

**• SUBSCRIBER - USER AGREEMENT •**

*AS REQUIRED BY THE FEDERAL FAIR CREDIT REPORTING ACT AND ITS STATE ANALOGUES*

*This Agreement is made by and between Personnel Research Services, Inc. (d.b.a Orange Tree Employment Screening), GVW, Inc. d.b.a. Healthways and the Client named below:*

**Personnel Research Services, Inc.**  
 d.b.a. Orange Tree Employment Screening (Orange Tree)  
 7301 Ohms Lane – Suite 600  
 Minneapolis, MN 55439  
 Phone: 800-886-4777 • 952-941-9040  
 Fax: 800-886-0774 • 952-941-9041  
 Email: info@orangetreescreening.com

**Client Name:** \_\_\_\_\_  
**Address:** \_\_\_\_\_  
**City, State ZIP:** \_\_\_\_\_  
**Phone:** \_\_\_\_\_  
**Fax:** \_\_\_\_\_  
**Email:** \_\_\_\_\_  
**Website:** \_\_\_\_\_

**Nature of Client’s Business/Industry:** \_\_\_\_\_

1. CLIENT desires to use and purchase services of Personnel Research Services, Inc., d.b.a. Orange Tree Employment Screening (ORANGE TREE). CLIENT acknowledges and agrees that (a) ORANGE TREE is considered a “Consumer Reporting Agency” as defined by the federal Fair Credit Reporting Act (15 U.S.C. 1681, *et seq.* as amended) and its state analogues (collectively, “FCRA”), (b) background investigation reports provided to CLIENT by ORANGE TREE are considered “Consumer Reports” or “Investigative Consumer Reports,” hereinafter referred to collectively as “Consumer Reports”, (c) ORANGE TREE must comply with FCRA and all other applicable federal and state laws, rules and regulations relating to the preparation and use of Consumer Reports (“FCRA Regulations”) and (d) by using the services of ORANGE TREE, CLIENT is considered a “User” of Consumer Reports and, therefore, also becomes subject to, and must comply with, *FCRA Regulations*.

CLIENT and ORANGE TREE agree to bear their responsibilities as a User and a Consumer Reporting Agency, respectively, as set forth in *FCRA Regulations*. CLIENT hereby certifies and warrants that CLIENT will order and use Consumer Reports in full compliance with *FCRA Regulations* including, but not limited to, the following:

- A. CLIENT agrees that the information from the Consumer Reports provided by ORANGE TREE will not be used in violation of any applicable federal or state equal employment opportunity law, rule or regulation.
- B. CLIENT agrees that Consumer Reports will be ordered and used solely in connection with \_\_\_\_\_ employment (e.g., hiring, promotion, transfer, or security related matters) and/or \_\_\_\_\_ credit transactions (e.g., property rental, club membership or business franchising), and will not be used for any other purpose(s).
- C. CLIENT agrees that it will order and use Consumer Reports solely in connection with transactions involving the consumer as to whom such information is sought and will not request or use such information for purposes prohibited by law.
- D. CLIENT agrees that all information from Consumer Reports shall be maintained by CLIENT in strict confidence and that distribution and review of all reports, whether oral or written, will be limited to those with a legitimate business need for the information, or as permitted or required by law. CLIENT specifically agrees not to disclose, sell or otherwise distribute to any third party any information received hereunder, except as required by law; provided, however, that CLIENT may share the contents of a Consumer Report with the consumer as long as it does so without charge to the consumer.
- E. CLIENT agrees to notify each applicant in a clear and conspicuous disclosure that a Consumer Report will be obtained. Such disclosure will be made in writing before the Consumer Report is ordered and the disclosure will be made in a document consisting solely of the disclosure or the disclosure and authorization.

