

# TERMS OF SERVICE

**PLEASE READ THE FOLLOWING TERMS OF SERVICE (THE "TERMS OF SERVICE" OR THE "AGREEMENT") CAREFULLY; IT IS A BINDING LEGAL AGREEMENT. BY USING THE SERVICE, YOU AGREE TO BE LEGALLY BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. IF YOU DO NOT AGREE TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, THEN YOU MAY NOT ACCESS OR USE [www.tcfa.org](http://www.tcfa.org) (THE "SITE") OR THE SERVICES AVAILABLE THROUGH THE SITE (THE "SERVICE"), WHICH IS A SERVICE OF TEXAS CATTLE FEEDERS ASSOCIATION ("TCFA"). TCFA GRANTING YOU PERMISSION TO USE THIS WEBSITE IS EXPRESSLY CONDITIONED UPON YOUR ASSENT TO ALL THE TERMS AND CONDITIONS OF THIS AGREEMENT, TO THE EXCLUSION OF ALL OTHER TERMS.**

Texas Cattle Feeders Association (which does business as "TCFA") is offering the Service solely for use by its members (the "Member" or "you") and not for the use or benefit of any third party. TCFA.org may change, suspend or discontinue the Service at any time, including the availability of any feature, database, or content. TCFA may also impose limits on certain features of the Service or restrict Member's access to parts or all of the Service without notice or liability. TCFA reserves the right, at its discretion, to modify this Agreement at any time by posting a notice on the Site, or by sending Member a notice via e-mail, and you consent to receipt of such notice. Member shall be responsible for reviewing and becoming familiar with any such modifications. Use of the Service by Member following such notification constitutes Member's acceptance of the terms and conditions of this Agreement as modified. Any new features that augment or enhance the current Service, including the release of new tools and resources, shall be subject to this Agreement. You can review the most current version of the Terms of Service at any time at: <http://www.tcfa.org/news-events/jobs.html>

## 1. ACCESS TO THE SERVICE

TCFA will use reasonable efforts to ensure that the Service is available during regular business hours. However, there will be occasions when the Service will be interrupted for maintenance, upgrades and emergency repairs or due to failure of telecommunications links and equipment. Reasonable steps will be taken by TCFA to minimize such disruption where it is within TCFA's reasonable control. YOU AGREE THAT TCFA WILL NOT BE LIABLE IN ANY EVENT TO YOU OR ANY OTHER PARTY FOR ANY SUSPENSION, MODIFICATION, DISCONTINUANCE OR LACK OF AVAILABILITY OF THE SERVICE OR OTHER CONTENT. TCFA retains the right to create limits on use and storage with respect to the Service in its sole discretion at any time with or without notice.

Member certifies to TCFA that if Member is an individual (i.e., not an entity) Member is at least 18 years of age. Member also certifies that it is legally permitted to use the Service, and takes full responsibility for the selection and use of the Service. This Agreement is void where prohibited by law, and the right to use the Service is revoked in such jurisdictions. TCFA makes no claim that the Service may be lawfully used or that Content (as defined hereafter) may be uploaded or downloaded outside of the United States. Access to Content may not be legal by certain persons or in certain countries. If you use the Service from outside the United States, you do so at your own risk and you are responsible for compliance with the laws of your jurisdiction. Member shall be responsible for obtaining and maintaining any equipment or ancillary services needed to connect to and use the Service, including, without limitation, modems, hardware, software, and long distance or local telephone service. Member shall be responsible for ensuring that such equipment or ancillary services are compatible with the Service.

## 2. GENERAL TERMS

When signing up for the Service, you must provide your full legal name, full company name, a valid e-mail address, and any other information requested in order to complete the signup process.

In addition the following terms also apply: You must be 18 years or older to use this Service. Accounts registered or automated login attempts by "bots" or other automated methods are not permitted. Your login may only be used by one person, a single login shared by multiple people is not permitted. You are responsible for maintaining the security of your account and password. TCFA cannot and will not be liable for any loss or damage from your failure to comply with this security obligation.

You are responsible for all Member Content (as defined hereafter) posted and activity that occurs through or under your account (even when Member Content is posted by others). Any fraudulent, abusive, unlawful or authorized activity may be grounds for termination of Member's right to Service or to access the Site and may be grounds for potential liability against Member.

Member may not post or transmit, or cause to be posted or transmitted, any communication or solicitation designed or intended to obtain password, or private information from any other user. Member shall not share his or her password with any other person or entity; violation of this provision will be a material breach of this Agreement and may result in immediate cancellation of the Member's access. Member agrees to notify TCFA immediately of any actual or suspected loss, theft, or unauthorized use of Member's account or password. Failure to do so shall constitute a material breach of this Agreement, which may result in immediate termination of Member's access.

You may not use the Service for any illegal or unauthorized purpose. You must not, in the use of the Service, violate any laws of your jurisdiction (including but not limited to copyright laws). You must not modify, adapt or hack the Service or modify another website so as to falsely imply that it is associated with the Service, TCFA or any other TCFA service.

