
Scout Talent – Terms & Conditions of Software as a Service and Support

- A Scout Talent Canada (Scout Talent, Employment Office Canada or the Supplier) has developed certain software applications and platforms which it makes available to subscribers via the internet for a monthly subscription fee per user.
- B The Customer wishes to use the Supplier's services in its business operations.
The Supplier has agreed to provide and the Customer has agreed to take and pay for the Supplier's service subject to the terms and conditions of this agreement.
- 1. Definitions and Interpretation**
- 1.1. Definitions**
- Business Day** means a day that is not a Saturday, Sunday, bank holiday or public holiday in Vancouver, BC, Canada;
- Customer** means the customer stated in the Software Proposal;
- Damages** means liabilities, expenses, losses, damages and costs (including legal costs on a full indemnity basis (whether incurred by or awarded against a party)) and consequential and indirect losses and damages including those arising out of any third party claim;
- Software Proposal** means the Software Proposal in which these terms and conditions are referred;
- Force Majeure Event** means, in relation to a party, anything outside the reasonable control of the party, including:
- (a) any act or omission of a third person (except for an act or omission of the party's Personnel);
 - (b) fire, flood, earthquake, elements of nature or act of God; or
 - (c) riot, civil disorder, rebellion or revolution;
- GST** means any goods and services tax, value added tax, consumption tax or other similar tax including, without limitation, any tax arising out of the passage of the relevant tax codes and associated legislation or regulations;
- Implementation Fee** means the fee stated in the Software Proposal which will be invoiced to the Customer within 7 days of the Customer accepting the Software Proposal;
- Initial Term** means the term stated in the Software Proposal;
- Intellectual Property Rights** means all intellectual property rights, including but not limited to, the following rights:
- (a) patents, copyright, rights in circuit layouts, designs, moral rights, trade and service marks (including goodwill in those marks), domain names and trade names and any right to have confidential information kept confidential;
 - (b) any application or right to apply for registration of any of the rights referred to in paragraph (a); and
 - (c) all rights of a similar nature to any of the rights in paragraphs (a) and (b) which may subsist anywhere in the world (including Canada), whether or not such rights are registered or capable of being registered;
- Personal Information** means personal information as defined in the relevant *Privacy Act*);
- Personnel** means, in relation to a party, the officers, employees, contractors and agents of the party and any Related Body Corporate of it;
- Price** means the price stated in the Software Proposal and includes the Implementation Fee, User Subscription Fee and Training Fee;
- Related Body Corporate** has the meaning given to that term in the relevant *Corporations Act*;
- Services** means the subscription services provided by the Supplier to the Customer under this agreement in accordance with the Software Proposal;
- Software** means the online software application provided by the Supplier as part of the Services;
- Support Services** means the support services detailed in clause 5 and the Software Proposal;
- Training** means the training services provided by Supplier in accordance with the Software Proposal;
- Training Fee** means the fee stated in the Software Proposal;
- Upgraded Version'** means an enhancement, improvement or modification to the Software; and
- User Subscription Fee** means the fee stated in the Software Proposal which will commence being invoiced 4 weeks from the Customer accepting the Software Proposal.
- 1.2. Interpretation**
- In this agreement, except where the context otherwise requires:
- (a) the singular includes the plural and vice versa, and a gender includes other genders;
 - (b) another grammatical form of a defined word or expression has a corresponding meaning;
 - (c) a reference to a clause, paragraph, schedule or annexure is to a clause or paragraph of, or schedule or annexure to, this agreement, and a reference to this agreement includes any schedule or annexure;
 - (d) a reference to a document or instrument includes the document or instrument as novated, altered, supplemented or replaced from time to time;
 - (e) a reference to CA\$, \$CA, dollar or \$ is to Canadian currency;
 - (f) a reference to time is to Pacific Standard time;
 - (g) a reference to a party is to a party to this agreement, and a reference to a party to a document includes the party's executors, administrators, successors and permitted assigns and substitutes;
 - (h) a reference to a person includes a natural person, partnership, body corporate, association, governmental or local authority or agency or other entity;

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- (i) a reference to a statute, ordinance, code or other law includes regulations and other instruments under it and consolidations, amendments, re-enactments or replacements of any of them;
- (j) a word or expression defined in the *Corporations Act* has the meaning given to it in the *Corporations Act*;
- (k) the meaning of general words is not limited by specific examples introduced by including, for example or similar expressions;
- (l) any agreement, representation, warranty or indemnity by two or more parties (including where two or more persons are included in the same defined term) binds them jointly and severally;
- (m) any agreement, representation, warranty or indemnity in favor of two or more parties (including where two or more persons are included in the same defined term) is for the benefit of them jointly and severally;
- (n) a rule of construction does not apply to the disadvantage of a party because the party was responsible for the preparation of this agreement or any part of it;
- (o) if a day on or by which an obligation must be performed or an event must occur is not a Business Day, the obligation must be performed or the event must occur on or by the next Business Day; and
- (p) headings are for ease of reference only and do not affect interpretation.

