



**FOREIGN DRIVER ASSOCIATES  
RECRUITMENT SERVICES  
AGREEMENT**

**OCTOBER 13, 2020**

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This Driver Recruiting Services Agreement (“Agreement”) by and between

**Company Name**  
of City, State (“the Client”)

and

**Experienced Associates, LLC**  
of Green Bay, Wisconsin (“Service Provider”)  
whose Representative is Robert Peacock  
 (“Effective Date”)

Each a “Party” and collectively the “Parties”

## 1. Recitals

WHEREAS, Service Provider is a company incorporated and existing under the laws of the state of Wisconsin, domiciled at 312 Pine Street, Green Bay, WI 54301;

WHEREAS, Service Provider is engaged in the recruitment and employment-based temporary and permanent immigration of, inter alia, foreign professional heavy tractor-trailer truck drivers for motor carriers located in the United States of America (U.S.A. / U.S.) (“Services”);

WHEREAS, Client is a company established under the laws of the state of \_\_\_\_\_, as evidenced in the register of the Secretary of State for \_\_\_\_\_, , domiciled at CLIENT Address

WHEREAS, Client is registered with the Federal Motor Carriers Safety Administration as a U.S. domestic interstate for-hire motor carrier of Bulk Chemicals, Refined Petroleum Products and other goods;

WHEREAS, Service Provider desires to provide recruitment and training of non-US citizens as professional qualified heavy tractor-trailer drivers to Client and to assist in securing appropriate permanent residence visas with respect to such individuals at the respective US consulate in South Africa and elsewhere in the world so as to allow their legitimate and lawful employment by Client in the United States of America (U.S. or US);

WHEREAS, Client wishes to retain the aforementioned professional qualified heavy tractor-trailer driver recruitment and training services from Service Provider.

NOW THEREFORE, in consideration of the covenants and warranties contained herein, it is agreed:

## 2. Definitions

The following terms shall have the meaning ascribed such term as set forth below:

- a. “Driver Associate” shall mean a Heavy Tractor-Trailer Truck Driver who is qualified to drive a tractor-trailer combination or a truck with a capacity of at least 26,000 pounds Gross Vehicle Weight in either their home country or within the United States of America.

- b. "Candidate" shall mean a Driver Associate who applies for participation in the program but has not yet been vetted for participation.
- c. "Qualified Individual" shall mean a Candidate who meets the criteria as set forth at Exhibit B: Candidate Screening Criteria, and for whom documentation has been obtained as set forth at Exhibit C: Required Documentation. Client retains the right to update the qualifications set forth at Exhibit B: Candidate Screening Criteria without prior written notification.
- d. "Eligible Driver" shall mean a Qualified Individual who has been issued an EB-3 Permanent Residence Permit by the United States ("Visa") authorizing such individual to work within the United States and reports for work to a designated Client facility in the United States within sixty (60) days of receipt of this Visa. Client agrees this period may be varied for reasonable, practical, logistical and training purposes.
- e. "Hired Driver" shall mean an Eligible Driver who possesses or obtains a valid US Class A Commercial Motor Vehicle Driver's License (CDL) issued by a state government within the United States of America, and who passes a road test administered by Client. Hired Driver is employed by Client as a Heavy Tractor-Trailer Truck Driver following the successful completion of a post job offer medical questionnaire and has had a medical examination approved by Client;
- f. "Lawful Permanent Resident" (LPR) shall mean any person not a citizen of the United States who is living in the U.S. under legally recognized and lawfully recorded permanent residence as an immigrant.

### 3. Recruitment of Qualified Individuals.

- a. Service Provider agrees that within sixty (60) days from the date of receipt of a signed Recruitment Request from Client, it will begin to locate, recruit, and orientate the initial requested number of Qualified Individuals willing to work for Client as Hired Drivers for the wages as set forth in Exhibit E: Hired Driver Compensation and Benefits and to use its best commercially reasonable efforts, acting in the highest ethical and professional manner, in that regard.<sup>4</sup>
- b. Service Provider shall verify the true identity of all such Qualified Individuals and use its best efforts, acting in the highest ethical and professional manner in that regard.
- c. Client agrees to work closely with Service Provider in assessing Client's need for Hired Drivers and to promptly notify Service Provider of any actual or potential change in that need.
- d. Client, with Service Provider's guidance, will conduct all advertising required by the Department of Labor (DOL) to identify qualified and willing U.S. Driver Associates who may be available to perform the work.
- e. Client, with Service Provider's guidance, will pay all filing fees for which it is liable in accordance with federal law.
- f. Client, with Service Provider's guidance, will pay all reasonable and customary legal fees associated with the visa applications contemplated herein. Notwithstanding anything to the contrary herein, Client shall solely determine to pursue such visa application.
- g. Service Provider shall inform any individual whom it recruits that employment by Client is not guaranteed, but instead is conditional upon such individual being deemed by Client in its sole discretion as having successfully progressed from being a Qualified Individual to a Hired Driver as such terms are used herein.