You may not resell the Service to any third party as a private label or with the inclusion of a mark-up fee without the expressed written consent of TCFA. Violation of any of the terms of this Agreement may result in the termination of your account and your access to the Service. While TCFA prohibits certain conduct and content on the Service, you understand and agree that TCFA shall not be responsible for the Member Content posted on the Service and you nonetheless may be exposed to such materials, which you may find objectionable. You agree to use the Service at your own risk. TCFA reserves the right to refuse Service to anyone, or cancel any persons' access, for any reason at any time.

### 3. MEMBER CONTENT STORAGE AND RETRIEVAL

The Service may only be used to transmit and store Job Posting Information e.g. employer identification, (including contact information) job title and location. TCFA will not accept or store (and will automatically delete) any job applications, tests, tests result or related files associated with the process of hiring a candidate (hereinafter referred to as "Candidate"). Job Descriptions and comments may be contained in the Job Posting so long as their length is not space prohibitive. (all of the foregoing referred to herein as "Member Content"). You may not upload advertisements or any other materials that do not fall within the definition of "Member Content" or transmit unsolicited information, materials or data (including, without limitation, "spam" messages).

You understand that the Service can be used for transmission of your Member Content, and that during processing, your Member Content may be transferred unencrypted over the internet, and you consent to such unencrypted transmission.

You must not transmit any worms or viruses or any code of a destructive nature or that attempts to automatically gather information from the screen (screen scraping). You may not use automated systems ("bots") to upload multiple streams of data, such as for multiple Candidates, at once. If your bandwidth usage is excessive (as determined solely by TCFA), TCFA reserves the right to throttle your usage or disable your account until you can reduce your bandwidth consumption in order to protect the responsiveness of the service for all Members.

### 4. QUALITY OF SERVICE & GENERAL CONDITIONS

While TCFA will work to respond to all incoming support requests within one business day, there is no agreement to respond within a certain period of time. You understand that TCFA.org uses third party vendors (hereinafter referred to as the "Vendors") and hosting partners to provide the necessary hardware, software, networking, storage, and related technology required to run the Service.

Verbal, physical, written or other abuse (including threats of abuse or retribution) with respect to any TCFA, member, vendor employee, member, director, officer or vendor will result in immediate account termination.

## 5. WARRANTY DISCLAIMER

Member acknowledges that TCFA has no control over, and no duty to take any action regarding: which Content (as defined hereafter) Member accesses via the Site; what effects the Content may have on Member; how Member may interpret or use the Content; or what actions Member may take as a result of having been exposed to the Content. Member hereby releases TCFA from any and all liability for Member having acquired, used, relied on, acted upon (or not acquired) Content obtained or obtainable through the Site. TCFA makes no representations or warranties concerning any content contained in or accessed through the Site, and TCFA will not be responsible or liable for the accuracy, completeness, copyright compliance or legality of material or Content contained in or accessed through the Site.

THE SERVICES, CONTENT AND SITE ARE PROVIDED ON AN "AS IS" AND "AS AVAILABLE" BASIS, WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE OR NON-INFRINGEMENT. TCFA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND WITH RESPECT TO THE SITE OR THE SERVICES, INCLUDING ANY REPRESENTATION OR WARRANTY THAT THE USE OF THE SITE OR SERVICES WILL (A) BE TIMELY, UNINTERRUPTED, SECURE OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) BE FREE FROM ERRORS OR THAT DEFECTS WILL BE CORRECTED, (D) BE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS (E) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE; AND (F) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR EXPECTATIONS.

TO THE FULLEST EXTENT ALLOWED BY LAW, TCFA.COM, INC. DISCLAIMS ANY LIABILITY OR RESPONSIBILITY FOR THE ACCURACY, RELIABILITY, AVAILABILITY, COMPLETENESS, LEGALITY OR OPERABILITY OF THE CONTENT, MATERIAL AND/OR SERVICES PROVIDED ON THIS SITE. BY USING THIS SITE, YOU ACKNOWLEDGE THAT TCFA.COM, INC. IS NOT

RESPONSIBLE OR LIABLE FOR ANY HARM RESULTING FROM (1) USE OF THE SITE; (2) THE TEMPORARY OR PERMANENT INABILITY TO ACCESS OR RETRIEVE ANY CONTENT FROM THE SITE AND (3) DOWNLOADING INFORMATION CONTAINED ON THE SITE; INCLUDING, WITHOUT LIMITATION, HARM CAUSED BY VIRUSES, WORMS, TROJAN HORSES, OR ANY SIMILAR CONTAMINATION OR DESTRUCTIVE PROGRAM.

THE LIMITATIONS SPECIFIED IN THIS SECTION WILL SURVIVE TERMINATION OR EXPIRATION OF THIS AGREEMENT. SOME STATES DO NOT ALLOW LIMITATIONS RELATING TO IMPLIED WARRANTIES, SO THE ABOVE LIMITATIONS MAY NOT APPLY TO MEMBER.