- F. CLIENT agrees to obtain a signed authorization from every person on whom a Consumer Report will be ordered and, upon request from ORANGE TREE, to forward a copy of the authorization to ORANGE TREE. CLIENT agrees that such authorization will be obtained and will be in CLIENT'S possession before ORANGE TREE is directed to prepare a Consumer Report.
  - G. CLIENT agrees that if adverse employment action is to be taken, based either in whole or in part on information provided by ORANGE TREE in a Consumer Report, the CLIENT will comply with all applicable adverse action procedures as set forth in *FCRA Regulations*. CLIENT will notify applicants/employees of their right to receive a copy of the Consumer Report, at no charge, within sixty (60) days of the decision.
  - H. CLIENT acknowledges receipt of "Notice to Users of Consumer Reports: Obligations of Users Under the FCRA" as prepared by the Federal Trade Commission. A copy of this notice is attached hereto as Exhibit A.
  - I. CLIENT and ORANGE TREE acknowledge that every Consumer Report sent to a consumer must include "A Summary of Your Rights Under the Fair Credit Reporting Act," hereinafter referred to as "Consumer Rights." CLIENT hereby relieves ORANGE TREE of responsibility for attaching "Consumer Rights" to each Consumer Report sent to CLIENT. Further, CLIENT agrees to include in and attach to each Consumer Report received from ORANGE TREE a copy of "Consumer Rights" whenever required by FCRA Regulations, and specifically when CLIENT is providing a copy of a Consumer Report to a consumer.
  - J. If hiring applicants to work in California, CLIENT acknowledges specific requirements imposed by the California Investigative Consumer Reporting Agencies Act and, that unless CLIENT has reason to believe the employee/applicant (consumer) is or has been engaged in criminal activity that is likely to result in loss to CLIENT or CLIENT has reasonable suspicion of other wrongdoing on part of employee/applicant, CLIENT agrees to:
    - i. Disclose to the employee/applicant in writing that an Investigative Consumer Report has been ordered, provide the name and address of ORANGE TREE as preparing the Investigative Consumer Report, provide the nature and scope of the investigation requested.
    - ii. Secure a release and authorization from the consumer each time an Investigative Consumer Report is requested.
2. CLIENT acknowledges that special requirements are imposed by credit bureaus if CLIENT requests Consumer Reports that include consumer credit information and/or residential history (commonly referred to as "Trace" or "Header" information) linked to a consumer's Social Security Number (SSN). CLIENT therefore agrees:
- A. To make no employment decisions based solely on credit bureau alerts/warnings regarding addresses and/or SSN.
  - B. To ensure security programs and appropriate access requirements are in place, the purpose being to prevent unauthorized ordering, accessing and/or unauthorized viewing of consumer information; to inform all accessing employees that they may not access their personal information, information of friends and/or relatives, or any other person unless it is specifically for employment purposes of CLIENT.
  - C. To release and indemnify the credit-reporting agency from all liability arising from CLIENT'S unauthorized access, improper use, or reliance on consumer credit information provided by ORANGE TREE pursuant to this
3. CLIENT agrees to pay all ORANGE TREE invoices within 30 days of receipt. CLIENT acknowledges that ORANGE TREE reserves the right to charge interest at the rate of one and one half percent (1.5%) per month on unpaid invoices.
4. CLIENT and ORANGE TREE acknowledge that under *FCRA Regulations* Consumer Reports may be provided only to legitimate business entities. As a result, ORANGE TREE will verify the legitimacy of prospective clients through banking and vendor references provided by CLIENT before services may commence. CLIENT is not obligated to provide requested identification; however, if required information is not provided, ORANGE TREE reserves the right not to commence service.
5. ORANGE TREE warrants to CLIENT to use commercially reasonable efforts to perform its obligations hereunder. CLIENT hereby acknowledges and agrees that ORANGE TREE is conveying information provided to ORANGE TREE by other sources and ORANGE TREE cannot and will not under any

