


Service Agreement



Customer Name

City of Columbia, Missouri

Street Address

600 E. Broadway

City

Columbia

State

MO

Zip

65201

In this Service Agreement (the "Agreement") dated _____, Customer refers to the organization named above and "PeopleAdmin" refers to PeopleAdmin, Inc., 816 Congress Ave., Suite 1800, Austin, Texas 78701-2482. PeopleAdmin offers software on a fully hosted basis to assist in automating certain human resources administrative tasks. Customer agrees to contract for use of the software, subject to the terms of this Agreement. In consideration of the mutual rights and obligations in this Agreement, the parties agree as follows:

1) **SERVICES.** Customer contracts with PeopleAdmin to perform the services described in the attached Exhibit A (the "Services"). Customer authorizes PeopleAdmin to provide the Services and agrees to pay the associated fees.

2) **TERM OF AGREEMENT.** The "Effective Date" is the earlier of a) the date the Customer begins implementation of the PeopleAdmin System, or b) 90 calendar days after execution of this Agreement by Customer. This Agreement shall extend for twelve (12) months (the "Initial Term") from the Effective Date and shall automatically renew for subsequent 12-month periods (each, a "Renewal Term"). Either party may terminate this Agreement, for any reason, with at least 90 days' prior written notice to the other party. Termination does not affect Customer's obligation to pay for Services already provided by PeopleAdmin through the date of termination. Upon early termination, PeopleAdmin will provide a pro-rated refund of the Service Fee (as defined in Exhibit A). The Implementation Fee (as defined in Exhibit A) is not refundable.

3) GENERAL PROVISIONS.

a) **Confidential Information.** "Confidential Information" means any proprietary or confidential information that at the time of disclosure is marked as "proprietary" or "confidential," is reasonably identifiable as the disclosing party's proprietary or confidential information, or should reasonably be considered as proprietary or confidential under the circumstances of disclosure. Confidential Information includes Customer's job applicant information, personnel data, and hiring criteria, Customer's and PeopleAdmin's forms, PeopleAdmin's software, and the terms of this Agreement. Each party agrees that it (i) will not copy or use any of the other party's Confidential Information in any way, except as permitted by this Agreement or as required to achieve the purposes of this Agreement, (ii) will not disclose any of the other party's Confidential Information to any third party, except to that party's attorneys and accountants who need to know such information and who are subject to confidentiality obligations at least as stringent as those in this Agreement, and (iii) will protect the other party's Confidential Information as well as it protects its own information of a similar nature using at least reasonable care. The receiving party may disclose the Confidential Information of the disclosing party in response to a valid court order, law, or other governmental action, provided that, to the extent permitted by law, (i) the disclosing party is notified in writing before disclosure of the information and given a reasonable opportunity to obtain a protective order, and (ii) the receiving party assists the disclosing party, at the disclosing party's expense, in any attempt to limit or prevent the disclosure of the Confidential Information. Information is not Confidential Information if a party can clearly show that it (i) became known to the receiving party prior to receipt from the disclosing party, (ii) has become publicly known, except through breach of this Agreement, or (iii) is independently developed without reference to Confidential Information.

b) **Intellectual Property.** Except as otherwise provided in this Agreement, PeopleAdmin retains all rights, title, and interest in and to all types of intellectual property, including but not limited to new forms and form modifications, software, trademarks, and other inventions or technical know-how protectable under patent, copyright, and trade secret law ("Intellectual Property"), provided, conceived, discovered, or developed, in whole or in part, by PeopleAdmin in the performance of this Agreement.

c) **Limited License.** Subject to the terms of this Agreement, PeopleAdmin grants Customer a limited, non-exclusive, non-transferable license to use PeopleAdmin's relevant Intellectual Property during the term of this Agreement solely for Customer's own internal purposes. Customer shall not sell, market, rent, sub-license, or re-license any aspect of the Intellectual Property. Customer obtains no ownership rights or any other rights in the Intellectual Property, other than those specified in this Agreement. Customer grants PeopleAdmin a limited license to use Customer's transactional and performance data related to Customer's use of the Services (e.g., statistical information about the number of job applications processed) solely on an aggregated basis as part of PeopleAdmin's overall statistics for marketing and analytical purposes, provided that PeopleAdmin does not reveal Customer's job applicant information, personnel data, or hiring criteria.

