

The following TERMS & CONDITIONS ("*Terms & Conditions*") are a legal and binding agreement between you and PerkCity, Inc., a Delaware corporation d/b/a Nectar HR ("*Company*," "*we*," "*our*", or "*us*"), governing (A) your online use of our websites, including <http://www.perknow.com> and <http://www.nectarhr.com>, and our mobile or stand-alone applications (collectively, our "*Online Platforms*") and (B) your general access to and use of our peer-to-peer employee recognition and other award-based services available through the Online Platforms (our "*Employee Recognition Services*") if you or your organization have not executed a separate MSA with us. By accessing or using our Online Platforms or Employee Recognition Services, you accept and agree to be bound by these Terms & Conditions, including the Privacy Policy linked below, and affirm that you are of legal age and capacity to enter into a binding agreement with the Company.

PLEASE READ THESE TERMS & CONDITIONS CAREFULLY BEFORE YOU ACCESS OUR ONLINE PLATFORMS, REVIEW OUR EMPLOYEE RECOGNITION SERVICES, OR PURCHASE, TEST, OR USE OUR EMPLOYEE RECOGNITION SERVICES ONLINE OUTSIDE OF A FORMAL MSA RELATIONSHIP WITH US. IF YOU DO NOT AGREE WITH THE PROVISIONS OF THESE TERMS & CONDITIONS, DO NOT ACCESS OUR ONLINE PLATFORMS.

IF YOU OR YOUR ORGANIZATION HAVE ALREADY EXECUTED A SEPARATE MSA WITH US, THE PROVISIONS OF THAT MSA WILL GOVERN YOUR RELATIONSHIP WITH THE COMPANY AND ACCESS RIGHTS TO THE EMPLOYEE RECOGNITION SERVICES. PLEASE SPEAK WITH YOUR ADMINISTRATIVE TEAM TO RECEIVE A COPY OF, OR BETTER UNDERSTAND THE RIGHTS AND PROVISIONS IN, ANY SUCH MSA.

## **1. ABOUT OUR ONLINE PLATFORMS.**

We offer our Online Platforms and Employee Recognition Services to help clients (and their staff) create a culture of recognition, meaningful engagement and rewards, and measurable promotion of core values. In furtherance of these goals, our Online Platforms create an interactive, rewards-based system for offering and redeeming awards by employees and staff. If you are visiting our Online Platforms as an employee or on behalf of an organization that has purchased access to the Employee Recognition Services for your use, your rights and access are generally governed by a separate master services agreement executed between your organization and the Company (each, an "*MSA*"). That said, if you or your organization have not yet formally subscribed to our Employee Recognition Services or executed a separate MSA with the Company, these Terms & Conditions govern your use of the Employee Recognition Services and your relationship with us—both to protect our rights and explain your options with respect to the Online Platforms.

## **2. CHANGES TO THESE TERMS & CONDITIONS.**

We may revise and update these Terms & Conditions from time to time in our sole discretion. All changes are effective immediately when we post them to our Online Platforms, and the changes apply to all uses of the Online Platforms and general requests for Employee Recognition Services made by our customers thereafter.

However, any changes or modifications to these Terms & Conditions will not apply retroactively. In addition, changes to these Terms & Conditions will not impact the binding effect of our separate MSA or services agreements with you or any other client, given that these Terms & Conditions are intended to more generally govern access to the Online Platforms (not stand-alone subscriptions or orders under an MSA).

### **3. ACCESS, ACCOUNT SECURITY & PRIVACY.**

3.1 Right of Access. Our Online Platforms are being made available for your personal use only for browsing, considering our Employee Recognition Services, and communicating with us. Subject to these Terms & Conditions, we grant you a limited, non-exclusive, nontransferable, and revocable right of access or license, as applicable, to: (A) download, install, and use the Online Platforms or related applications for your personal use on any mobile device or computer owned or otherwise controlled by you; and (B) test, access, review, and use for your personal use on your mobile device or computer the content, features, functionality, and Employee Recognition Services hosted on our Online Platforms (collectively, the "*Right of Access*"). The grant of the Right of Access under this Section, however, does not supersede or amend any binding terms between us and you (or your organization) in a separate MSA.

