

Elevated Resources User Terms of Service

Revised May 2, 2018

Our Contractual Relationship and Categories

Thank you for accessing one of the tools developed by Elevated Resources, Inc. and its affiliates (“**We**,” “**Company**,” or “**Us**”). We welcome you and hope you find our desktop platform and related tools, apps, and software (individually and collectively, the “**Tools**”) and our services, which include use of the Tools and our provision of services related to the Tools (“**Services**”), helpful and efficient. We have developed the Services to help our clients with workforce management, and you are required to agree to these Terms of Service (“**Agreement**”) because you are using the Services either (1) as an administrator or other employee of our client or vendor, or (2) to manage your relationship with our client or vendor.

This Agreement governs our legal relationship related to the Services, and it is a legally binding agreement. By using the Services, you agree to the provisions of this Agreement, and you represent and warrant that you are authorized to bind any organization on whose behalf you are accessing the Services.

We reserve the right to make amendments to this Agreement from time to time, and we will post the revised versions on the Tools when we do. Amended terms become binding thirty days after they are posted on the Tools.

When you register with us, you will associate your registration with one or more of our vendors or clients. To the extent you input any information about yourself into the Tools, and to the extent the Tools generate or record any information about you and/or your use of the Tools, you agree that the information you provide shall be available to the associated vendor or client, and to us, for the purposes of fulfilling our obligations under our contracts with clients and in accordance with our Privacy Policy <http://www.elevatedresources.com/privacy>]. Your personal information will not be made available to any client or vendor other than the clients or vendors with whom you associate your registration.

Privacy Policy

Our Privacy Policy [<http://www.elevatedresources.com/privacy>] governs how we use the information we obtain through your use of the Services, and you should also review that policy periodically, since we update it from time to time as technology and circumstances change. Revisions to our Privacy Policy are also effective thirty days after they are posted on the Tools. Your continued use of the Services indicates your acceptance of this Agreement and the Privacy Policy, as amended.

Usage Rules

Our Tools allow you, our clients, and our vendors, to interact within each organization and among organizations and individuals in a manner that is intended to positively impact engagement among and between them. You may not use the Services for any other purpose. While we are not responsible for the things you do and say while using the Services, if your communications do not further our overall goals, we may take action to prevent your misuse of the Services, including suspending your account or terminating your use of the Services completely. We do not accept responsibility for any comments or other misuse of the Services by any other party.

Specifically, you agree to abide by the principles set forth above and the rules set forth below and any other reasonable rules we may impose regarding the use of the Services.

You agree that you will not:

- Harass, threaten, disrupt or defraud other users or otherwise create or contribute to an unsafe, harassing, threatening or disruptive environment;
- Make unsolicited offers, advertisements, proposals, or send junk mail or “spam” to other users;
- Impersonate another person or access another user’s account;
- Share Company-issued passwords with any third party or encourage any other users to do so;

- Upload material (e.g. virus) that is damaging to computer systems or data of Company or users of the Services;
- Upload or post any material that is inappropriately violent, unduly graphic, pornographic, bigoted, derogatory, racist, or offensive, or that violates the intellectual property rights of any third party. We may remove any material that we decide, in our sole discretion, violates the foregoing requirement.

Company may determine in its sole discretion whether conduct in which you engage violates any or all of these obligations, and it may immediately and unilaterally suspend your account and access to the Services for such violation. Exercise of its termination rights hereunder does not preclude the exercise of any other right to which Company is entitled, either under the law or under this contract. Such rights include, without limitation, the right to refer violating conduct to law enforcement, where Company believes in its sole discretion that illegal conduct has occurred.