circumstances or for any reason be an insurer or guarantor of the accuracy or reliability of the information in the Consumer Reports. CLIENT hereby releases ORANGE TREE and its agents, employees, officers, directors, affiliates, representatives and independent contractors from any liability in connection with the preparation of Consumer Reports hereunder and from any loss or expense suffered by CLIENT resulting directly or indirectly from Consumer Reports provided by ORANGE TREE to CLIENT in accordance with this Agreement. CLIENT, including its agents, employees, officers, directors, affiliates, representatives and independent contractors, covenants not to sue or maintain any claim, cause of action, demand, cross-action, counterclaim, third-party action or other form of pleading against ORANGE TREE or its agents, employees, officers, directors, affiliates, representatives or independent contractors arising out of or relating in any way to the accuracy or inaccuracy and/or validity or nonvalidity of any Consumer Reports provided by ORANGE TREE to CLIENT hereunder. THE WARRANTY IN THE FIRST SENTENCE OF THIS PARAGRAPH IS THE ONLY WARRANTY ORANGE TREE HAS GIVEN CLIENT WITH RESPECT TO THE OBLIGATIONS OF ORANGE TREE HEREUNDER AND SUCH WARRANTY IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS OR IMPLIED, ORANGE TREE MIGHT HAVE GIVEN CLIENT WITH RESPECT THERETO, INCLUDING, FOR EXAMPLE AND WITHOUT LIMITATION, WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE.

6. Notwithstanding anything to the contrary set forth herein, if liability is imposed on ORANGE TREE in connection with any Consumer Reports prepared by ORANGE TREE for CLIENT hereunder, then CLIENT agrees that the total liability of ORANGE TREE for any or all of CLIENT'S or a third party's losses or injuries from acts or omissions of ORANGE TREE under this Agreement regardless of the nature of the legal or equitable right claimed to have been violated, shall not exceed the amount paid by CLIENT to ORANGE TREE hereunder during the six (6) month period preceding the alleged breach by ORANGE TREE of this Agreement. CLIENT agrees that it will not sue ORANGE TREE for any amount greater than permitted by this Agreement. NOTWITHSTANDING ANY OTHER PROVISION HEREIN, UNDER NO CIRCUMSTANCES WILL EITHER PARTY HAVE ANY OBLIGATION OR LIABILITY TO THE OTHER HEREUNDER FOR ANY INCIDENTAL, INDIRECT, CONSEQUENTIAL OR SPECIAL DAMAGES INCURRED BY THE OTHER PARTY (INCLUDING DAMAGES FOR LOST BUSINESS, LOST PROFITS OR DAMAGES TO BUSINESS REPUTATION), REGARDLESS OF HOW SUCH DAMAGES ARISE AND REGARDLESS OF WHETHER OR NOT A PARTY WAS ADVISED SUCH DAMAGES MIGHT ARISE.
7. CLIENT shall indemnify, defend and hold ORANGE TREE harmless from and against any and all claims and expenses, including reasonable attorney's fees, which may be asserted against or incurred by ORANGE TREE based upon the use by CLIENT of Consumer Reports or other information furnished by ORANGE TREE for purposes not permitted by law.
8. Nothing contained in this Agreement shall be deemed to convey to CLIENT or to any other party any right, title or interest, including any patent, copyright or other proprietary right, in or to any tangible or intangible intellectual property of ORANGE TREE including, but not limited to, the data stored in any database of ORANGE TREE, which are and remain the exclusive property of ORANGE TREE. CLIENT will not use, or permit its agents, employees, officers, directors, affiliates, representatives or independent contractors to use, the trademarks, service marks, logos, names or any other of ORANGE TREE' or its affiliates' proprietary designations, whether registered or unregistered, without the prior written consent of ORANGE TREE.
9. Without limiting any of the foregoing, CLIENT acknowledges that it has had an opportunity to consult with its own legal counsel regarding the laws and regulations applicable to this Agreement and the use by CLIENT of Consumer Reports provided by ORANGE TREE, including without limitation FCRA Regulations, and is solely responsible for its compliance therewith.
10. CLIENT agrees that this Agreement and the Exhibits hereto constitute all conditions of service and applies to all reports made by ORANGE TREE to CLIENT regardless of which office of CLIENT requests and/or receives such reports. CLIENT further agrees that no changes to this Agreement may be made except by written consent of an authorized agent of Personnel Research Services, Inc. and an authorized agent of CLIENT.