#### 4. Procurement of Visas.

- a. Client will complete Exhibit D: US Sponsor Recruitment Request, which describes the work to be performed, the Hired Driver's qualifications required by Client and any other specific requests regarding the screening of Qualified Individuals by Service Provider.
- b. Service Provider shall execute the necessary steps that will allow Client to employ Eligible Drivers, including, but not limited to:
  - i) Filing an application for a Prevailing Wage Determination with the Department of Labor (DOL)
  - ii) Filing a Permanent Labor Certification application with the Department of Labor (DOL);
  - iii) Filing an I-140 Immigrant Worker Petition with United States Customs and Immigration Services (USCIS);
  - iv) Filing the Immigration Visa and Alien Registration Application ("Green Card" application) with the Department of State (DOS).
- c. Service Provider shall provide to the Qualified Individuals all assistance reasonably required for such Qualified Individuals to obtain the appropriate valid Visa and licenses that authorize such Qualified Individuals to work within the United States as employees of Client.
- d. Client agrees to reasonably cooperate with Service Provider in its endeavours to procure such Visas and render the assistance specified.

#### 5. Training of Qualified Individuals.

- a. Service Provider will, with the cooperation of the Client and/or Qualified Individuals, assist Qualified Individual to comply with the general requirements for commercial motor vehicle operators as set forth in the U.S. Federal Motor Carrier Safety Part 391 (49 CFR 391) et. seq.

#### 6. Hiring of Eligible Drivers by Client.

- a. Client shall, in the good faith exercise of its discretion, and upon presentation by Service Provider to Client of all Required Documentation, offer employment to Eligible Drivers for the wages and benefits as set forth in Exhibit E: Hired Driver Compensation and Benefits.
- b. At all times during the Term of this Agreement and for a period of one (1) year from the date of termination of this Agreement, Client shall not directly or indirectly solicit, hire, recruit, or attempt to solicit, hire, or recruit, any Driver Associate introduced to Client by Service Provider unless such Driver Associate is sourced to Client by Service Provider.

#### 7. Program Fees

- a. In full consideration for the performance of the Services provided herein, and for any rights granted or relinquished by Service Provider, the Client shall pay Service Provider according with the fees set forth in Exhibit A: Program Fees.

#### 8. Unavailability of Visas.

- a. Client understands that each Qualified Individual selected by Client must be granted Lawful Permanent Resident (LPR) status from the U.S. Government before they can start working for Client.

- b. Client understands that the Departments of Labor, Homeland Security and State each exercise discretion in adjudicating LPR status applications and that Service Provider is not responsible for the outcome of each Qualified Individual's LPR application, except to the extent Service Provider fails to fulfill its obligations in sections (3), (4) herein or fails otherwise in accordance with this Agreement.
- c. Client understands and acknowledges that the process, timing, and issuance of LPR status applications is controlled solely by the U.S. Government and Service Provider is not responsible for the outcome or timing of each application, subject to subsection (b) above.
- d. Service Provider and its partners will use their knowledge and expertise to obtain the results desired by Client, but Service Provider makes no representations or warranties concerning the LPR application process or success in obtaining LPR status for Qualified Individuals sourced for the Client or the timing of arrival of Eligible Drivers to the Client.
- e. Subject to subsection (b) hereinabove, Client acknowledges that failure to successfully obtain an LPR status for a Qualified Individual does not constitute a breach under this Agreement
- f. In the event that a Qualified Individual's Permanent Labor Certification is denied, Service Provider may recruit another Qualified Individual.

## 9. Governing Law, Mediation, Arbitration.

- a. This Agreement shall be governed by, and construed in accordance with, the laws of the State in which Service Provider is incorporated, without regard to any conflict of laws provisions.
- b. If a dispute arises from or relates to this contract or the breach thereof, and if the dispute cannot be settled through direct discussions conducted in good faith, the Parties agree to endeavour first to settle the dispute by mediation administered by the American Arbitration Association under its Commercial Mediation Procedures before resorting to arbitration.
- c. The parties further agree that any unresolved controversy or claim arising out of or relating to this contract, or breach thereof, shall be settled by arbitration administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules and judgment on the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

## 10. No Agency Relationship Created.

- a. The relationship of the Parties is that of independent contractors. Nothing contained in this Agreement and no action by either Party shall be deemed to constitute any Party or any Party's employees or agents to be an employee or agent of the other Party or shall be deemed to create any partnership, joint venture, association, or syndicate among or between any of the Parties, or shall be deemed to confer on any Party any express or implied right, power, or authority to enter into any agreement or commitment, express or implied, or to incur any obligation or liability on behalf of, the other Party.
- b. It is specifically understood and agreed that the method of recruitment and training shall be determined by Service Provider consistent with the highest ethical and professional standards and training objectives.

