

DATA PROCESSING AGREEMENT OF NECTAR HR

This DATA PROCESSING AGREEMENT (this “**DPA**”) is entered into by and between PerkCity, Inc., a Delaware limited liability company d/b/a Nectar HR (together with its affiliates, “**Nectar HR**”), whose principal address is 815 W 1250 S #303, Orem UT 84058, and [Insert client name], a [insert jurisdiction of organization] (the “**Client**”), whose principal address is [insert client address].

RECITALS

- A. Nectar HR provides to Client certain software-as-a-service and professional services (collectively, the “**Services**”) pursuant to that Master Service Agreement between Nectar HR and Client (the “**Services Agreement**”). In connection with the Services, the parties anticipate that Nectar HR may process outside of the European Economic Area (“**EEA**”), the United Kingdom, and Switzerland certain Personal Data (defined below) in respect of which the Client or its personnel may be a data controller under applicable Data Protection Laws (defined below).
- B. In connection with the Services, the parties to this DPA desire to accept and execute this instrument to ensure that adequate safeguards are put in place with respect to the protection of Personal Data, as required by applicable Data Protection Laws.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are acknowledged by Nectar HR and Client, and in light of the recitals above, the parties agree as follows:

1. Definitions.

- a. “**Adequate Country**” means a country or territory that is recognized under Data Protection Laws as providing adequate protection for Personal Data in connection with transfers thereof.
- b. “**Data Protection Laws**” means all laws and regulations of the European Union, the European Economic Area, their member states, and the United Kingdom and Switzerland applicable to the processing of Personal Data under the Services Agreement, including (where applicable) the GDPR.
- c. “**GDPR**” means the General Data Protection Regulation (Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data), and all regulations and commission opinions issued thereunder.

d. **“Personal Data”** means all data and personal information that (i) is defined as “personal data” under the Data Protection laws (including GDPR) and (ii) is provided by Client to Nectar HR (directly or indirectly through employee users of the Services and personnel) for processing, use, or storage as a part of Nectar’s provision of the Services to Client.

e. **“Regulator”** means any supervisory authority with power and authority under Data Protection Laws over all or any part of the provision or receipt of the Services or the processing of Personal Data.

f. **“Security Incident”** means an accidental, unauthorized or unlawful destruction, loss, alteration, disclosure of, or access to, Personal Data.

g. **“Standard Contractual Clauses”** means the standard contractual clauses for processors as approved by the European Commission, as amended or updated from time to time (available at https://ec.europa.eu/info/law/law-topic/data-protection/international-dimension-data-protection/standard-contractual-clauses-scc_en).

h. **“Subcontractor”** means any third party engaged by Nectar HR to process any Personal Data relating to this DPA or the Services Agreement.

i. The terms **“controller”**, **“processor”**, **“processing”**, **“data subject”**, **“data importer”**, and **“data exporter”** have the meanings given those terms in applicable Data Protection Laws.

2. **Service Agreement.** The parties acknowledge that this DPA supplements and is incorporated into the Service Agreement, and in the event of any conflict between the terms of this DPA and the terms of the Services Agreement with respect to processing of Personal Data, the terms of this DPA shall prevail and control.

3. **Obligations of Nectar HR (as processor).** Nectar hereby agrees to process Personal Data under the Service Agreement only as a processor acting on behalf of Client or Client’s employee users and personnel, in either respect such person(s) or entities being the controller of the Personal Data.

a. *Instructions.* Nectar HR will only process Personal Data under the Services Agreement pursuant to the written instructions of Client, as set forth and described on the attached **Schedule I**. Consistent with the instructions, Nectar HR agrees to process Personal Data only for the purpose of providing the Services to Client (or its employee users or personnel), unless Nectar HR is required to process the Personal Data for other lawful purposes set out under the Data Protection Laws. If such a requirement is placed on Nectar HR, it will deliver prior notice to Client detailing the requirement and additional purposes, unless the relevant Data Protection Law prohibits giving the notice. Nectar HR agrees to notify Client if Nectar HR has knowledge that an instruction relating to the processing hereunder could, or does, infringe on applicable Data Protection Laws.

b. *Confidentiality.* Nectar HR, and its personnel and Subcontractors authorized to process Personal Data, will treat all Personal Data as strictly confidential. Consistent with industry practices, Nectar HR will ensure that its personnel and Subcontractors who are authorized to process the Personal Data are subject to appropriate confidentiality obligations.

c. *Ability to perform.* Nectar HR agrees to promptly notify Client, or the appropriate employee or personnel, if Nectar HR determines that it cannot comply with its obligations under this DPA. If such a scenario should occur, Nectar HR will work with Client and take all reasonable and appropriate steps to stop and remediate (if possible) any processing, including processing performed by Subcontractors, until such time as the processing complies with the requirements of this DPA.