2. Acceptance

- 2.1. A signed Software Proposal received by the Supplier from the Customer for the supply of the Services constitutes acceptance of the terms and conditions contained in this agreement.
- 2.2. Where more than one Customer has entered into this agreement, the Customer's will be jointly and severally liable for all payments.
- 2.3. Upon acceptance of these terms and conditions by the Customer the terms and conditions are irrevocable and can only be rescinded or varied by written agreement between the Supplier and Customer.
- 2.4. None of the Supplier's Personnel are authorized to make any representations, statements, conditions or agreements not expressed by the Supplier in writing nor is the Supplier bound by any such unauthorized statements.
- 2.5. The Customer undertakes to give the Supplier not less than fourteen (14) days prior written notice of any proposed change in the Customer's name and/or any other change in the Customer's details (including but not limited to, changes in the Customer's contact details).

3. Software

Upon acceptance of the Software Proposal and payment of the Fee, the Supplier shall make the Services available to the Customer in accordance with the provisions of this Agreement and the Software Proposal.

4. Customers Rights

The Customer is entitled to:

- (a) use the Software in accordance with this Agreement and the Software Proposal; and (b) receive information on Upgraded Versions.

5. Support

The Supplier will provide the Customer with the support services detailed in the Software Proposal.

6. Training

The Supplier will provide the Customer with the training detailed in the Software Proposal.

7. Software Availability

The Supplier guarantees 99.5% uptime for the duration of the agreement.

8. Price & Invoicing

- 8.1. The Price payable under this agreement is exclusive of GST. The parties agree that:
 - (a) the Supplier will provide the Customer with a Tax Invoice for the Implementation Fee and the User Subscription Fees and any other charges and GST; and
 - (b) Tax Invoices are payable within 7 days after receipt of the Tax Invoice unless otherwise stated on the invoice.
- 8.2. If the Tax Invoice remains unpaid for 30 days after becoming due for payment then the Supplier reserve the right to charge the Customer interest accruing daily on any amount that is not paid within 30 days. Interest will be charged at a rate of 2.5% from the date that the Tax Invoice first became payable. This is without prejudice to any other remedy that the Supplier may have in relation to this agreement.
- 8.3. For the purpose of this agreement the Customer will be deemed to have received the Supplier's Tax Invoice if it is: (a) given to you or to your agent personally – on the day it is given to you;
 - (b) sent to you at the address provided by you or to your agent by post then – within two days of posting; and
 - (c) sent to you by email at the address provided by you – within 24 hours of the email being sent on a Business Day. If the email is not sent on a Business Day, the 24 hour period will commence on the following Business Day.
- 8.4. Upon the expiration of the Term and each Renewal Period, the User Subscription Fee will increase by an additional 5%.

9. Intellectual Property

- 9.1. The Customer acknowledges that any and all of the Intellectual Property Rights subsisting in or used in connection with the Software, including any modifications, improvements or enhancements made thereto, are and remain the sole property of the Supplier or such other party as may be identified in or on it (**Owner**). The Customer must not during or at any time after the expiry or termination of

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this Agreement (whether in whole or with respect to support only) in any way question or dispute the ownership of the Intellectual Property Rights by the Supplier or the Owner. In the event that any Intellectual Property Rights vest for some reason in the Customer, the Customer hereby assigns such Intellectual Property Rights to the Supplier.

- 9.2. The parties acknowledge that the previous sub-clause does not confer on the Supplier any rights, title or interest in the Customer's data files, candidate files, or other business records which the Customer inputs into or stores on the Software.
- 9.3. The Customer grants an irrevocable royalty free license in perpetuity to the Supplier to use candidate data for, but not limited to industry-wide benchmarking, trends, sales and marketing. No personal information of either the Candidates or Customer would be used or disclosed.
- 9.4. The Customer indemnifies the Supplier fully against all liabilities, costs and expenses which the Supplier may incur as a result of work done in accordance with the Customer's specifications involving infringement of any Intellectual Property Rights.