As an administrator or user with rights to access the Data of third parties, you also agree as follows:

1. Acknowledgment of Company's Data Privacy Obligations. I acknowledge that Company has entered or will enter into one or more agreements with third parties that obligate Company to ensure that its employees and independent contractors abide by certain privacy protection principles. These principles include, without limitation, the General Data Protection Regulation effective in Europe as of May 25, 2018 ("**GDPR**"), as well as other legislation applicable to companies and individuals in various geographical locations in the world. These obligations may be in addition to the obligations into which I have already entered by contract with Company.
2. Third-Party Data Protection. With respect to any personal information that belongs or relates to any third person, which information is or becomes available on or through Company's network, systems, or software ("**Data**") to which I may have access or visibility, or with which I may have contact, I agree that I shall:
 - 2.1. Never access, process, transfer, view, use, or store any such Data without express authorization, and then only for purposes directly related to fulfilling Company's contractual obligations under its agreement with any third party ("**Data Secrecy**").
 - 2.2. Keep all Data strictly confidential and disclose Data only on a strict need-to-know basis to other authorized employees or independent contractors of Company only as required for fulfilling Company's contractual obligations ("**Confidentiality**"); however, I agree that I shall not disclose or otherwise make accessible Data under any circumstances to anyone who has not been obliged to Data Secrecy and Confidentiality or who is not required for fulfilling Company's contractual obligations.
 - 2.3. Ensure that my obligations of Data Secrecy and Confidentiality are observed forever, both during and after the expiration and/or termination of my employment or contractual relationship with Company and after the expiration and/or termination of Company's agreement with any third party.
 - 2.4. Upon Company's request to provide Company with satisfactory evidence that I have complied with my obligations of Data Secrecy and Confidentiality as set forth in this agreement.

Data Categories and Access Rights

We use three categories of data to provide the Services. When this Agreement uses the term "Data" alone and without other qualification, it refers to all three categories.

1. Contact Data: Contact Data consists of name, e-mail address and other contact information you or other users provide using the Tools. Contact information is accessible only by us and the client or vendor with whom you associate your registration. You consent to the use of your Contact Data for the legitimate business purposes of us and our clients, including the creation of a company directory for the inter-company use of our clients.
2. Personal Data: Personal Data consists of all the personal information you or other users input into the Tools and that clients or vendors input or process about you, your employment, and any other

information about you (other than the Contact Data) or other users. It includes, without limitation, employment history and qualifications, resume, salary or hourly rates, tax information, employee reviews, and all other personal information (other than the Contact Data). Your Personal Data is accessible only to us, to you, and to the client or vendor with whom your registration is associated. We do not share it with third parties, but we may use Personal Data to make inferences that help us provide the Services. We may use Personal Data in an aggregated format that is not identifiable to any individual, and that aggregated information belongs solely to us. To the extent we are required to delete any Personal Data about you, we will still retain aggregated and anonymized information that may have originated as your Personal Data.

3. **Usage Data:** Usage Data consist of information relating to your use of the Tools, such as the device you use, how often you access the Tools and at what times, information gathered through cookies and other technical tools, and similar related usage information. Usage Data is accessible to us and to you.

As a user, you agree to use the Data only for the purposes set forth in this Agreement and for no other purpose whatsoever. You agree that to the extent you obtain any Data about a third party (such as an employee or candidate of your employer), you will retain such Data in complete confidentiality and not disclose it (or the fact that it exists) to any third party. You agree not to convey, sell, or rent the Data for any purpose and not to share the Data with any third party, except for the purposes expressly set forth in this Agreement.

Our Services and Third-Party Services

Our Services may use third-party services in connection with the Tools (each a “**Third-Party Service**”). When you access a Third-Party Service, you must agree to its terms of service. Except to the extent required by law, your relationship with any provider of a Third-Party Service and any claim, issue, or dispute that may arise between you and the provider of the Third-Party Service is strictly between you and that provider, and you agree not to involve us in any such claim, issue, or dispute.