d) **Independent Contractor.** The relationship of PeopleAdmin and Customer established by this Agreement is that of independent contractor, and nothing contained in this Agreement shall be construed to (i) give either party the power to direct or control the day-to-day activities of the other, (ii) establish PeopleAdmin as a hiring or human resources consultant to Customer, (iii) establish the parties as partners, franchisee-franchiser, co-owners or otherwise as participants in a joint or common undertaking, or (iv) otherwise give rise to fiduciary obligations between the parties.

e) **Force Majeure.** Except for payment of fees, non-performance by either party will be excused to the extent that performance is rendered impossible by strike, fire, flood, governmental acts or restrictions, failure of suppliers, or any other reason where failure to perform is beyond the control and not caused by the negligence of the non-performing party.

f) **Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject matter of this Agreement and supersedes all previous agreements or representations, oral or written regarding the subject matter of this Agreement. Except as otherwise provided in this Agreement, this Agreement may not be modified except in writing signed by an authorized representative of each party. Both parties acknowledge having read the terms and conditions set forth in this Agreement and all attachments hereto, understand all terms and conditions, and agree to be bound thereby. The titles of sections and subsections are for convenience only and are not to be used in construing any term in this Agreement.

4) WARRANTIES, RESPONSIBILITIES, AND LIMITATIONS.

a) **Limited Warranty.** PeopleAdmin represents and warrants that it will use commercially reasonable efforts to fulfill its obligations under this Agreement. PeopleAdmin does not warrant that its Services are or will be error free. PeopleAdmin further does not warrant that its electronic files containing information pertaining to Customer and/or Customer's applicants are not susceptible to intrusion, attack or computer virus infection, but given the confidential nature of much of this data, PeopleAdmin will use commercially reasonable efforts to insure and safeguard the security of this data. EXCEPT FOR THE LIMITED WARRANTY DESCRIBED IN THIS SECTION AND TO THE EXTENT ALLOWED BY APPLICABLE LAW, PEOPLEADMIN

MAKES NO OTHER WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, AND EXPRESSLY DISCLAIMS ANY IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, SATISFACTORY QUALITY OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE.

b) Exclusive Remedies. For any breach of the warranties set forth above, PeopleAdmin's entire liability and Customer's exclusive remedy shall be correction of the errors that caused the breach, or if PeopleAdmin is unable to provide Services as warranted, Customer shall be entitled to credit for the fees for the non-performing Services for the period of non-performance.

c) No Liability for Customer Procedures. PeopleAdmin carries out procedures specified solely by Customer, and PeopleAdmin expressly denies all liability for PeopleAdmin's implementation of Customer's procedures including, but not limited to, Customer's hiring and screening criteria and any of Customer's practices that are discriminatory or otherwise in violation of applicable law. Customer is solely responsible for determining the scope and extent of the Services provided by PeopleAdmin, and Customer is entirely responsible for reviewing the Services provided by PeopleAdmin on Customer's behalf to ensure compliance with Customer's procedures. PeopleAdmin makes no attempt to determine or advise as to whether the Customer's procedures comply with any statutory or regulatory requirements, including but not limited to any statutory or regulatory requirements related to hiring, employment, race, color, ancestry, religion, citizenship, gender, sexual orientation, age, marital status, pregnancy, veteran status, national origin, disability, or any federal, state or local statutes governing the employer/employee relationship. To the extent, however, that Customer's procedures or criteria clearly violate any of these laws, PeopleAdmin reserves the right to refuse to implement such procedures or criteria. PeopleAdmin also will not be liable for Customer's failure to comply with applicable laws, regulations, or Customer's own privacy policy (if any) or for loss of data caused by Customer.

d) Customer's Responsibility. Customer will comply with all applicable laws, regulations, and Customer's own privacy policy, if any. To the extent permitted by applicable law, Customer will be responsible for and will reimburse PeopleAdmin for all costs and expenses incurred by PeopleAdmin (including, without limitation, reasonable attorney's fees, expenses of litigation and damages) arising from Customer's or its officers' or employees' negligence, PeopleAdmin's implementation of Customer's procedures in accordance with this Agreement, the violation by Customer's procedures of any applicable statutory or regulatory requirements, or a claim by any Customer job applicant or employee arising from Customer's procedures or the acts or omissions of Customer's officers, employees or agents.