3.2 Availability and Access. From time to time, at our discretion, we may restrict your access to certain portions of the Online Platforms, revoking the Right of Access described in Section 3.1 above. We reserve the right to withdraw or amend any of the offers, Employee Recognition Service details and descriptions, and other material we provide to you on our Online Platforms, at our sole discretion and without notice (subject only to the terms of any stand-alone MSA or binding agreement with you or your applicable organization). We will not be liable to you if for any reason all or any portion of the Online Platforms is unavailable at any time or for any period.

3.3 Modification. The Company reserves the right, at any time, to modify, suspend, or discontinue any Employee Recognition Services (in whole or in part) or the Right of Access with or without notice to you. You agree that Company will not be liable to you or to any third party for any modification, suspension, or discontinuation of the Employee Recognition Services or the Right of Access, or any parts thereof. The Company shall use reasonable efforts to notify you of all

modifications, suspensions, and updates to the Employee Recognition Services and these Terms & Conditions.

**3.4 Account Responsibilities and Security.** If you choose to create an online account with the Company as part of your online requests for Employee Recognition Services or general use of the Online Platforms (outside of an MSA relationship), you are solely responsible for retaining all login information and account names. You acknowledge that your account is personal to you, and you agree not to provide any other person with access to portions of your account containing your username, password, or other security information. You agree to notify us immediately of any unauthorized access to or use of your username or password, or any other breach of security. Please exercise caution when accessing your account from a public or shared computer so that others are not able to view or record your secure information.

We have the right to disable any username, password, or other identifier at any time, at our sole discretion for any or no reason, including if you have violated any provision of these Terms & Conditions.

**3.5 Privacy.** Your privacy and the protection of the information you may submit through the Online Platforms are important to the Company. To access our Employee Recognition Services or register an account with us, you may be asked to provide registration details (for example, you or your entity's email address, formal legal name, and phone number) or other identifying information. A condition of your use of the Online Platforms is that all the information you provide to us or through the Online Platforms is correct, current, and complete. If you are a natural person visiting the Online Platforms, all information you provide to register with or use our Online Platforms is governed by our "*Privacy Policy*" (available at <https://nectarhr.com/privacy-policy/>).

## **4. INTELLECTUAL PROPERTY RIGHTS.**

For the purposes of these Terms & Conditions, "*Intellectual Property Rights*" means all intellectual property rights worldwide arising under statutory or common law, and whether or not perfected, including, without limitation, all (A) patents, patent applications, and patent rights; (B) rights associated with works of authorship including copyrights, copyright applications, and copyright registrations; (C) rights relating to the protection of trade secrets and confidential information; (D) any other proprietary rights relating to intangible property (other

than trademark, trade dress, or service mark rights); (E) divisions, continuations, renewals, reissues and extensions of the foregoing (as and to the extent applicable) now existing, hereafter filed, issued or acquired; and (F) all goodwill associated with any of the foregoing. The Online Platforms (including all content, Service offerings, source code, communications, features, software, text, published works, displays, images, sounds, video, graphics, designs, and online formatting) are owned by the Company, its licensors (if any), or other providers of such material and are protected by United States and international copyright, trade dress, trademark, patent, trade secret, and other intellectual property or proprietary rights laws. Use of any content or material on the Online Platforms without prior written authorization by the Company is strictly prohibited. We stress that the value of our Employee Recognition Services is based, in large part, on the unique works of authorships, trade secrets, or unique coding and design represented in the business solutions we deliver. As such, we will pursue all necessary action to protect the rights underlying those Employee Recognition Services.