## 6. LIMITATION OF LIABILITY

You expressly understand and agree that TCFA and its directors, officers, employees, agents and members shall not be liable for any direct, indirect, incidental, special, consequential, punitive or exemplary damages, including but not limited to, damages for loss of profits, goodwill, use, data or other intangible losses (even if TCFA.org has been advised of the possibility of such damages), whether sounding in contract, tort, strict liability, warranty or other legal or equitable theory, resulting from: (i) the use or the inability to use the Service; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Service; (iii) unauthorized access to or alteration of your transmissions or data; (iv) statements or conduct of any third party on the Service; (v) for any amounts that exceed the member fees paid by you to TCFA during the six (6) month period prior to the occurrence giving rise to your claim or cause of action against TCFA; (vi) or any other matter arising out of or relating to the Service or your use thereof (including but not limited to security breaches relating to data stored in connection with the Service). Some states do not allow the exclusion or limitation of incidental or consequential damages, so the above limitations and exclusions may not apply to Member. The limitations specified in this Section will survive termination or expiration of this Agreement and apply even if any limited remedy specified in this Agreement is found to have failed of its essential purpose.

## 7. INDEMNIFICATION

You agree to indemnify and hold harmless TCFA, its vendors, contractors, and licensors, and their respective directors, officers, employees, members, and agents from and against any and all claims, liabilities, losses, actions, causes of action, demands, costs and expenses, including but not limited to attorneys' fees, arising out of your use of the Service (or any third party using Member's access), your violation of this Agreement, or infringement of any intellectual property or other right of any person or entity in connection with the Service

or your use thereof. The terms specified in this Section will survive termination or expiration of this Agreement.

## 8. MODIFICATION TO SERVICE

TCFA.org reserves the right at any time or periodically to modify or discontinue, temporarily or permanently, the Service (or any part thereof) with or without notice. TCFA shall not be liable to you or to any third party for any modification, price change, suspension or discontinuance of the Service.

## 9. EXTERNAL JOB BOARDS AND OTHER VENDORS

The Service may contain links to other websites and vendors. Any such links to other web sites do not represent an endorsement, sponsorship, or approval of the material on and/or generally of such website(s). Such other websites are not within the supervision or control of TCFA or the Site. Unless explicitly otherwise provided, neither TCFA.org nor the Site make any representation or warranty whatsoever about any third party site that is linked to the Site, or endorse the products or services offered on such site. TCFA and the Site disclaim: (a) all responsibility and liability for content on third party websites and (b) any representations or warranties as to the security of any information (including, without limitation, financial and other personal information) you might be requested to give any third party, and you hereby irrevocably waive any claim against the Site or TCFA and its directors, officers, employees, agents and members with respect to such sites and third party content.

TCFA assumes no liability for loss or damage as the result of the incorrect presentation of information, including prices and ratings, on any screen that results in a transaction of any kind, with a vendor found through using the Service.

TCFA provides no warranty or guarantee that you will receive the same results as shown in the customer testimonials or any other rating system found in the Service.

## 10. PAYMENTS, REFUNDS UPGRADING AND DOWNGRADING

Use of the service is free for TCFA members.

## 11. CANCELLATION AND TERMINATION

TCFA, in its sole discretion, has the right to suspend or terminate your account and refuse any and all current or future use of the Service for any reason at any time. TCFA reserves the right to refuse service to anyone for any reason at any time.

## 12. COPYRIGHT AND CONTENT OWNERSHIP

The Site and its contents are intended solely for the use of TCFA's Members and may only be used in accordance with the terms of this Agreement. All materials displayed or performed on the Site, including, but not limited to text, data, information, graphics, logos, tools, photographs, images, illustrations, audio, video and animations ("Site Content") are the property of TCFA and/or third parties and are protected by United States and international copyright laws. All trademarks, service marks, and trade names are proprietary to TCFA.org and/or third parties. Member shall abide by all copyright notices, information, and restrictions contained in any Content accessed through the Service. Site Content and Member Content are referred to collectively as "Content."

The Site is protected by copyright pursuant to U.S. copyright laws, international conventions, and other copyright laws. Except as explicitly permitted in the next paragraph of this Agreement, Member may not copy, modify, publish, transmit, upload, participate in the transfer or sale of, reproduce, create derivative works based on, distribute, perform, display, or in any way exploit, any of the Site Content, software, materials, or Service in whole or in part.

Member may download or copy the Site Content for his, her or its individual use only and not for any other person or entity, and provided that Member maintains all copyright and other notices contained in such Site Content. Member may not make multiple copies of the Site Content or otherwise distribute or transmit such Site Content to any other person or entity.