10. Privacy

If either party gives the other Personal Information, the party in receipt of the Personal Information must comply with:

- (a) the *Privacy Act 1988* (Cth), the National Privacy Principles established under the Act and any applicable law relating to privacy; and
- (b) the other party's reasonable directions for the protection of the Personal Information, including how it collects, holds, uses and discloses the information.

11. Confidentiality

- 11.1. All information, data, drawings, specifications, documentation, software listings, source or object code which the Supplier may have imparted and may from time to time impart to the Customer relating to the Software (other than the ideas and principles underlying the same) or support documentation or procedures is confidential. The Customer agrees that it must use the same solely in accordance with the provisions of this Agreement and that it must not at any time during or after expiry or termination of this Agreement (in whole or with respect to support only), disclose the same, whether directly or indirectly to any third party without the Supplier's prior written consent.
- 11.2. The Customer further agrees that it must not itself or through any subsidiary, agent or third party modify, vary, enhance, copy, sell, lease, license, sub-license or otherwise deal with the Software or any part or parts or variations, modifications, copies, releases, versions or enhancements of the Software or have any software or other program written or developed for it based on any confidential information supplied to it by the Supplier.
- 11.3. This clause does not prevent the disclosure or use by the Customer of any information which is or after the date of this Agreement, through no fault of the Customer, becomes public knowledge or to the extent permitted by law.
If, in using the Software, the Customer discloses any business information, financial information or candidate information of a confidential nature to the Supplier, the Supplier agrees that it will keep confidential such information. This clause does not prevent the disclosure or use by the Supplier of any information which is or after the date of this Agreement, through no fault of the Supplier, becomes public knowledge or to the extent permitted by law.

12. Data Storage

- 12.1. If this agreement is terminated, the Customer may request the Supplier export the data from the Software and provide it to the Customer in CSV format in order that the Customer may use the data in the future.
- 12.2. Alternatively, upon request by the Customer all Customer data records (including candidate data) stored within the Software will be destroyed upon request by the Customer.

13. Indemnity

- 13.1. The Supplier agrees to indemnify the Customer from and against liability under any final judgment in proceedings brought by a third party against the Customer which determine that the Customer's use of the Software constitutes an infringement in Canada of Intellectual Property Rights affecting the Software as the case may be provided that:
 - (a) the Customer has not done, permitted or suffered to be done anything which may have been or become an infringement of any Intellectual Property Rights; and
 - (b) the Customer has exercised a reasonable standard of care in protecting the same failing which the Customer indemnifies the Supplier or the Owner against all actions, proceedings, costs, claims and expenses incurred in respect of that failure.
- 13.2. The Customer must give the Supplier prompt notice of any claim of infringement or of suspected or alleged infringement under the previous sub-clause that is made against the Customer and the Supplier has the right to defend any such claims and make settlements at its own discretion and the Customer must give such assistance as the Supplier may reasonably require to settle or oppose any such claims.
- 13.3. In the event, that any such infringement occurs or may occur, the Supplier may at its sole option and expense:
 - (a) procure for the Customer the right to continue using the Software or any infringing part;
 - (b) modify or amend the Software or infringing part so that it becomes non-infringing;
 - (c) replace the Software or infringing part with other software of similar capability; or (d) repay to the Customer the Fee relating to the whole or the infringing part of the Software.

14. Limitation of Liability

- 14.1. This clause does not exclude or modify any condition or warranty implied into this agreement, or any liability imposed on the Supplier, by law if to do so would contravene the law or make any part of this clause void.
- 14.2. The Supplier excludes any condition or warranty implied into this agreement and limits its liability for breach of any implied condition or warranty that it cannot exclude to the greater of (at the Suppliers option) re-supplying the Software or paying the cost of having the Services re-supplied.
- 14.3. If the Customer makes a claim against the Supplier for any act or omission of the Supplier relating to this agreement (whether the claim is based in contract, tort ((including negligence) or statute) the Supplier’s liability in respect of that claim is:
- (a) unlimited for personal injury (including sickness & death);
 - (b) limited to \$10,000 for loss of, or damage to tangible property; and
 - (c) for any other claim, limited in aggregate to the total paid for the particular Services that gave rise to the loss or damage as at the date the liability arose.
- 14.4. The Supplier excludes liability to the Customer for any special or consequential loss including loss of opportunity, lost revenue and lost profits and loss of data.