## 11. Indemnification.

- a. Service Provider shall defend, indemnify and hold harmless Client, its affiliates, its clients, their officers and directors from and against all claims or causes of action, wherever venued, arising

- b. out of any act or omission of Service Provider, including but not limited to any claim that it has violated any federal or state employment or other law or regulation of the United States, or any applicable laws of South Africa or any other applicable jurisdiction. Client agrees to defend, indemnify and hold harmless Service Provider from and against all claims or causes of action venued in the United States with respect to claims arising in the United States as a result of any negligent action or omission of Client.
- c. Notwithstanding anything to the contrary herein, neither Party shall be liable to the other Party for any indirect, incidental, special, punitive, exemplary, or consequential damages hereunder (including, but not limited to, lost profits, loss of production or other damages attributable to business interruption, or loss of customer goodwill), regardless of whether the Parties have been advised of the possibility of such damages, regardless of whether such damages were reasonably foreseeable, and regardless of the legal theory under which said damages are claimed, whether in contract, tort, statute, or any other legal theory.

## 12. Term and Termination.

- a. The term of this Agreement shall begin on the Effective Date and shall remain in force and effect until terminated as provided herein (the "Term").
- b. Either Party may terminate this Agreement by providing sixty (60) calendar days prior written notice to the other Party.
- c. Either Party may terminate this Agreement effective immediately on receipt of written notice of termination, if any of the following events occur:
  - i) Either Party becomes the subject of a proceeding under bankruptcy, receivership, insolvency, or similar law, which is not dismissed within thirty (30) days after being instituted;
  - ii) The other Party fails to cure a material breach of this Agreement within ten (10) days after receipt of written notice of such breach and opportunity to cure;
  - iii) This Agreement, or the actions of either Party, is found to be in violation of any law, other than a technical violation that is curable and cured within ten (10) days after receipt of written notice of such violation from the non-violating Party.

## 13. Consequences of Termination of Agreement

- a. Within 14 days of the termination of this agreement for Client's convenience, or a reduction in the number of Hired Drivers requested, the Service Provider shall identify and invoice all work in progress costs and expenses, and Client agrees that all agreed herein, liabilities and receivables held directly from work in progress by Service Provider shall be paid within 30 days of invoice by the Client to the Service Provider.

## 14. Consequences of Termination of Employment

- a. If a Hired Driver provided under this agreement is terminated "for cause", Client will not be responsible for paying the weekly Program Fee.
- b. If the Hired Driver is terminated "without cause", the Client agrees to pay 100% of remaining Program Fees in which Program Fees can be reduced if the Service Provider can place the terminated Hired Driver at another company which agrees to pay the Program Fees.
- c.
  - a. Termination "for cause": Reasons a Hired Driver could be terminated "for cause" include, but are not

limited to, stealing, lying, negativity, poor attitude, failing a drug or alcohol test, falsifying records, embezzlement, insubordination, fraud, felonious conduct, disclosing private, confidential information or trade secrets, deliberately violating company policy or rules, and other serious misconduct related to their employment or safety violations.



- d. Termination “without cause”: Occurs when a Hired Driver is terminated from a job not because they have necessarily done anything wrong, but because Client has decided, for whatever reason, that it no longer needs the Hired Driver’s services.

## 15. Survival.

- a. The Parties’ respective obligations under Paragraph 11, Indemnification, as well as Client’s obligations with respect to payment to Service Provider of the Program Fees which predates termination of this Agreement, shall survive such termination, unless it is determined that Service Provider acted negligently or did not act in good faith in the performance of its duties or obligations under this Agreement.