Member acknowledges and agrees that if Member uses any part of the Service to contribute Member Content, TCFA.org will have a non-exclusive, perpetual, worldwide, royalty-free, freely transferable right, under all of Member's intellectual property rights, to copy, cache, publish, display, perform, distribute, translate and store such Member Content and to allow others to do so. Member warrants, represents and agrees Member has the right to grant TCFA.org and the Site the rights set forth above. Member represents, warrants and agrees that it will not contribute any Member Content that (a) infringes, violates or otherwise interferes with any copyright or trademark of another party, (b) reveals any trade secret, unless Member owns the trade secret or has the owner's permission to post it, (c) infringes any intellectual property right of another or on the privacy or publicity rights of another, (d) is libelous, defamatory, obscene, pornographic, abusive, indecent, threatening, harassing, hateful, offensive or otherwise violates any law or right of any third party, (e) contains a virus, Trojan horse, worm, time bomb or other computer programming routine or engine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information, or (f) remains posted after Member has been notified that such Member Content violates any of sections (a) to (e) of this sentence. TCFA.org reserves the right to remove any Member Content from the Site, suspend or terminate

Member's right to use the Service at any time, or pursue any other remedy or relief available to TCFA.org and/or the Site under equity or law, for any reason (including, but not limited to, upon receipt of claims or allegations from third parties or authorities relating to such Member Content or if TCFA.org is concerned that Member may have breached the immediately preceding sentence), or for no reason at all.

All resume documents uploaded to your account by you, another user within your account, or an applicant, can be retrieved by you through the provided user interface or application programming interface (API).

TCFA.org does not pre-screen Member Content, but TCFA.org and its designee have the right (but not the obligation) in their sole discretion to refuse or remove any Content that is available via the Service.

The Site, including but not limited to the look and feel of the Service, is copyright © 2014 Texas Cattle Feeders Association. All rights reserved. You may not duplicate, copy, or reuse any portion of the HTML/CSS or visual design elements without express written permission from TCFA. In cases in which such permission is given, all copyright and "powered by" notices, images and texts ("notices") in rendered pages and outgoing emails must be present. The location of the notice on the page may be altered so long as the notice remains clearly visible.

### **13. PROMOTIONS AND MARKETING**

This Service is intended to provide Members and potential applicants with a publicly available list of jobs, and therefore your usage of this service is not intended to be private. Unless expressly prohibited in writing or electronically by you, you agree that TCFA can use your brand identity, organization or company name and mention your usage of this Service in press releases, interviews, promotional materials, presentations, websites and other self-promotional channels. You also agree that a "powered by TCFA" graphic or text link can be included with your job listings unless you choose to disable or hide this fact. Any promotions or discounts are valid for services to which the promotion or discount was originally applied; subsequent upgrades or add-on services are not guaranteed any promotions or discounts.

### **14. PRIVACY POLICY**

Please review our Privacy Policy, which governs the use of personal information on the Site and in connection with the Service, and to which Member agrees to be bound as a condition of this Agreement and use of the Site and Service.

### **15. ELECTRONIC DELIVERY POLICY**

You agree that we may provide to you required notices, agreements and other information concerning the Service electronically. While refunds will be handled promptly when warranted, by using the Service you also



agree that TCFA.org is not responsible for valid charges incurred as the result of failed electronic delivery of email messages to the address you provide, either by the fault of TCFA. or another third party.

## 16. RESOLUTION OF DISPUTES

Any disputes arising out of the use of the Service shall be governed by the laws of Texas, without regard to any conflict of laws principles, and any proceedings shall solely be brought in the state and federal courts located in Randall County, Texas. You consent to the exclusive jurisdiction of and venue in such courts. You also acknowledge and agree that the venue provided for herein is the most convenient forum for both you and TCFA. And waive any objection to jurisdiction and/or venue and any objection based on a more convenient forum in any action between you and TCFA. (and/or its officers, directors, employees, members and agents) and/or otherwise in connection with the Service.

## 17. MISCELLANEOUS

This Agreement (including the Privacy Policy), as modified from time to time, constitutes the entire agreement between you and TCFA. with respect to the subject matter hereof and supersedes any and all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter hereof. The failure of either party to exercise in any respect any right provided for herein shall not be deemed a waiver of any further rights hereunder. TCFA shall not be liable for any failure to perform its obligations hereunder where such failure results from any cause beyond TCFA reasonable control, including, without limitation, mechanical, electronic or communications failure or degradation. If any provision of this Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that this Agreement shall otherwise remain in full force and effect and enforceable. This Agreement will be binding upon, and inure to, the benefit of each party and such party's heirs, representatives, successors and assigns; provided, however, that this Agreement is not assignable, or transferable by or through Member except with TCFA's prior written consent. TCFA.org may assign this Agreement in whole or in part at any time without Member's consent. No agency, partnership, joint venture, or employment is created as a result of this Agreement and Member does not have any authority of any kind to bind TCFA in any respect whatsoever.

# Member / Employer Terms of Use

## 1. General.

(a) These Employer Terms of Use apply to and govern each Job Posting placed on the TCFA Website, as fully as if the provisions of these Employer Terms of Use were set forth in their entirety in each such Job Posting. The services described by Website Job Postings are referred to herein collectively as the “Services.”