d. *Data Subject and Regulator Requests.* In light of Nectar HR's capacity as the processor hereunder, if Nectar HR receives a request from a data subject made under Data Protection Laws (including, without limitation, GDPR) and determines that Nectar HR is not the controller and that the controller is the Client, Nectar HR will refer the data subject to Client as the party to whom the request should be made. Nectar HR further agrees to provide reasonable assistance to Client to address any communications and advice or orders from any Regulator relating to the Personal Data.

e. *Security Reports.* Nectar HR agrees to maintain records in accordance with reasonable industry standards and shall provide Client with copies of its relevant systems management and records on Client's written request.

f. *Additional Obligations.* Nectar HR will provide reasonable assistance to the Client, including its employee users and personnel, in complying with it or their obligations under Articles 32 through 36 of GDPR (which, in short, address obligations with regard to security, breach notifications, data protection impact assessments, and prior consultation).

4. Obligations of Client (as controller).

a. *Instructions.* Client agrees and acknowledges that this DPA and the Services Agreement are Client's complete and final instructions to Nectar HR for the processing of Personal Data, delivered by Client as the controller of the Personal Data. Any additional or alternate instructions must be agreed upon mutually by the Parties in writing (pursuant to Section 15(c) hereof), unless such instructions are required by law. Client represents and warrants that the instructions it provides to Nectar HR pursuant to this DPA comply with applicable Data Protection Laws.

b. *Data Subject and Supervisory Authority Requests.* Client agrees that it is, and will remain, responsible for communications and leading any efforts to comply with all requests made by data subjects under Data Protection Laws and all communications

from any Regulator(s) that relate to the Personal Data, in accordance with Data Protection Laws.

c. *Notice, Consent, and Other Authorizations.* Client is responsible for the accuracy, quality, and legality of Personal Data and the means by which Client acquired the Personal Data that it provides to Nectar HR for processing under the Services Agreement and this DPA. Client is responsible for providing any notice to the Data Subjects and for obtaining and demonstrating evidence that it has obtained any necessary consents, authorizations, permissions, or another lawful basis from the Data Subjects in a valid manner for Nectar HR to perform the Services. Client will provide Nectar HR with such evidence of this as Nectar HR may reasonably request if Nectar HR needs this information to comply with Data Protection Laws or the request of any Regulator.

5. **Security Measures.** Nectar HR has, or will implement and maintain, all reasonable and appropriate technical and organizational security measures to meet the requirements of the Data Protection Laws, and in particular, to protect against the occurrence of Security Incidents. Such Security Measures shall take into account industry standards, the costs of implementation, and the purposes of the processing, as well as the risk of a Security Incident and potential impact on the rights and freedoms of natural persons. At a minimum, Nectar HR agrees to the Security Measures identified in **Schedule II** hereto.

6. **Incidents and Notification.** If the Personal Data is subject to a Security Incident, Nectar HR will promptly (but no later than 48 hours of becoming aware of the incident) provide written notification to Client of the Security Incident. The written notification will contain information such as (a) a description of the Security Incident; (b) the type of Personal Data involved; (c) the identity of each impacted data subject (and approximate estimation of the number of data subjects); (d) a description of the potential consequences; and (e) information concerning the measures taken by Nectar HR to address the Security Incident. Further, in the event of a Security Incident, Nectar HR agrees to provide timely information and cooperation as Client may require to satisfy its breach reporting requirements under Data Protection Laws and take such reasonable measures and actions to mitigate the effects of the Security Incident.

7. **Assessments, and Audits.** Nectar HR agrees to reasonably cooperate with Client (including its employee users and personnel) to:

- a. assist Client in carrying out any privacy impact assessment of the Services as is reasonable in light of the Personal Data that is being processed and as may be required under Data Protection Laws, provided that Client gives fifteen (15) days prior written notice to Nectar HR of the impact assessment; and
- b. on written request from Client, make available to Client information as is reasonably necessary to demonstrate Nectar HR's compliance with applicable Data Protection Laws and permit Client or its agents to audit the records to the extent reasonably necessary to confirm such compliance.

8. **Cross-border Transfers (data exports).** Consistent with the terms of this DPA, Nectar HR will at all times provide an adequate level of protection for the Personal Data, wherever processed, in accordance with the requirements of applicable Data Protection Laws. To the extent that transfers of Personal Data occur under this DPA in connection with the Services, and such transfers are not to an Adequate Country, the Parties agree that such transfers shall be subject to the Standard Contractual Clauses, conditioned on Nectar HR complying with (and requiring any Subcontractor to comply with) the Standard Contractual Clauses, which are incorporated by reference and form as an integral part of this DPA. For the purposes of the descriptions in the Standard Contractual Clauses and only as between Nectar HR and Client, Nectar HR agrees that it is a “data importer” and Client is the “data exporter” under the Standard Contractual Clauses.