Health Laws and Regulations

You expressly grant us the right to gather and use the Data under the terms set forth in this Agreement and consistent with the Privacy Policy. You waive any claims that may belong to you under the Health Insurance Portability and Accountability Act (“**HIPAA**”) and any other federal, state, or local law related to the gathering and sharing of the Data, and as a user, you agree to not make any use of the Data that violates the provisions of HIPAA or any other federal, state, or local law related to the privacy of health information.

Our License

We grant to you a non-transferable, non-exclusive and revocable license to install the Tools on electronic devices, such as phones, tablets, or computers, that you own or control (each a “**Device**”) and to use the Tools according to the terms and conditions set forth in this Agreement. The Tools are licensed, not sold, to you. Except as expressly granted by this Agreement or otherwise by us or our licensors in writing, you acquire no right, title or license in the Tools or any data, software, content, application or materials accessed from or incorporated in the Tools. This Agreement does not give you any rights to any updates or upgrades to the Tools or to any maintenance releases, patches, fixes, extensions or enhancements (collectively, “**Updates**”) to the Tools developed by us or our suppliers or licensors at any time in the future, except as we make those Updates available in our sole discretion. We may provide Updates and/or support in our absolute discretion. If provided by us, Updates may be delivered automatically, or you may be notified when a new Update is ready to be installed, or when we make such Updates available for download. You authorize us to deliver automatically or to force any Update if we believe it is necessary to provide for the continued functionality of the Tools or for any reasonable business purpose. We are not required to maintain legacy versions of the Tools, and therefore, forced Updates may be necessary. Your use of the Updates will be governed by this Agreement unless you are asked to agree to new or additional terms at the time of download or installation. You also agree that you may have to enter into a renewed version of this Agreement if you want to download, install or use a new or modified version of the Tools.

Your License

You grant to Company a perpetual, non-exclusive, fully-assignable, royalty-free, and worldwide license to collect and store your Data and to use your Data as described in this Agreement, but never to sell your Data to any third party, except as provided in this Agreement and the Privacy Policy, and except in connection with the sale,

merger, or acquisition of Company or of all or substantially all its assets. Upon your request, we will delete your user account, but we will retain Data in an anonymized fashion that does not allow the use of any of your personally identifiable Data.

You also grant us a perpetual, exclusive fully-assignable, royalty-free, and worldwide license to collect, store, use, and sell the content, suggestions, comments, and feedback you may post using the Services or otherwise communicate with us, without any obligation of compensation. For clarity, this license continues after termination of this Agreement, and it includes without limitation any GIFs, images, template comments, or other intellectual property you create and post using the Services. You agree to review such templates and to be responsible for the creation and use of any such templates, including any claims by third parties related to the creation and use of such templates, whether the claims are based on intellectual property infringement claims or otherwise.

License Restrictions

In addition to governing yourself in accordance with the usage rules, you also agree to the following license restrictions. You agree: (a) to use the Tools solely for the purpose of connecting and communicating with other users and our clients or vendors; (b) to not install or use a copy of the Tools on a device that you do not own or control; (c) to not duplicate, copy or distribute the Tools, except as necessary to use it on your Device; (d) to not license, sell, rent, lease, lend, transfer, assign, distribute, host, outsource, disclose or otherwise commercially exploit the Tools or make the Tools available to any third party; and (e) to not use the Tools for any fraudulent, unlawful or illegal activity, for the hauling of prohibited Items, or in any way that could harm the Tools or impair anyone else's use of it or a wireless network or to try to gain unauthorized access to any service, data, account or network by any means; (f) to not modify, translate, or create derivative works based on the Tools or disassemble, decompile or reverse engineer any part of the Tools, except and only to the extent that applicable law expressly permits, despite this limitation; (g) to not engage in any harassment, illegal discrimination, or any other offensive or illegal behavior; (h) to not work around any technical limitations in the Tools; and (i) to preserve all copyright and other proprietary rights notices on the Tools and all copies thereof.