15. Warranty

- 15.1. The Customer acknowledges that software in general is not error-free and agrees that the existence of errors does not constitute a breach of this Agreement.
- 15.2. If the Customer discovers a material error which substantially affects the Customer’s use of the Software and notifies the Supplier of the error within 90 days from the date of this License (‘warranty period’), the Supplier may at its sole option:
- (a) refund the Fee; or
 - (b) use all reasonable endeavors to correct by patch or new release (at its option) that part of the Software which does not so comply provided that such non-compliance has not been caused by any modification, variation or addition to the Software not performed by the Supplier or caused by its incorrect use, abuse or corruption of the Software or by use of the Software with other software or on equipment with which it is incompatible.
- 15.3. To the extent permitted by the applicable law, the Supplier disclaims all other warranties with respect to the Software either express or implied, including but not limited to any implied warranties of merchantability or fitness for any particular purpose.
- 15.4. Although the Supplier does not warrant that the Software is free from all known viruses, it has used commercially reasonable efforts to check for the most commonly known viruses prior to packaging but the Customer is solely responsible for virus scanning the Software.

16. Term and Termination

- 16.1. Upon the expiration of the Term of this agreement, unless terminated by written notice received thirty (30) days before the expiration date, the Agreement will automatically renew for a subsequent term equal to the Initial Term of the Agreement (**Renewal Term**), at the Supplier’s then current fees.
- 16.2. During the Initial Term of the Agreement or during a Renewal Term, the Supplier may, in its absolute discretion, terminate this agreement by giving the Customer thirty (30) days written notice.
- 16.3. During the Initial Term of the Agreement or during a Renewal Term, the Customer may terminate this agreement at any time upon payment of all outstanding Fees for the remainder of the Initial Term or Renewal Term.
- 16.4. If either party is in material default of its obligations under this Agreement, the other may give written notice of termination. The defaulting party will have thirty (30) days from such notice to cure its default. If the default is not cured within the thirty (30) day period, the Agreement will automatically terminate.
- 16.5. To the extent permitted by applicable law, this Agreement will automatically terminate upon the occurrence of any of the following:
- (a) the institution of insolvency, receivership or bankruptcy proceedings against Customer;
 - (b) Customer making an assignment for the benefit of creditors; or (c) Customer’s dissolution, liquidation or ceasing to do business.
- 16.6. Customer will provide at least 30 days written notice to Supplier prior to a change in control of Customer ownership, voting or controlling interest, whether by merger, transfer, sale or otherwise.
- 16.7. Upon termination of this agreement the Customers Software Account will be closed and if requested by the Customer all Customer data will be exported to CSV and provided to the Customer, prior to being removed and destroyed from the Software.

17. Solicitation of the Supplier Personnel

- 17.1. During the term of this agreement and for 12 months after its termination (for any reason), the Customer must not solicit, entice away or attempt to entice away any of the Supplier’s Personnel from continuing to be employed by, or act as a consultant to, the Supplier.
- 17.2. During the term of this agreement and for 12 months after its termination (for any reason), the Customer must ensure that its Personnel, any related body corporate of it and their Personnel do not, solicit, entice away or attempt to entice away any of the Supplier’s Personnel from continuing to be employed by, or act as a consultant to, the Supplier.