These Terms & Conditions permit you to use the Online Platforms for your personal use (according to Section 3.1 above), including for Employee Recognition Service requests and account access. Accordingly, you must not unlawfully reproduce, distribute, modify, or create derivative works of any of the material on our Online Platforms (including the Employee Recognition Services), except as follows:

- Your computer or device may temporarily store copies of such materials in RAM incidental to your accessing and viewing those materials.
- You may store files that are automatically cached by your web browser or mobile device for display enhancement purposes.
- You may print or download copies of your order receipts and purchase history from the Online Platforms—to the extent you acquire any Employee Recognition Services or products through purchases with us that are not governed by a separate MSA.
- You may print or download copies of the digital materials we deliver to you through the Employee Recognition Services for your own business use in connection with the use of the Employee Recognition Services.
- If we provide desktop, mobile, web, or other applications for download, you may download copies to your computer or mobile device solely for your own personal, non-commercial use (consistent with Section 3.1 above).

- If we do not enter into a separate MSA with you, you are hereby granted a non-exclusive, non-sublicensable, non-transferable, and revocable right to access and use our Employee Recognition Services in accordance with these Terms & Conditions (consistent with Section 3.1)—subject, however, in all respects to our right to monitor such access and revoke it if you are in breach of these Terms & Conditions.

By using the Online Platforms, you agree not to delete or alter any copyright, trademark, or other proprietary rights notices from copies of materials from the Online Platforms. If you print, copy, modify, download, or otherwise use or provide any other person with access to any part of the Online Platforms in breach of the Terms & Conditions, your right to use the Online Platforms, including any account thereon, will stop immediately and you must, at our option, return or destroy any copies of the materials you have made.

EXCEPT AS SET FORTH IN THESE TERMS & CONDITIONS, NO RIGHT, TITLE, OR INTEREST IN OR TO THE ONLINE PLATFORMS OR ANY CONTENT ON THE ONLINE PLATFORMS IS TRANSFERRED TO YOU, AND ALL RIGHTS NOT EXPRESSLY GRANTED ARE RESERVED BY THE COMPANY.

## **5. ORDERS & SUBSCRIPTIONS.**

If you wish to purchase access rights for your organization or generally subscribe to our Employee Recognition Services on the Online Platforms, please contact one of our dedicated sales representatives through the “Get in Touch” link available at: <https://nectarhr.com/contact-us>. Our sales team will walk you through the MSA, order form, general subscription process, and even a product demo if you would like to further investigate our Online Platforms and the features they can provide to your organization.

## **6. TRADEMARKS.**

The Company name, any logo we display on our Online Platforms—including all related names, features and solution descriptions, and slogans—are trademarks of and proprietary to the Company or its affiliates and service providers. You must

not use or exploit such marks and logos without the prior written permission of the Company.

## **7. COPYRIGHT INFRINGEMENT.**

The Company is committed to complying with U.S. copyright law and to responding to claims of copyright infringement. We will promptly process and investigate notices of claimed infringement based on our user Contributions (as defined in Section 9.1) or our Employee Recognition Services, and we will take appropriate actions under applicable law. All notifications of claimed copyright infringement must be submitted to the contact information set forth at the end of these Terms & Conditions. IF YOU BELIEVE THAT YOUR WORK HAS BEEN COPIED OR USED ON THE ONLINE PLATFORMS IN A WAY THAT CONSTITUTES COPYRIGHT OR TRADEMARK INFRINGEMENT, PLEASE NOTIFY US IMMEDIATELY.