e) PeopleAdmin's Limited Liability. Customer agrees that regardless of the form of any claim Customer may have under this Agreement or otherwise, PeopleAdmin's liability for damages to Customer will not exceed the fees paid by Customer under this Agreement for the 12 months immediately preceding the date on which the claim arose. PeopleAdmin will not be liable for damages arising from any breach, unauthorized access, misuse of, or intrusion into the Customer's data. EXCEPT IN THE EVENT OF FRAUD, GROSS NEGLIGENCE, OR WILLFUL MISCONDUCT, PEOPLEADMIN WILL NOT BE LIABLE OR RESPONSIBLE FOR ANY SPECIAL, INDIRECT, INCIDENTAL, EXEMPLARY, PUNITIVE, OR CONSEQUENTIAL DAMAGES, SUCH AS, BUT NOT LIMITED TO, LOSS OF PROFITS RESULTING FROM THE USE OF THE SERVICES, OR ARISING OUT OF ANY BREACH OF THIS AGREEMENT OR THE LIMITED WARRANTY, EVEN IF PEOPLEADMIN HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.



 _____ Authorized Customer Signature	9/29/10 _____ Date	 _____ PeopleAdmin Signature	10/13/10 _____ Date
Marilyn Starke _____ Printed Name	Recr. Mgr. _____ Title	Susanne Bauer _____ Printed Name	CEO _____ Title

Exhibit A

1) **PRIMARY CONTACT.** The primary Customer contact for this Service is:

Customer contact name City of Columbia, Missouri Kathy Baker	Phone (573)874-7435	E-mail krb@GoColumbiaMo.com
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2) **SERVICE.** PeopleAdmin will provide the following services for the Customer, collectively the "PeopleAdmin System". PeopleAdmin will provide and maintain the systems established to provide this service, including maintenance of all computer hardware and software.

- a. **Applicant Tracking Module.** PeopleAdmin will establish and maintain an automated Internet based system (the "Applicant Tracking Module System") for accepting and processing Customer employment applications. The Applicant Tracking Module System shall provide the following functions: a.) allow designated staff users to create job requisitions on-line and electronically submit them for review and approval prior to being published to the hosted jobs site; b.) allow job candidates to view open positions, submit employment application materials, and review the status of their employment applications on-line; c.) allow designated staff to electronically review candidate application materials using automated and manual system based tools; d.) allow designated staff to electronically forward candidates to appropriate hiring authorities; f.) allow hiring authorities to communicate with job candidates via system template emails and make hiring recommendations or determinations directly in the system; g.) allow for automated approval and reminder notification emails to be generated by the system.
- b. **Position Description Module.** PeopleAdmin will establish and maintain an automated Internet based system (the "Position Description Module") for performing administrative tasks related to Customer's employee position description management. The Position Description Module shall provide the following functions: a.) allow designated staff to create new position description records for review and approval; b.) allow designated staff to initiate position description record change requests and submit for review and approval; c.) allow designated approvers to review proposed changes and update the status of change requests; d.) allow designated hiring authorities to convert vacant position description to a job vacancy notice; d.) allow designated users to review position description audit information to track changes to position description records over time; e.) allow designated users to search and view position description library contents; f.) allow for automated approval and reminder notification emails to be generated by the system.
- c. **Performance Evaluation Module.** PeopleAdmin will establish and maintain an automated Internet based system (the "Performance Evaluation Module") for performing the administrative tasks related to Customer's employee evaluation process. The Performance Evaluation Module shall provide the following functions: a.) allow departmental managers to create annual and probationary employee performance evaluations online using a customized performance evaluation form; b.) allow departmental managers to create goals and objectives for an employee and track (or rate) employee attainment; c.) allow departmental managers to forward an employee evaluation to the appropriate employee for review online and create a printable version of the completed evaluation; d.) allow the human resources department to send automatic email reminders to managers when performance evaluations need to be conducted; e.) allow select human resources department staff to review performance evaluations results by department or manager; f.) allow the human resources department and departmental managers to review historic performance evaluations by employee; g.) allow departmental managers to use an employee's position description to populate the current performance evaluation form.
- d. **Import/Exports.** PeopleAdmin will establish and maintain the following imports/exports.
 - i. PeopleAdmin will provide a daily file of applicant demographic data once person has been hired in Applicant Tracking. (Layout determined by PeopleAdmin's existing outbound demographic transactions and approved by City of Columbia.)
 - Modifications allowed before go live (if all information needed is not under existing outbound transactions)
 - Adequate test files need to be sent to test process
 - File to be made available by PeopleAdmin once a day via secure protocol.
 - ii. PeopleAdmin will provide a daily file of performance evaluation data as determined by PeopleAdmin's existing export capabilities. PeopleAdmin will work with City of Columbia to identify pertinent information for export during the implementation process.
 - iii. City of Columbia will provide a file of demographic data to PeopleAdmin for updating of employee demographic data (Applicant tracking and performance appraisal, if separate, set of files.)
 - File to be prepared by City of Columbia once a day
 - PeopleAdmin will receive via secure protocol and then update the People Admin demographic data
 - Adequate test files to be sent to test process
 - iv. The PeopleAdmin System will allow the City of Columbia to periodically import system users from HTE via a flat file import using the standard system import function.