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- 17.3. If the Customer does solicit, entice away or attempt to entice away any of the Supplier's Personnel in accordance with the previous sub-clauses the Customer agrees to pay to the Supplier 3 times the employees salary or contract amount as the case may be or the equivalent annual salary that the Customer has agreed to pay the Personnel whichever is the greater.
- 18. Dispute Resolution**
- 18.1. A party must not start court proceedings (except proceedings seeking interlocutory relief) unless it has complied with this clause.
- 18.2. A party claiming that a dispute, difference or question arising out of this agreement has arisen (**Dispute**) must give the other party notice of the details of the Dispute (**Dispute Notice**).
- 18.3. The parties must attempt to resolve any Dispute by negotiations using the following escalation procedure:
- (c) when a Dispute Notice is given, each party's respective representatives must first attempt to resolve the Dispute; and
 - (d) if they cannot resolve the Dispute within five Business Days after the Dispute Notice is given, they must refer the Dispute to each party's chief executive officer or equivalent who must then attempt to resolve it.
- 18.4. If the parties cannot resolve the Dispute within 10 Business Days after the Dispute Notice is given:
- (a) each party is free to start court proceedings; or
 - (b) the parties may agree to attempt to resolve the Dispute by other means such as expert determination, mediation or arbitration.
- 18.5. If a party breaches the procedure in this clause in relation to a Dispute, the other party need not comply with this clause in relation to the Dispute.
- 18.6. The parties' obligations in this agreement continue, pending the resolution of a Dispute.
- 18.7. The dispute resolution procedure in this clause does not affect a party's right to terminate the agreement in accordance with the termination clause above.
- 18.8. Each party must pay its own costs of complying with this clause.
- 19. Force Majeure**
- If the Supplier is wholly or partially unable to provide the Services because of a Force Majeure Event then:
- (a) as soon as reasonably practicable after the Force Majeure Event arises, the Supplier must give the Customer notice of the extent to which the Supplier is unable to provide the Services; and
 - (b) the Supplier's obligations to provide the Services is suspended for the duration of the delay arising out of the Force Majeure Event; and
 - (c) any suspension of the Services as a result of the Force Majeure Event does not constitute a breach of agreement by the Supplier.
- 20. Notices and other communications**
- 20.1. A notice, demand, consent, approval or communication under this agreement (**Notice**) must be:
- (a) in writing, in English and signed by a person duly authorized by the sender; and
 - (b) hand delivered or sent by prepaid post, facsimile or email to the recipient's address for Notices specified in the Campaign Order, as varied by any Notice given by the recipient to the sender.
- 20.2. A Notice given in accordance with the above sub-clause takes effect when taken to be received (or at a later time specified in it), and is taken to be received:
- (a) if hand delivered, on delivery;
 - (b) if sent by prepaid post, on the second Business Day after the date of posting (or on the seventh Business Day after the date of posting if posted to or from a place outside Canada
 - (c) if sent by facsimile, when the sender's facsimile system generates a message confirming successful transmission of the entire Notice unless, within eight Business Hours after the transmission, the recipient informs the sender that it has not received the entire Notice;
 - (d) if sent by email, 24 hours after the date of sending, but if the delivery, receipt or transmission is not on a Business Day or is after 5.00pm on a Business Day, the Notice is taken to be received at 9.00am on the next Business Day.
- 21. Miscellaneous**
- 21.1. The Customer and the Supplier agree to be bound by these terms and conditions.
- 21.2. Except where this agreement expressly states otherwise, a party may, in its discretion, give conditionally or unconditionally or withhold any approval or consent under this agreement.
- 21.3. A party may only assign this agreement or a right under this agreement with the prior written consent of each other party.
- 21.4. Each party must pay its own costs of negotiating, preparing and executing this agreement.
- 21.5. Any stamp duty, duties or other taxes of a similar nature (including fines, penalties and interest) in connection with this agreement or any transaction contemplated by this agreement must be paid by the Customer.
- 21.6. Any indemnity or any obligation of confidence under this agreement is independent and survives termination of this agreement. Any other term by its nature intended to survive termination of this agreement survives termination of this agreement.
- 21.7. The rights and obligations of the parties under this agreement do not merge on completion of any transaction contemplated by this agreement.
- 21.8. This agreement constitutes the entire agreement between the parties in connection with its subject matter and supersedes all previous agreements or understandings between the parties in connection with its subject matter.

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- 21.9. Each party must do, at its own expense, everything reasonably necessary (including executing documents) to give full effect to this agreement and any transaction contemplated by it.
- 21.10. A term or part of a term of this agreement that is illegal or unenforceable may be severed from this agreement and the remaining terms or parts of the terms of this agreement continue in force.
- 21.11. A party does not waive a right, power or remedy if it fails to exercise or delays in exercising the right, power or remedy. A single or partial exercise of a right, power or remedy does not prevent another or further exercise of that or another right, power or remedy. A waiver of a right, power or remedy must be in writing and signed by the party giving the waiver.
- 21.12. Except where this agreement expressly states otherwise, it does not create a relationship of employment, trust, agency or partnership between the parties.
- 21.13. These terms and conditions shall be governed by the laws of the state of British Columbia. The parties agree to submit to the nonexclusive jurisdiction of the courts of British Columbia.
- 21.14. The Supplier may, at its discretion, refuse to accept for publication (or remove from the site) a notice or resume if it believes the notice or resume may infringe the rights of any person or may not comply with all the laws and regulations of the Provinces and Territories.