(b) The applicable Job Posting, any related statements prepared by TCFA and delivered to Member in connection with such Job Posting and these Employer Terms of Use constitute the entire contractual agreement of Member and TCFA relating to the Services described in such Job Posting. The specific terms agreed to by Member and TCFA in connection with ordering Services through a Website Order, defined as a request from a Member for a Job Posting (the “Website Order Terms”) and these Employer Terms of Use constitute the entire contractual agreement of Member and TCFA relating to the Services covered by such Website Order. Unless specifically agreed to in writing by Member and TCFA, no other terms or conditions, including, without limitation, no preprinted terms on any Member purchase order or similar document, will be included in the agreement of the parties or otherwise binding on or enforceable against the parties.

## 2. Services.

(a) Member and TCFA agree that TCFA will provide to Member the Services described in each Job Posting or covered by each Website Order, as applicable, for the service period(s) specified in, or to the extent otherwise provided in, such Job Posting or the applicable Website Order Terms (the “Service Periods”). The Services may be provided, as applicable, through the use of the TCFA Website (the “TCFA Website”).

(b) In connection with utilizing the Services, Member will be responsible for obtaining and maintaining at its expense all computer hardware, software and communications equipment and connections required for the Member to access the TCFA Website and to access and use the applicable Services.

(c) TCFA reserves the right to make modifications to the Services, the TCFA Website, in its sole discretion with or without advance notice.

## 3. License; Limitations.

(a) During the applicable Service Periods, TCFA grants to Member a limited, nonexclusive, nontransferable and non-sublicenseable license (i) to access and use the TCFA Website, and (ii) to use any information available to Member by TCFA in connection with the Services, in each case to the extent necessary to access and use the Services for the periods and quantities purchased under the applicable Job Posting or Website Order.

(b) This license is limited to Member and it may not be resold, sublicensed, leased or otherwise made available to any third party. This license is also limited to the number of locations or quantity of units (jobs) sought by Member under the applicable Job Posting or Website Order.

(c) Member agrees that it will not (i) modify, adapt, reverse engineer, decompile, disassemble, reverse assemble or otherwise attempt to discover the source code or underlying algorithms or know-how of any of the Services, the TCFA Website, the App or the Software, (ii) create any derivative works from any of the Services, the TCFA Website, the App or the Software, (iii) access or use the Services, the TCFA Website for any illegal, unlawful, threatening, abusive, harassing or obscene purpose or for any other purpose prohibited by TCFA’s policies in place from time to time, (iv) post or otherwise provide any false, misleading or dishonest information or other content on, through or in connection with the Services, the TCFA Website or (v) attempt to do any of the foregoing.

#### **4. Payment for Services.**

Members are provided Services without any additional charge or fees. To utilize the Services Members must be in good standing with TCFA, including the payment of all applicable membership fees.

#### **5. Term; Termination.**

(a) For any Services for which a specific Service Period is described on the applicable Job Posting or provided by the applicable Website Order Terms (a "Subscription Service"), the initial term for the Subscription Service will be the Service Period specified on the applicable Job Posting or by the applicable Website Order Terms. For any Services for which a specified quantity of units is described on the applicable Job Posting or provided by the applicable Website Order Terms (a "Specified Quantity Service"), the initial term for the Specified Quantity Service will begin on the date the applicable Job Posting is signed by the parties or the date Member makes the applicable Website Order, as applicable, and will end when the specified quantity of the Services has been used or provided.

(b) Members may terminate a Job Posting or Website Order with respect to one or more Services prior to the applicable scheduled termination date at any time upon written notice.

(d) TCFA may terminate a Job Posting or Website Order with respect to one or more Services prior to the applicable scheduled termination date(s) if (i) Member violates or fails to perform or comply with any of its obligations under Section 3(c) or Section 4(a) of these Employer Terms of Use, (ii) Member violates or fails to perform or comply with any of its other material obligations under the Job Posting or Website Order, as applicable, or these Employer Terms of Use, or (iii) Member ceases its business activities, makes a general assignment for the benefit of creditors or becomes the subject of a voluntary or involuntary bankruptcy or insolvency proceeding.

#### **6. Representations and Warranties; Disclaimers.**

(a) Each of Member and TCFA represents and warrants to the other party that (i) it is a corporation or other entity duly organized and validly existing in good standing under the laws of the state of its incorporation or organization, and it has the corporate or other power to own its property and to carry on its business as now being conducted, (ii) it has full power and authority to enter into the Job Postings, the Website Orders and these Employer Terms of Use and to perform its obligations hereunder and thereunder, all of which have been duly authorized by all required corporate or other action by it, (iii) no consent or approval of, notice to or filing with any governmental authority or third party is required as a condition to the validity or enforceability of any Job Posting or Website Order or these Employer Terms of Use as to it, (iv) each Job Posting, each Website Order and these Employer Terms of Use constitutes the valid and legally binding agreement of it enforceable in accordance with its terms, (v) there are no proceedings pending or threatened before any court or governmental or administrative agency that would reasonably be expected to affect the validity or enforceability of any Job Posting, any Website Order or these Employer Terms of Use as to it, and (vi) it is not a party to or otherwise bound by any contract or agreement which in any manner would prohibit it from entering into any Job Posting, any Website Order or these Employer Terms of Use or performing its obligations hereunder or thereunder.