## **8. PROHIBITED USES.**

You may use the Online Platforms only for lawful purposes—for example, to view, request, and purchase our Employee Recognition Services—and in accordance with these Terms & Conditions. During your visits to our Online Platforms, you expressly agree not to use the Online Platforms:

- For any commercial purposes that extend beyond your personal viewing and inspection use.
- To violate, or solicit others to violate, any applicable federal, state, local, or international law or regulation.
- To infringe upon or violate our intellectual property rights or the intellectual property rights of others.
- For the purpose of exploiting, harming, or attempting to exploit or harm minors (or any other person) in any way.
- To interfere with or circumvent the security features of the Online Platforms.
- To transmit, or procure the sending of, any advertising or promotional material, including any “junk mail,” “chain letter,” “spam,” or any other similar solicitation.
- To upload or transmit viruses, bugs, or any other type of malicious code that will or may be used in any way that will affect the functionality or operation of the Online Platforms.
- For any obscene or immoral purpose.

- To engage in any other conduct, including, but not limited to abuse, defamation, disparagement, or discrimination, that restricts or inhibits anyone's use or enjoyment of the Online Platforms, or which, as determined by us, may harm the Company or users of the Online Platforms, or expose them to liability.

Additionally, you agree not to:

- Use for any non-business purposes—i.e., purposes beyond your personal viewing use and orders under these Terms & Conditions or a separate MSA—any part of the Online Platforms.
- Use the Online Platforms in any manner that could disable, overburden, damage, or impair the Online Platforms or interfere with any other party's use of the Online Platforms.
- Use any robot, spider, or other automatic device, process, or means to access the Online Platforms for any purpose, including unlawfully monitoring or copying any of the material or data on the Online Platforms.
- Use any device, software, or routine that interferes with the proper working of the Online Platforms.
- Introduce to the Online Platforms any viruses, Trojan horses, worms, logic bombs, or other material that is malicious or technologically harmful.
- Attempt to gain unauthorized access to, interfere with, damage, or disrupt any parts of the Online Platforms (including subscription portions only), the server on which they are stored or hosted, or any server, computer, or database connected to the Online Platforms (including those of our service providers).
- Otherwise attempt to interfere with the proper working of the Online Platforms and our online Employee Recognition Services system.

## **9. YOUR CONTRIBUTIONS.**

9.1 Description. During your testing, access to, or review of the Online Platforms or Employee Recognition Services, you are solely responsible for any information, review, social media posts, content, or other material you transmit to or through the Online Platforms or otherwise to us (collectively, "*Contributions*"). You assume



all risks associated with use by the Company or other parties of your Contributions, including any reliance on its accuracy, completeness or usefulness, or any disclosure of your Contributions that personally identifies you or any third party. For example, if you make a social media post or online review concerning the Online Platforms or our Employee Recognition Services, which is ultimately linked to us, you are responsible for the content of that Contribution. Moreover, you understand that, except for any personal information we may collect from you under the guidelines established in our Privacy Policy, Contributions to the Company are considered non-confidential and non-proprietary. The Company is not obligated to backup any Contributions, and your Contributions may be deleted at any time without prior notice to you.

9.2 Ownership of Contributions. Subject to any separate MSA with us and the grant of rights described in this Section, for purposes of your relationship with the Company, you retain all ownership rights for all content and Contributions created in your interactions with the Online Platforms and the Company.

9.3 Feedback. If you provide Company with any feedback or suggestions regarding the Employee Recognition Services or Online Platforms ("*Feedback*"), you hereby assign to Company all rights in such Feedback and agree that Company shall have the right to use and fully exploit such Feedback and related information in any manner it deems appropriate. Company will treat any Feedback you provide to Company as non-confidential and non-proprietary.

9.4 License Grant; Representations. In connection with any Contribution, you grant (to the extent available to you) the Company an unrestricted, irrevocable, perpetual, transferable, sublicensable, worldwide, royalty-free license to (A) make changes to our Online Platforms that may affect how content for your Contributions appear; (B) use and disclose metrics regarding your Contributions, in a format that does not include personally identifiable information; and (C) remove any Contribution that is in violation of these Terms & Conditions. You represent and warrant that: (i) you have the right to submit the Contribution to the Company and grant the rights set forth above; (ii) the Company will not need to obtain licenses from any third party or pay royalties to any third party for its use of the Contribution; (iii) the Contribution does not infringe any third party's rights, including intellectual property rights and privacy rights; and (iv) the Contribution materially complies with these Terms & Conditions and all applicable laws and regulations.