9. **Sub-processing and Subcontractors.** Nectar HR will not subcontract any processing of Personal Data to a Subcontractor without the prior written consent or general authorization of Client. However, Client hereby expressly consents to Nectar HR appointing and engaging with Subcontractors to process Personal Data as follows:

a. Nectar HR provides Client with a list of all Subcontractors engaged to process Personal Data on Nectar HR’s behalf, an updated list of which is provided at <https://f.hubspotusercontent40.net/hubfs/2727242/Nectar%20Subcontractors-1.pdf>, promptly delivering to Client a current copy of, or link to, the Subcontractor list in the event the Subcontractors therein named are updated with additional Subcontractors;

b. Nectar HR provides at least thirty (30) days’ prior notice to Client of the engagement or appointment of any new Subcontractor;

c. Nectar HR requires that the Subcontractor it engages agree to the same data protection terms set out in this DPA; and

d. Nectar HR remains liable for any breach of this DPA or the Service Agreement that is caused by an act or omission of the Subcontractor.

10. **Return or Destruction of Data.** On the earlier of (a) Client’s written request or (b) termination or expiration of this DPA or the Services Agreement, Nectar HR will destroy or return to Client, at its election, all Personal Data in its possession or control; provided, however, this Section shall not apply to the extent that Nectar HR is required by any applicable Data Protection Law or other law to retain some or all of the Personal Data. In such an event, Nectar HR will isolate and protect the Personal Data from any further processing except to the extent required by the law.

11. **General Terms.**

a. *Indemnity.* Any claims brought under this DPA will be subject to the same terms and conditions, including the exclusions and limitations of liability, as are set out in the Services Agreement. For avoidance of doubt, any such limitation of liability applied from the Services Agreement shall apply in the aggregate to all Nectar HR entities or

affiliates taken together, even if such entities are not referred to specifically in the Services Agreement or this DPA.

b. *Governing Law.* Without prejudice to the Standard Contractual Clauses, this DPA and any action related thereto shall be governed by and construed in accordance with the laws of the state of Utah, without giving effect to any conflicts of laws principles. The parties consent to the personal jurisdiction of, and venue in, the courts of Utah.

c. *Amendment.* This DPA may not be modified except by a written consent or amendment signed by both parties hereto.

d. *Counterparts.* This DPA may be executed in any number of counterparts, which taken together shall constitute one and the same instrument.

e. *Severability.* If any provisions of this DPA shall be found by any court of competent jurisdiction to be invalid or unenforceable, the invalidity or unenforceability of such provision shall not affect the other provisions of this DPA. The parties will attempt to agree upon a valid and enforceable provision that is a reasonable substitute and shall incorporate such substitute provision into this DPA.

f. *Change in Laws.* The Parties agree to negotiate modifications to this DPA if changes are required to continue to comply with the Data Protection Laws, including but not limited to (i) reflect any changes or amendments to the Standard Contractual Clauses issued by the European Commission, or (ii) if changes to the membership status of a country in the European Union or the European Economic Area require such modification.

[Signatures follow]

IN WITNESS WHEREOF, the parties' authorized signatories have duly executed this DPA on behalf of the party and, where relevant, their affiliates, as of the last date set forth below.

NECTAR HR

Signature _____

Printed Name _____

Title : _____

Date _____

CLIENT

Signature: _____

Printed Name: _____

Title: _____

Date: _____

SCHEDULE I

Instructions and Details of Processing

- **Description of Client's activities under the DPA and Services Agreement:**

Client is and shall be the controller of the Personal Data provided to Nectar HR in connection with the Services. As applicable to transfers of the Personal Data, Client will also be the data exporter, and Nectar HR shall be the data importer.

- **Services requested from and provided by Nectar HR:**

Nectar HR offers a peer-to-peer employee recognition platform with a wide range of reward options (such as gift cards, branded items, and custom awards, in addition to actions ancillary to these Services).

- **The duration of the processing will be:**

Until the earlier of (a) termination or expiration of the Services Agreement, or (b) the date upon which processing is no longer necessary for the purposes of either party performing its obligations under the Services Agreement.

- **The processing will comprise:**

Processing necessary to provide the Services to Client, pursuant to the terms and conditions of the Services Agreement.

- **The purposes of the processing are:**

Necessary for the provision of the Service and performance of a contract (i.e., the Services Agreement).

- **Personal data may concern the following data subjects:**

- a. Employees, award candidates, and personnel or contact persons of Client; and
- b. Natural persons authorized by Client to use the Services (including the Nectar HR portal).

- **Types of Personal Data that may be processed:**

- a. Personal Data (including, but not limited to, name, identification numbers with Client, photographs, age, gender, marital status, number of children, and other Personal Data maintained in the personnel records of Client); and
- b. Information concerning the job, position, work history, benefits, payroll, and other details of the employees and personnel of Client.

SCHEDULE II

Security Measures

- **Online Security Measures:**

Nectar HR's technical and organizational security measures can be found at: <https://nectarhr.com/security/>. Nectar HR may update those security measures from time to time in connection with changes to Data Protection Laws or best practices of Nectar HR's systems.