Security and Privacy for EU Residents

The information that the Tools collect may be stored locally on your Device and may be transmitted to our servers in countries of the European Union ("EU"), the United States ("U.S."), and/or other countries where we or our service providers operate. We take your privacy and the security of your Data seriously, and we use the Privacy Shield as a framework for those security and privacy efforts. Your obligations and our obligations with respect to the security and privacy of the Data (whether about you or a third party) are set forth in the Data Protection Addendum posted at [<http://www.elevatedresources.com/DPA> "DPA"]. The DPA is legally binding upon you and upon us. It addresses the restrictions placed upon you in your role as an administrator or other user with access to the Data of other users. It also addresses the restrictions placed upon us regarding security and privacy issues of all Data. We are currently seeking certification under the Privacy Shield protocol and will post further notices of our certification when that is complete.

By using the Services, you specifically consent to the processing of your Data in the United States for the purposes of fulfilling our duties under this Agreement, as provided herein and in the Privacy Policy. We will process the Data in accordance with our DPA. However, you acknowledge that the transmission of information over wireless and wired networks is not inherently secure. We use tools to help protect your Data against unauthorized access and disclosure. However, we do not guarantee that your Data or private communications will always remain private when using the Tools.

Term and Termination

Your license to use the Services is effective until we terminate it or until the termination of our contract with the client or vendor with whom your account is associated. In addition, your rights under this license will terminate automatically without notice to you if you fail to comply with any of the provisions of this Agreement. We reserve the right to suspend, discontinue, enhance, update or otherwise modify the Services, or their availability to you, at any time without notice. Upon termination of the license to the Services, you will cease all use of the Services.

Warranty Disclaimer and Liability Limit

EXCEPT FOR WARRANTIES SET FORTH EXPRESSLY IN THIS AGREEMENT, NEITHER PARTY MAKES ANY REPRESENTATION OR WARRANTY OF ANY KIND WHETHER EXPRESS, IMPLIED (EITHER IN FACT OR BY OPERATION OF LAW), OR STATUTORY. EACH PARTY EXPRESSLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, QUALITY, ACCURACY, AND TITLE. COMPANY DOES NOT WARRANT AGAINST INTERFERENCE WITH THE ENJOYMENT OF

THE TOOLS OR THE SERVICES, OR AGAINST INFRINGEMENT OF THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS. WE DO NOT WARRANT THAT THE TOOLS OR THE SERVICES WILL BE ERROR-FREE OR THAT OPERATION OF THE TOOLS OR SERVICES WILL BE SECURE OR UNINTERRUPTED. WE DO NOT GUARANTEE OR WARRANT THAT ANY USER WILL BE INSURED OR LICENSED, AND WE DO NOT GUARANTEE OR REPRESENT THAT THEY OR THIRD PARTIES WILL NOT ENGAGE IN CONDUCT, WILLFUL, NEGLIGENT, OR OTHERWISE, THAT WILL NOT HARM YOU. WE CANNOT BE HELD RESPONSIBLE FOR THE CONDUCT OF OTHER USERS OR THIRD PARTIES. EXCEPT WITH REGARD TO OUR WILLFUL MISCONDUCT, NOTWITHSTANDING ANYTHING CONTAINED IN THIS AGREEMENT TO THE CONTRARY, AND IN CONSIDERATION OF THE RELATIVE RISKS AND REWARDS, WE WILL NOT, UNDER ANY CIRCUMSTANCES, BE LIABLE TO YOU OR ANY THIRD PARTY FOR CONSEQUENTIAL, INCIDENTAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, INCLUDING BUT NOT LIMITED TO LOST PROFITS OR LOSS OF BUSINESS, EVEN IF WE ARE TOOLSRISED OF THE LIKELIHOOD OF SUCH DAMAGES OCCURRING; NOR, EXCEPT FOR OUR WILLFUL MISCONDUCT, SHALL OUR TOTAL LIABILITY OF ANY KIND ARISING OUT OF OR RELATED TO THIS AGREEMENT, REGARDLESS OF THE FORUM AND REGARDLESS OF WHETHER ANY ACTION OR CLAIM IS BASED ON CONTRACT, TORT, OR OTHERWISE, EXCEED THE TOTAL AMOUNT OF \$500.00.