By: **PERSONNEL RESEARCH SERVICES, INC.**  
**d.b.a. Orange Tree Employment Screening**

**CLIENT**

\_\_\_\_\_  
Signature, Authorized Representative

\_\_\_\_\_  
Signature, Authorized Representative

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

\_\_\_\_\_  
Title

\_\_\_\_\_  
Date

**NOTE: Federal Law requires that 'Consumer Reports' be provided only to legitimate business entities. Therefore, the following Subscriber information is required (see previous notation - paragraph #4).**

**• BUSINESS INFORMATION**

Business Type (check one)       SOLE PROPRIETORSHIP       PARTNERSHIP       CORPORATION  
Building Type (check one)       COMMERCIAL       RESIDENTIAL       APARTMENT COMPLEX       APARTMENT COMPLEX WITH STOREFRONT

Years in Business \_\_\_\_\_      Number of Employees \_\_\_\_\_  
*If less than one, attach Certificate of Incorporation*

Is the company Publicly Traded?       Yes       No      Stock Exchange \_\_\_\_\_      Symbol \_\_\_\_\_

**• BANKING INFORMATION**

Bank Name \_\_\_\_\_ Account Number \_\_\_\_\_  
Address \_\_\_\_\_  
*City, State, Zip*

**• PROFESSIONAL REFERENCES – TWO REQUIRED (vendors, partners, or service providers)**

Business Name \_\_\_\_\_ Contact \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_  
*City, State, Zip*

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Business Name \_\_\_\_\_ Contact \_\_\_\_\_  
Address \_\_\_\_\_ Phone \_\_\_\_\_  
*City, State, Zip*

## **NOTICE TO USERS OF CONSUMER REPORTS: OBLIGATIONS OF USERS UNDER THE FCRA**

The federal Fair Credit Reporting Act (FCRA) requires that this notice be provided to inform users of consumer reports of their legal obligations. State law may impose additional requirements. This first section of this summary sets forth the responsibilities imposed by the FCRA on all users of consumer reports. The subsequent sections discuss the duties of users of reports that contain specific types of information, or that are used for certain purposes, and the legal consequences of violations. The FCRA, 15 U.S.C. 1681-1681u, is set forth in full at the Federal Trade Commission's Internet web site (<http://www.ftc.gov>).

### **I. OBLIGATIONS OF ALL USERS OF CONSUMER REPORTS**

- A. Users Must Have a Permissible Purpose. Congress has limited the use of consumer reports to protect consumers' privacy. All users must have a permissible purpose under the FCRA to obtain a consumer report. Section 604 of the FCRA contains a list of the permissible purposes under the law. These are:
- As ordered by a court or a federal grand jury subpoena. Section 604(a)(1)
  - As instructed by the consumer in writing. Section 604(a)(2)
  - For the extension of credit as a result of an application from a consumer, or the review or collection of a consumer's account. Section 604(a)(3)(A)
  - For employment purposes, including hiring and promotion decisions, where the consumer has given written permission. Sections 604(a)(3)(B) and 604(b)
  - For the underwriting of insurance as a result of an application from a consumer. Section 604(a)(3)(C)
  - When there is a legitimate business need, in connection with a business transaction that is initiated by the consumer. Section 604(a)(3)(F)(i)
  - To review a consumer's account to determine whether the consumer continues to meet the terms of the account. Section 604(a)(3)(F)(ii)
  - To determine a consumer's eligibility for a license or other benefit granted by a governmental instrumentality required by law to consider an applicant's financial responsibility or status. Section 604(a)(3)(D)
  - For use by a potential investor or servicer, or current insurer, in a valuation or assessment of the credit or prepayment risks associated with an existing credit obligation. Section 604(a)(3)(E)
  - For use by state and local officials in connection with the determination of child support payments, or modifications and enforcement thereof. Sections 604(a)(4) and 604(a)(5)

In addition, creditors and insurers may obtain certain consumer report information for the purpose of making unsolicited offers of credit or insurance. The particular obligations of users of this "prescreened" information are described in Section V below.