(b) TCFA further represents and warrants to Member that it will provide the Services substantially in accordance with any applicable written specifications published by TCFA and substantially in accordance with any service description set forth in any applicable Job Posting.

(c) Member further represents and warrants to TCFA that all of the following comply and will comply with all federal, state and local employment, data protection, privacy and other applicable laws and regulations: (i) the questions and other materials used in connection with any application process the Job listings posted or submitted by or on behalf of Member through the Services, (ii) the questions and other materials and technology used by Member in screening or making hiring decisions regarding potential employees, (iii)

Member's other hiring practices, including, without limitation, the use of any results of any procurement, screening or assessment Services provided hereunder, and (iv) Member's hiring decisions. Without limiting the generality of the foregoing, Member represents and warrants to TCFA that it will not use the results of any procurement, screening or assessment Services provided hereunder to discriminate against candidates or current employees in violation of any federal, state or local employment or other applicable laws or regulations.

(d) THE REPRESENTATIONS AND WARRANTIES MADE BY TCFA IN THIS SECTION OR ELSEWHERE IN THESE EMPLOYER TERMS OF USE ARE IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, AND ALL SUCH OTHER REPRESENTATIONS AND WARRANTIES ARE HEREBY EXPRESSLY DISCLAIMED. WITHOUT LIMITING THE GENERALITY OF THE PRECEDING SENTENCE, NEITHER TCFA NOR ANY OF ITS LICENSORS REPRESENTS OR WARRANTS THAT (i) ANY OF THE SERVICES, THE TCFA WEBSITE WILL BE UNINTERRUPTED, SECURE OR ERROR FREE, (ii) ANY SPECIFIC RESULTS WILL BE OBTAINED USING THE SERVICES, THE TCFA WEBSITE, OR (iii) ANY ERRORS IN THE SERVICES, THE TCFA WEBSITE WILL BE CORRECTED. IN ADDITION, TCFA AND ITS LICENSORS EXPRESSLY DISCLAIM LIABILITY FOR MEMBER'S IMPROPER OR DISCRIMINATORY USE OF THE SERVICES, INCLUDING CLAIMS AGAINST MEMBER MADE BY ANY COURT OR REGULATORY AGENCY BASED IN WHOLE OR IN PART ON FINDINGS OF DISPARATE OR ADVERSE IMPACT TREATMENT REGARDING CANDIDATES OR EMPLOYEES. TCFA AND ITS LICENSORS MAKE NO WARRANTY THAT THE SERVICES WILL NOT CAUSE AN ADVERSE OR DISPARATE IMPACT ON A LEGALLY PROTECTED CLASS OF PEOPLE IF SUCH SERVICES ARE USED IMPROPERLY OR ARE USED WITHOUT A STATISTICALLY ADEQUATE OR REPRESENTATIVE CANDIDATE POOL. FURTHERMORE, TCFA AND ITS LICENSORS EXPRESSLY DISCLAIM LIABILITY FOR THE SERVICES' COMPLIANCE WITH, OR MEMBER'S ABILITY TO USE PROCUREMENT, SCREENING OR ASSESSMENT SERVICES TO EVALUATE CANDIDATES OR EMPLOYEES UNDER, THE EMPLOYMENT LAWS OF ANY JURISDICTION OTHER THAN THE FEDERAL AND STATE LAWS OF THE UNITED STATES.

(e) WITHOUT LIMITING THE GENERALITY OF THE SECTION ABOVE, THE PARTIES SPECIFICALLY ACKNOWLEDGE AND AGREE THAT THE JOB SEEKER RESUMES AND OTHER JOB SEEKER INFORMATION PROVIDED ON OR THROUGH THE SERVICES, THE TCFA WEBSITE AND/OR THE APP ARE PROVIDED ON AN "AS IS, AS AVAILABLE" BASIS AND THAT TCFA MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING ANY SUCH RESUMES OR OTHER INFORMATION OR THEIR ACCURACY OR COMPLETENESS.

## **7. Confidentiality.**

(a) Each party will take commercially reasonable steps to protect the confidentiality of the Confidential Information and Trade Secrets (as such terms are defined below) of the other party disclosed to or otherwise received by such party in connection with the Job Posting(s), the Website Order(s), the Services or these Employer Terms of Use. Neither Member nor TCFA will copy, duplicate, use, disclose or transfer any such Confidential Information or Trade Secrets of the other party except as required to access and use or provide the Services, as applicable.

