. The parties hereby irrevocably: (1) agree that any suit, action or other legal proceeding arising out of these T&Cs shall be brought exclusively in any state court located in Oakland County, Michigan or in the US Federal Court for the Eastern District of Michigan, which is the location of HCV's principal office and the venue where the T&Cs are deemed made by the parties (the Company specifically consents to the jurisdiction of each such court in any such suit, action or proceeding); and (2) waive any objection which they may have to the laying of venue of any such suit, action or proceeding in any of such courts.
- H. **Waiver of Right to Jury Trial** - THE PARTIES HERETO WAIVE ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, OR CAUSE OF ACTION ARISING HEREUNDER, RELATED HERETO, OR IN ANY WAY CONNECTED WITH, RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE; AND EACH PARTY FURTHER WAIVES ANY RIGHT TO CONSOLIDATE ANY ACTION IN WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY OTHER ACTION IN WHICH A JURY TRIAL CANNOT BE OR HAS NOT BEEN WAIVED.
- I. Except as provided in Section 2. B., in the event of a dispute under these T&Cs, the prevailing party shall be entitled to recover its reasonable legal fees and expenses from the unsuccessful party. In the event of a settlement of such a dispute, each party shall pay its own legal fees and expenses, unless the settlement agreement provides otherwise.