- B. Users Must Provide Certifications. Section 604(f) of the FCRA prohibits any person from obtaining a consumer report from a consumer reporting agency (CRA) unless the person has certified to the CRA (by a general or specific certification, as appropriate) the permissible purpose(s) for which the report is being obtained and certifies that the report will not be used for any other purpose.
- D. Users Must Notify Consumers When Adverse Actions Are Taken. The term "adverse action" is defined very broadly by Section 603 of the FCRA. "Adverse actions" include all business, credit, and employment actions affecting consumers that can be considered to have a negative impact -- such as unfavorably changing credit or contract terms or conditions, denying or canceling credit or insurance, offering credit on less favorable terms than requested, or denying employment or promotion.
1. Adverse Actions Based on Information Obtained From a CRA. If a user takes any type of adverse action that is based at least in part on information contained in a consumer report, the user is required by Section 615(a) of the FCRA to notify the consumer. The notification may be done in writing, orally, or by electronic means. It must include the following:
- The name, address, and telephone number of the CRA (including a toll-free telephone number, if it is a nationwide CRA) that provided the report.
  - A statement that the CRA did not make the adverse decision and is not able to explain why the decision was made.
  - A statement setting forth the consumer's right to obtain a free disclosure of the consumer's file from the CRA if the consumer requests the report within 60 days.
  - A statement setting forth the consumer's right to dispute directly with the CRA the accuracy or completeness of any information provided by the CRA.

**II. OBLIGATIONS OF USERS WHEN CONSUMER REPORTS ARE OBTAINED FOR EMPLOYMENT PURPOSES.** If information from a CRA is used for employment purposes, the user has specific duties, which are set forth in Section 604(b) of the FCRA. The user must:

- Make a clear and conspicuous written disclosure to the consumer before the report is obtained, in a document that consists solely of the disclosure, that a consumer report may be obtained.
- Obtain prior written authorization from the consumer.
- Certify to the CRA that the above steps have been followed, that the information being obtained will not be used in violation of any federal or state equal opportunity law or regulation, and that, if any adverse action is to be taken based on the consumer report, a copy of the report and a summary of the consumer's rights will be provided to the consumer.
- Before taking an adverse action, provide a copy of the report to the consumer as well as the summary of the consumer's rights. (The user should receive this summary from the CRA, because Section 604(b)(1)(B) of the FCRA requires CRAs to provide a copy of the summary with each consumer report obtained for employment purposes.)

**III. OBLIGATIONS OF USERS OF INVESTIGATIVE CONSUMER REPORTS.** Investigative consumer reports are a special type of consumer report in which information about a consumer's character, general reputation, personal characteristics, and mode of living is obtained through personal interviews. Consumers who are the subjects of such reports are given special rights under the FCRA. If a user intends to obtain an investigative consumer report, Section 606 of the FCRA requires the following:

- The user must disclose to the consumer that an investigative consumer report may be obtained. This must be done in a written disclosure that is mailed, or otherwise delivered, to the consumer not later than three days after the date on which the report was first requested. The disclosure must include a statement informing the consumer of his or her right to request additional disclosures of the nature and scope of the investigation as described below, and must include the summary of consumer rights required by Section 609 of the FCRA. (The user should be able to obtain a copy of the notice of consumer rights from the CRA that provided the consumer report.)
- The user must certify to the CRA that the disclosures set forth above have been made and that the user will make the disclosure described below.
- Upon the written request of a consumer made within a reasonable period of time after the disclosures required above, the user must make a complete disclosure of the nature and scope of the investigation that was requested. This must be made in a written statement that is mailed, or otherwise delivered, to the consumer no later than five days after the date on which the request was received from the consumer or the report was first requested, whichever is later in time.

**IV. LIABILITY FOR VIOLATIONS OF THE FCRA.** Failure to comply with the FCRA can result in state or federal enforcement actions, as well as private lawsuits. Sections 616, 617, and 621. In addition, any person who knowingly and willfully obtains a consumer report under false pretenses may face criminal prosecution. Section 619.

- This appendix fulfills the intent of the required notice.