Release and Indemnity

Your use of the Services involves risks for which we cannot be responsible. As between you and the other Users, all interactions are independent of us. You must independently and wisely govern your interactions with third parties, as well as all other aspects of your use of the Services. For these reasons, you hereby release Company and its employees and agents from any and all liability arising out of your use of the Services, and you waive any claims against Company, its employees and agents, that may arise out of or be related to your interactions with other users. You also agree to defend, indemnify, and hold Company, its employees and agents, harmless from and against any and all losses, damages, judgments, settlements, and other claims, including attorney fees and court costs, arising out of or related to (1) your breach of any of the provisions of this Agreement, including without limitation the usage rules, (2) your use of the Tools, (3) your negligent or intentional acts or omissions, (4) any dispute, claim, or issue that may arise between you and any other user, and any party providing a Third-Party Service, and (5) your conduct that is contrary to applicable law.

Compliance with Law

You represent and warrant that you shall comply with any applicable laws, regulations, or other governmental requirements (“**Laws**”), including without limitation any Laws regarding (i) your authority to do business in any state or country, and (ii) any other matter related to your use of the Services and your provision of advice or services to any third party

Confidentiality and Proprietary Rights

1. Confidential Information. “Confidential Information” means any proprietary information of a party to this Agreement disclosed by one party to the other whether in written, graphic, machine readable or other form that is either marked “Confidential” or “Proprietary” or is confidential in nature. Data, as defined in the Agreement is not included in the term “Confidential Information” and is governed by separate provisions of this Agreement.
2. Exceptions. Confidential Information will not include any information that (a) was in the public domain prior to the time of disclosure by the disclosing party, (b) becomes public information after disclosure by the disclosing party to the receiving party through no action or inaction of the receiving party, (c) is already in the possession of the receiving party at the time of disclosure without an obligation of confidentiality, or (d) is independently developed by the receiving party without use of or reference to the disclosing party’s Confidential Information.
3. Non-Use and Non-Disclosure. Each party will (a) treat as confidential all Confidential Information of the other party, (b) not disclose such Confidential Information to any third party, except on a “need to know” basis to third parties that have signed a non-disclosure agreement containing provisions substantially as protective as the terms of this Section provided that the disclosing party has obtained the written consent to such disclosure from the other party, and (c) not use such Confidential Information except in connection with performing its obligations or exercising its rights under this Agreement. Each party is permitted to disclose the other party’s Confidential Information if required by law so long as the other

party is given prompt written notice of such requirement prior to disclosure and assistance in obtaining an order protecting such information from public disclosure.

4. **Proprietary Rights.** Company hereby reserves all intellectual property rights not explicitly granted in this Agreement. As between Company and you, Company owns all intellectual property rights in and to the Services, and to all related documentation and copies thereof, including without limitation all copyrights, trademarks, patents, trade secrets and other intellectual property (the “**Proprietary Rights**”), including goodwill or reputation that accrues to Company’s intellectual property. To the extent that any Proprietary Rights are invented, created, developed, or first reduced to practice under this Agreement, jointly by the parties or in connection with Company’s provision of Services, including by incorporating your comments or suggestions, Company will own all right, title, and interest in and to such Proprietary Rights, with no duty to account to you or to pay you any amounts with respect to the use and exploitation of the Proprietary Rights.