THE COMPANY TAKES NO RESPONSIBILITY AND ASSUMES NO LIABILITY FOR ANY CONTRIBUTION.

## **10. CONTENT STANDARDS.**

We pride ourselves on providing interactive Online Platforms that empower our visitors and client organizations to review the Employee Recognition Services in a professional environment. Accordingly, all Contributions or other information you post to or transmit through the Online Platforms must not: (A) contain any material that is defamatory, obscene, indecent, abusive, harassing, or hateful; (B) promote sexually explicit activities or pornographic material; (C) infringe any patent, trademark, trade secret, copyright, or other intellectual property right of others; (D) violate the legal rights (including privacy rights) of any others; or (E) promote any other illegal, immoral, or unlawful activity (as judged in the discretion of the Company).

## **11. MONITORING AND ENFORCEMENT.**

To enforce these Terms & Conditions and protect the integrity of the Online Platforms, we retain the rights to: (A) remove any Contributions for any or no reason, at our sole discretion; (B) take appropriate legal action in connection with any illegal or unauthorized use of the Online Platforms or our Employee Recognition Services; and (C) terminate or suspend your access to all or part of the Online Platforms for any violation, or suspected violation based on evidence available to us, of these Terms & Conditions. Without limiting the foregoing, we have the right to cooperate fully with any law enforcement authorities or court order requesting or directing us to disclose the identity or other information of anyone posting any materials on or through the Online Platforms.

## **12. LINKS TO OTHER SOURCES & PARTIES.**

If the Online Platforms contain links or plug-ins to other sites and resources provided by third parties (for example, sites where employee rewards may be redeemed), these links and plug-ins are provided for your convenience only and for your voluntary visiting, if you choose to do so. We stress that we have no control over the contents of those third-party sites or resources, and we accept no responsibility for them or for any loss or damage that may arise from your use of them. If you decide to access any of the third-party websites linked to our

Online Platforms, you do so entirely at your own risk and are subject to the terms and conditions for such websites.

## **13. DISCLAIMERS & LIMITATION.**

13.1 Disclaimer of Warranties. ALL CONTENT, INFORMATION, MATERIALS, PRODUCTS, AND OTHER SERVICES INCLUDED ON, OR MADE AVAILABLE TO YOU BY THE COMPANY AND THROUGH THE ONLINE PLATFORMS, AND THE ONLINE PLATFORMS THEMSELVES, ARE PROVIDED "AS IS" AND "AS AVAILABLE", WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, AS TO THE OPERATION OF THE SITE OR THE CONTENT, INFORMATION, MATERIALS, PRODUCTS, OR OTHER SERVICES INCLUDED ON, OR MADE AVAILABLE TO YOU THROUGH, THE ONLINE PLATFORMS. YOU EXPRESSLY ACKNOWLEDGE AND AGREE THAT YOUR USE OF THE ONLINE PLATFORMS AND ANY OF THE CONTENT, INFORMATION, MATERIALS, PRODUCTS OR OTHER SERVICES INCLUDED ON, OR MADE AVAILABLE TO YOU THROUGH THE ONLINE PLATFORMS, IS AT YOUR SOLE DISCRETION AND RISK.

EXCEPT TO THE EXTENT PROHIBITED BY APPLICABLE LAW, THE COMPANY DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, WITH RESPECT TO ITS SERVICES AND THE ONLINE PLATFORMS, INCLUDING ANY IMPLIED WARRANTIES OF CONFORMANCE TO THE STANDARDS OF TRADE FOR THE PRODUCTS OR REDEMPTION AWARDS OFFERED THROUGH THE ONLINE PLATFORMS, AND ALSO DISCLAIMS ANY WARRANTY AGAINST INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS OF OTHERS.