- 3) **FEEES.** The Implementation Fee and an annual Service Fee covering service for the Initial Term are due upon execution of this Agreement. Subsequent annual Service Fees will be due for each Renewal Term no later than 30 days before the first day of such Renewal Term. PeopleAdmin will submit an invoice for the subsequent year's annual Service Fee, plus any fee increase (not to exceed 6% per renewal term), to Customer at least 60 days before the expiration of the Initial Term or any Renewal Term. If the invoice for the Initial Term, or any subsequent Renewal Terms becomes more than 60 days past due, Customer's access to the PeopleAdmin System may be interrupted until payment is received.

The following details the fee structure for the PeopleAdmin System:

Applicant Tracking Module		\$ 12,000.00
Position Description Module		6,000.00
Performance Evaluation Module		6,000.00
NPELRA Discount		(1,200.00)
Implementation Service	Basic	6,000.00
Total	Due upon contract execution	\$ 28,800.00
Technical Support	Customer representatives: 6	

This Agreement is void unless executed by Customer and delivered to PeopleAdmin on or before September 30, 2010.

- 4) **IMPLEMENTATION.** The selected implementation process is detailed in Exhibit B. The Implementation Fee includes implementation of all modules as part of one implementation process. PeopleAdmin will support the City of Columbia with a phased implementation of the PeopleAdmin Performance Management Module, once the module, is available at no additional cost.
- 5) **TECHNICAL SUPPORT.** PeopleAdmin will provide e-mail and toll-free telephone technical support for designated Customer representatives. Normal technical support hours will be 8:30am - 5:00pm central time, Monday-Friday, excluding certain nationally recognized holidays. Additionally, a 24-hour, 7-days a week toll free telephone number will be available for reporting of emergency situations.
- 6) **OTHER.** The PeopleAdmin "Lighthouse" Account program is offered, on occasion, to agencies in designated geographic areas in correlation with new offerings and/or product enhancements. Benefits of being a PeopleAdmin "Lighthouse" Account for the City of Columbia are:
- a. Insight into PeopleAdmin Future Enhancements
 - b. Free Training Site (\$1,500 Value)
 - c. Free Registration to PeopleAdmin Client Conference
 - d. Development of a Joint Press Release upon Go-live

Exhibit B

The Basic Implementation service for the Applicant Tracking and Position Description Modules includes the following:

- Two (2) day onsite meeting with Customer to conduct Best Practice Consultation and lead project discussions.
- Site Administrator Training including system overview, launch tool kit, tour of e-learning library and "train-the-trainer" session for Human Resources designed to familiarize Customer with the configuration and optimization settings of their PeopleAdmin solution.
- Configuration of Forms and Workflows for up to two (2) Position Types. Additional Position Types, if required, will cost \$5,000 each.
- General System Setup with instructional text, site triggers and permissions for up to ten (10) user groups. Additional user groups, if required, will cost \$300 each.
- Importing Data as necessary for the Customer. PeopleAdmin will provide file import templates for Customer to populate for one load of each of the following types of data:
 - User information handled as a product configuration instead of a file import
 - Organizational structure information, e.g. departments, divisions, locations; also handled as a product configuration instead of a file import
 - Job templates/titles which are the generic attributes that apply to all postings or requisitions associated with a particular employment category.
 - Positions which are the generic attributes which apply to all position descriptions.
- Configuration of Applicant Portal Design Template based on supported site design and content elements provided by Customer, including one round of revisions. Configuration may include setting up applicant portal homepage content, adjusting fonts and changing wording, image and color elements in site header, navigation and footer areas. Configuration does not include setting up fly-out navigation or other dynamic elements.
- One (1) day of onsite system administration "train-the-trainer" training will be provided free of charge. Additional training courses and onsite instruction are available for a fee.

PeopleAdmin provides up to eighty (80) hours of PeopleAdmin staff time during the course of this Basic Implementation service, focused on the delivery of the items specified. Unused hours are non-refundable and non-transferable and additional hours, if required, will be billed at \$125 per hour.