Trademarks

Each party grants to the other party a non-exclusive, non-transferable, royalty-free right to display the trademarks, service marks and logos (“**Marks**”) of the other party solely to allow each party to perform its obligations under this Agreement and to display the Marks of the other party in marketing material indicating its business relationships. If a party objects to a specific use of the other party’s Marks, it will notify the other party of such objection, and such party will cease such use of the objecting party’s Marks. Notwithstanding this provision, you may not make any representations about the Services or Services to any customer beyond information and representations that are made publicly available by Company.

Independent Contractor

You agree that nothing in this Agreement shall, or shall be deemed to, create any franchise or relationship of agency or employer/employee between any user and us. Such parties are independent contractors, and they agree to file their own taxes, to use their own uniforms, if any, to use their own tools and equipment, to provide their own transportation, to provide their own workers compensation, and to determine their own hours.

Intellectual Property Rights

We agree to defend, indemnify, and hold you harmless from and against any losses, damages, judgments, settlements, and other claims, including attorneys’ fees and court costs that may arise out of a third-party claim that your authorized use of the Tools infringes on the intellectual property rights of such third party. You acknowledge that we will be solely responsible for the investigation, defense, settlement and discharge of any such intellectual property infringement claim, but you agree to cooperate fully with us in such actions. Our agreement to indemnify and defend you and to hold you harmless is contingent upon you providing us prompt notice (no more than 15 days) that you have received a communication alleging an infringement.

Notices

Except as explicitly stated otherwise, legal notices will be served, with respect to Company, on Company’s registered agent, and, with respect to you, to the email address you provide to Company during the registration process. Notice will be deemed given 24 hours after email is sent, unless the sending party is notified that the email address is invalid. Alternatively, we may give you legal notice by mail to the address provided during the registration process. In such case, notice will be deemed given three days after the date of mailing.

Governing Law and Jurisdiction

This Agreement shall be governed by and construed in accordance with the laws of the State of California, without reference to the United Nations Convention on the International Sales of Goods. The parties hereby submit to the exclusive personal jurisdiction of the state and federal courts located in the State of California and waive any objections to jurisdiction therein that are based on *forum non conveniens*.

Severability

If any provision of this Agreement, including without limitation the warranty disclaimer and liability limitation terms, shall be unlawful, void, or for any reason unenforceable, then the unenforceable or void portion of that provision will be deemed severable from this Agreement and will not affect the validity and enforceability of any remaining provisions.

Headings

The headings used in this Agreement are for ease of reference only. They are not intended as a complete re-statement of the matters contained under each heading, and you acknowledge that you have read and understand all the text of this Agreement, and not just the headings.

Entire Agreement

This Agreement as it may be amended as set forth herein, is the entire agreement between you and Company relating to the subject matter herein.

Claims; Statute of Limitations

YOU AND COMPANY AGREE THAT ANY CAUSE OF ACTION ARISING OUT OF OR RELATED TO THESE TERMS OR THE SERVICES MUST COMMENCE WITHIN ONE (1) YEAR AFTER THE CAUSE OF ACTION ACCRUES. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

Attorney Fees

In case of an action to enforce any rights or conditions of this Agreement, or appeal from said proceeding, it is mutually agreed that the losing party in such suit, action, proceeding or appeal shall pay the prevailing party's reasonable attorney fees and costs incurred.

Waiver

No waiver of any of this Agreement by Company is binding unless authorized in writing by an executive officer of Company. In the event that Company waives a breach of any provision of this Agreement, such waiver will not be construed as a continuing waiver of other breaches of the same nature or other provisions of this Agreement and will in no manner affect the right of Company to enforce the same at a later time.

Force Majeure

Company will not be liable for, or be considered to be in breach of, or default under, this Agreement on account of, any delay or failure to perform as required by this Agreement as a result of any cause or condition beyond Company's reasonable control.

Survival

All provisions of this Agreement, other than those entirely fulfilled within the term of the Agreement shall survive the expiration or earlier termination of this Agreement.

Waiver of Jury Trial. Each party hereby waives any right to jury trial in connection with any action or litigation in any way arising out of or related to this Agreement.