(b) For purposes of these Employer Terms of Use, (i) "Confidential Information" means all proprietary or confidential information of a party and/or its affiliates, other than Trade Secrets, which is of value to the party and/or its affiliates and which is not generally known by or available to the party's competitors, whether or not such information is specifically designated by the party as being confidential, and (ii) "Trade Secrets" mean all trade secrets of a party as defined under applicable law. The pricing and other specific terms relating to the Services included in the Job Postings or the Website Order Terms constitute the Confidential Information of TCFA.

## **8. Ownership of Property.**

(a) As between Member and TCFA, any Member Job postings and information and related materials provided by Member for placement, storage and/or use in or in connection with the Services or on or in connection with the TCFA Website (“Member Materials”) are and will remain the property of Member. Member grants TCFA an irrevocable, royalty-free, nonexclusive license to use, copy, display and distribute Member Materials to the extent necessary to provide the Services and/or to administer or maintain the TCFA Website.

(b) Except for the limited license granted in the Section above, Member has and will have no right, title or interest in or to any of the Services, the TCFA Website, and TCFA or its applicable licensor will retain ownership of and full and exclusive rights in and to the Services, the TCFA Website, including, without limitation, ownership of and full and exclusive rights to all related copyrights and other intellectual property rights and full and exclusive rights to sell, license, market, assign and modify the Services, the TCFA Website.

## **9. Member Indemnification.**

Member agrees to indemnify, defend and hold TCFA and its licensors harmless from and against any damages, costs and expenses (including reasonable attorneys’ fees) incurred by TCFA or a licensor as a result of or in connection with any third-party claim that (i) any of the Member Materials infringes or otherwise violates any patent, copyright, trademark, service mark, trade secret or other intellectual property right of a third party, and/or (ii) Member’s employee procurement, screening, testing, assessment, hiring or firing policies or practices, or improper use of the Services, violates any applicable employment, data protection, privacy or other law or regulation.

## **10. Liability Limitations.**

EXCEPT AS OTHERWISE PROVIDED IN THE PREVIOUS SECTIONS ABOVE, AND WITHOUT IN ANY WAY LIMITING MEMBER’S OBLIGATION TO PAY FOR THE SERVICES AS PROVIDED IN THE APPLICABLE JOB POSTINGS OR WEBSITE ORDER TERMS, (i) NEITHER PARTY WILL BE LIABLE FOR ANY PUNITIVE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, AND EACH PARTY IRREVOCABLY WAIVES ANY RIGHT TO COLLECT ANY SUCH DAMAGES, AND (ii) EACH PARTY’S MAXIMUM AGGREGATE LIABILITY FOR DAMAGES HEREUNDER WILL NOT EXCEED THE AMOUNTS PAID, IF ANY, OR PAYABLE BY MEMBER TO TCFA UNDER THE APPLICABLE JOB POSTINGS OR WEBSITE ORDER DURING THE TWELVE (12) MONTHS IMMEDIATELY PRECEDING THE EVENT CAUSING THE LIABILITY.

## **11. Miscellaneous.**

(a) Each party and its employees and representatives are and will be independent contractors with respect to the other party, and neither party by virtue of any Job Posting, any Website Order or these Employer Terms of Use will have any right, power or authority to act or create any obligation on behalf of the other party.

(b) The Job Postings, the Website Orders and these Employer Terms of Use will be governed by and construed in accordance with the laws of the State of Texas. The parties agree that any dispute, claim or controversy arising out of or in connection with these Employer Terms of Use, any Job Posting, any Website Order and/or the Services will be brought, tried and litigated exclusively in the District Court of Randall County, Texas or in the United States District Court for the Northern District of Texas (Amarillo Division). Each party hereby voluntarily submits to personal jurisdiction in each such court, and each party expressly waives any right to object to personal jurisdiction or improper venue, or to assert the doctrine of *forum non conveniens* or any similar doctrine, with respect to either such court in connection with any dispute, claim or controversy arising out of or in connection with these Employer Terms of Use, any Job Posting, any Website Order and/or the Services.

(c) All communications, notices and disclosures required or permitted by these Employer Terms of Use will be in writing and will be deemed to have been given on the date when delivered personally, by messenger, by overnight delivery service or otherwise, (i) to Member, at the address described on the applicable Job Posting or provided in connection with the applicable Website Order, and (ii) to TCFA, at its corporate headquarters.

(f) These Employer Terms of Use will be binding on and inure to the benefit of the parties and their respective successors and permitted assigns.

(g) The section headings contained herein are for the convenience of the parties only and will not be interpreted to limit or affect in any way the meaning of the language contained in these Employer Terms of Use.

(h) The Job Postings and any other documents included as part of or relating to the Job Postings or Website Orders may be executed in one or more counterparts, each of which will be deemed an original but all of which together will constitute one and the same instrument. The Job Postings and any other documents included as part of or relating to the Job Postings or Website Orders may be executed by exchange of manually signed originals or facsimile copies or by exchange of electronic signatures through any electronic signing service or process approved by TCFA.