13.2 Limitation of Liability. TO THE FULLEST EXTENT PROVIDED BY LAW, IN NO EVENT WILL THE COMPANY, ITS AFFILIATES, OR ANY OF ITS LICENSORS, SERVICE PROVIDERS, EMPLOYEES, AGENTS, OR REPRESENTATIVES BE LIABLE FOR DAMAGES OF ANY KIND, UNDER ANY LEGAL THEORY, ARISING OUT OF OR IN CONNECTION WITH YOUR USE, OR INABILITY TO USE, THE SITE OR ANY CONTENT ON THE ONLINE PLATFORMS. THIS LIMITATION EXPRESSLY PRECLUDES ANY DIRECT, INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, OR PUNITIVE DAMAGES AGAINST THE COMPANY, EVEN IF FORESEEABLE BY YOU OR US.

SUBJECT TO ANY ADDITIONAL LIMITATIONS IN A SEPARATE MSA WITH YOU, IN NO EVENT WILL THE COMPANY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY EXCEED THE TOTAL

AMOUNTS AND FEES PAID AND AMOUNTS AND FEES ACCRUED BUT NOT YET PAID BY YOU TO THE COMPANY FOR THE EMPLOYEE RECOGNITION SERVICES IN THE TWELVE (12) MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR LOSSES.

## **14. GENERAL TERMS.**

14.1 Entire Agreement. Except as specifically referenced or incorporated herein (for example, our Privacy Policy or a stand-alone MSA with us), these Terms & Conditions constitute the sole and entire agreement between you and the Company regarding the Online Platforms and your use of our Employee Recognition Services. Subject to the priority of any separate MSA, these Terms & Conditions supersede all prior and contemporaneous understandings, agreements, representations, and warranties, both written and oral, regarding the Online Platforms and your access to the Employee Recognition Services.

14.2 Severability. If any provision of these Terms & Conditions is held by a court or other authority of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, the provision will be eliminated or limited to the minimum extent such that the remaining provisions of the Terms & Conditions will continue in full force and effect.

14.3 Governing Law. All matters relating to the Online Platforms and these Terms & Conditions, and any dispute or claim arising therefrom or related thereto (in each case, including non-contractual disputes or claims), will be governed by and construed in accordance with the laws of the State of Utah without giving effect to any choice or conflict of law provision or rule (whether of the State of Utah or any other jurisdiction). Any legal suit, action, or proceeding arising out of, or related to, these Terms & Conditions or the Online Platforms must be instituted exclusively in the federal or state courts of the State of Utah. You waive any and all objections to the exercise of jurisdiction over you by such courts and to venue in such courts.

14.4 Attorneys' Fees (limited scenarios). In the event that we are required to pursue legal action against you to protect the Company's rights under Section 4 (IP Rights), Section 6 (Trademarks), or Section 8 (Prohibited Uses), you fully acknowledge, understand, and agree to be responsible for all collection costs, reasonable attorney's fees, court costs, and a collection fee as allowed by Utah Code § 12-1-11 or other applicable law.

14.5 ADA Compliance. As you may already know, organizations that otherwise qualify as places of public accommodation must ensure that their public-facing websites comply with the Americans with Disabilities Act (the "ADA"). Because of the private nature of the Company's subscriptions and SaaS Online Platforms (which are generally governed by our stand-alone MSAs), the Company does not represent, warrant, or otherwise promise that the Online Platforms are compliant with the ADA. If you have any questions or requests concerning ADA compliance, please contact us at the information set out below.

14.6 Contact Information. For questions about these Terms & Conditions or the Online Platforms, please contact: [support@nectarhr.com](mailto:support@nectarhr.com), or write to us at the following address:

*Attn:* Online Platforms Terms & Conditions Support

729 N. 1500 W., Orem, Utah 84057, USA