## 16. Notices.

- a. Any notice required or permitted under this Agreement shall be in writing and will be deemed received when sent via email, delivery receipt requested, or delivered personally, or within five business days of deposit in the U.S. mail, certified, return receipt requested, postage prepaid, addressed to the parties at their respective addresses as set forth below:

Client  
Info

Experienced Associates LLC  
Attn: Robert J. Peacock  
312 Pine Street  
Green Bay, WI 54301  
Email: peacockrj@experienced-  
associates.com

## 17. Services to Driver Associates

- a. Service Provider may advance funds, or facilitate loans from third parties, to assist a Qualified Individual cover their cash flow requirements up to their employment as a Hired Driver. Any such funds advanced to a Qualified Individual selected by Client are outside the scope of this Agreement.
- b. Client will agree to any wage deduction authorized in writing by a Hired Driver that received assistance per Paragraph 17(a), including but not limited to those in favour of Service Provider.

## 18. Assignment.

- a. This Agreement may not be assigned by one Party without the other Party’s written agreement, which agreement cannot be unreasonably withheld.
- b. Any attempted assignment in violation of this restriction shall be void and of no effect.

## 19. Waiver.

- a. Any term or provision of this Agreement may be waived by the Party entitled to the benefit thereof by a written instrument duly executed by such Party.

- b. Any such waiver shall not imply a waiver as to any other term or condition, nor estop any Party from enforcing any other term or condition of this Agreement or deprive that Party of the right to thereafter insist upon adherence of that term or condition of this Agreement.

## 20. No Benefit to Others.

- a. The representations, warranties, covenants, and agreements contained in this Agreement are for the sole benefit of the Parties hereto or their permitted assigns.

## 21. Force Majeure

- a. Delay or failure to comply with or breach of any of the terms and conditions of this Agreement if occasioned by or resulting from an act of God or public enemy, fire, explosion, earthquake, perils of the sea, flood, war declared or undeclared, civil war, revolution, civil commotion or other civil strife, riot, strikes, blockade, embargo, sanctions, epidemics, act of any Government or other Authority, compliance with Government orders, demands or regulations, telecommunication breakdown, power failure or any circumstances of like or different nature beyond the reasonable control of the Party so failing, will not be deemed to be a breach of this Agreement nor will it subject either Party to any liability to the other.
- b. Should either Party be prevented from carrying out its contractual obligations as a result of a force majeure event lasting continuously for a period of 30 (thirty) days, either Party shall be entitled, after due consultation with the other Party in an effort to come to a mutually acceptable arrangement, to terminate the Agreement on written notice to the other Party, without liability.

## 22. Entire Agreement.

- a. This Agreement and exhibits and schedules attached hereto sets forth the entire understanding of the Parties with respect to the undertakings contemplated hereby.
- b. This Agreement shall not be amended or modified except by written instrument duly executed by each of the Parties hereto.
- c. All previous agreements and understandings between or among the Parties regarding the subject matter hereof, whether written or oral, are superseded by this Agreement.

## 23. Counterparts.

- a. This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same agreement.
- b. A signed copy of this Agreement delivered by e-mail or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

## 24. Signatures of the Parties to the Agreement

IN WITNESS WHEREOF, the parties have duly executed this Agreement at client address and Green Bay, WI USA on the Effective Date written above.

Experienced Associates, LLC

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Who warrants their authority to do so.

Signed: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Who warrants their authority to do so.

## Exhibit A: Program Fees

### General conditions

- a. All US Government filing fees and professional legal fees shown in the Schedule of Estimated Fees below are subject to change and will be confirmed with Client.
- b. Any variation of fees in (a) during the course of the program will result in the Client being notified of program fee increases where applicable.
- c. All fees established herein shall include all applicable taxes.
- d. All fees are non-refundable and payable when due.

### Service Provider Program Fees

In consideration of the recruiting services, immigration visa advice and assistance, and program management to be provided as set forth herein, Client shall, upon execution of this Agreement, pay a weekly Program Fee per the following schedule:

\$145 per week with full training program.

- a. The weekly Program Fee shall be paid for 156 weeks per Hired Driver.
- b. Client will not be responsible for paying the weekly Program Fee from the time that any Hired Driver who gave a voluntary termination of employment left the Client or Hired Driver is terminated "for cause".
- c. Within five (5) days of separation of Hired Driver from employment at Client, Client shall provide written notice to Service Provider of the date of separation so that Service Provider can accurately invoice Client the applicable weekly Program Fees for each weekly period.
- d. Client agrees to combine its weekly Program Fee with the total of all Hired Driver weekly wage deductions in favour of Service Provider noted on 17(b).
- e. The combined total of Client's weekly Program Fees and Hired Drivers' weekly wage deductions in favour of Service Provider is due upon receipt of invoice and paid via ACH.
- f. Should the Client terminate the Agreement prior to the completion of 156 weeks of payment for a Hired Driver, Client is obligated to complete payment for the outstanding balance, except as set forth in subsection (b) above.