(i) Except as otherwise provided herein, (i) these Employer Terms of Use, together with the applicable Job Posting and any related Statement(s) of Work prepared by TCFA and delivered to Member in connection with such Job Posting, contains the entire agreement and understanding between Member and TCFA concerning the Services described in such Job Posting, and (ii) these Employer Terms of Use, together with the applicable Website Order and Website Order Terms, contains the entire agreement and understanding between Member and TCFA concerning the Services ordered through such Website Order. No waiver by either party hereto of any term or provision of these Employer Terms of Use or of any default hereunder will affect such party's rights thereafter to enforce such term or provision or to exercise any right or remedy in the event of any other default, whether or not similar.

# Privacy Policy

TCFA appreciates the sensitivity and privacy with which any job search should be handled. The purpose of the TCFA Job Posting site is to give Members an additional on-line option for reaching out to Prospective Applicants by posting openings within their respective companies. Prospective Applicants may review these posted openings and respond directly to the Member.

TCFA does not recruit potential applicants for its Members and does not collect information, such as background information, work history etcetera, from Prospective Applicants.

The Privacy Policy describes how TCFA will handle information received and collected from Members or Prospective Applicants by means of our Website. It does not apply to information that we gather or collect using any other method. We urge you to read our Privacy Policy so that you will understand both our commitment to you and your privacy, and how you can participate in that commitment.

Providing information to TCFA is voluntary and may be withdrawn by you at any time.

- (a) Prospective Applicants. Apart from e-mail or IP Addresses and supporting Metadata, TCFA will not accept, collect or transmit any applicant information to a Member. If such information is received, it will be deleted immediately. Prospective Applicants must contact the posting Member directly.
  
- (b) Personally Identifiable Information. Prospective Applicants should refrain from providing TCFA with Personally Identifiable Information (“PII”). PII includes, but is not necessarily limited to:
  - E-mail Address
  - Name
  - Address
  - City
  - State
  - ZIP code
  - Phone number
  - Date or Place of birth
  - Gender
  - Military service
  - Citizenship / Work Status
  - Education
  - Job preferences
  - Work experience

## Social Security Number

(c) TCFA may obtain URL of the site from which you came and the site to which you are going when you leave our Website, as well as the IP address of the computer you are using (or the proxy server you use to access our Website), your computer operating system and type of web browser you are using, mobile device operating system (if you are accessing our Website using a mobile device), as well as the name of your ISP or your mobile carrier. This information will only be used in the event TCFA has reasonable cause to suspect that the user has violated the Terms of Use of its Services, or has been or is currently engaged in unlawful or harassing conduct.

**NOTE: TCFA WILL IMMEDIATELY ADVISE LAW ENFORCEMENT OF ANY SUSPECTED UNLAWFUL OR HARASSING CONDUCT THROUGH ITS WEBSITE SERVICES. COOPERATION WILL INCLUDE PROVIDING URL AND IP ADDRESS INFORMATION, AS WELL AS, INFORMATION PROVIDED BY THE USER.**

We may collect information through our Website in order to, among other things, accurately categorize and respond to Member inquiries and investigate breaches of our terms.

We may collect information about the fact that you use certain features and functionality or our Website, or participate in research initiatives like polling and surveys on our Website.

Our Website contains links to other websites that may be of interest to you. We do not have control over these websites, however, and therefore are not responsible for their privacy policies or practices. Please make sure to review the privacy policies of these websites so that you will be familiar with them.

We offer search services to help find information and learn more about other Members, as well as employment opportunities. We use information from Member profiles to populate and refine our search engine results.

We have implemented a variety of security measures to maintain the safety of your Personal Information. We keep your Personal Information on a central database on a secured network in the United States that can be accessed only by a limited number of persons who are required to keep such information confidential. We audit our network regularly for possible vulnerabilities and attacks.

By using the Website, you grant us and all other persons or entities involved in the operation of our Website the right to receive, transmit, monitor, retrieve, store and use your Personal Information, including information that may be privileged and confidential under applicable state



and federal laws, in connection with the operation of our Website and our maintenance of your Information.

Although we have made reasonable efforts to safeguard the confidentiality of your Personal Information, we cannot promise, and you should not expect, that your Personal Information will always stay private. There is no guarantee that information may not be accessed, disclosed, altered, or destroyed by breach of any of our physical, technical, or managerial safeguards. We also cannot guarantee that unauthorized third parties will never be able to circumvent our security measures and obtain access to your Personal Information and use it for improper purposes. As a user of the Website, you agree that you assume all risks regarding your use of the Website, transmissions made over the Internet generally, and your sharing of your Personal Information.

You are responsible, however, for taking all reasonable steps to ensure that no unauthorized person has access to your password. It is your sole responsibility (1) to control the dissemination and use of your password; (2) to authorize, monitor and control access to your password; and (3) to promptly notify us of any need to deactivate your login, or to change your password.

Also, please note that e-mails, instant messaging, and similar means of communication with other Members of our Website are not encrypted, and we strongly advise you not to communicate any confidential information through these means.