

## SCOUT TALENT

### TERMS & CONDITIONS FOR SERVICES AGREEMENT

This agreement (this "**Agreement**"), effective as of the date the contract is signed (the "**Effective Date**"), is by and between SCOUT TALENT INC., a federal company with offices located at #406 - 1199 West Pender Street, Vancouver, BC V6E 2R1 ("**Scout Talent**" or the "**Provider**") and the signing client (the "**Customer**"). The Provider and Customer may be referred to herein collectively as the "**Parties**" or individually as a "**Party**."

#### WHEREAS:

- A. The Corporation is in the business of providing Services to clients with recruitment process outsourcing, employee branding, talent engagement, and other recruitment marketing and related services as set out in the Campaign Order defined below (the "**Services**"); and
- B. The Client and the Corporation desire to enter into this Agreement pursuant to which the Corporation will provide these Services.

NOW THEREFORE, in consideration of the mutual covenants, terms, and conditions set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

#### 1 DEFINITION AND INTERPRETATION

##### 1.1 Definitions

- (a) "**Acceptance**" has the meaning set out in Section 4.2;
- (b) "**Authorized Representative**" means any Person duly designated and empowered by a party to act on a Party's behalf, make decisions, and engage in legal or contractual matters related to the Agreement or the applicable Campaign Order;
- (c) "**Business Day**" means a day that is not a Saturday, Sunday, bank holiday, or public holiday in Vancouver, BC, Canada;
- (d) "**Client Materials**" shall mean all content, business or marketing plans, manuals, products, pricing, operations and procedures, Client preferences, needs and requirements data, records, supplies, audio and visual materials, and other works of authorship which have been provided by the Client to the Corporation;
- (e) "**Candidate**" means the Person, introduced by the Corporation to the Client for an Engagement in accordance with the terms of the Campaign Order;
- (f) "**Campaign Order**" means the proposal or similar document outlining the details, objectives, Fees, scope, Deliverables, tasks, timeline, and any other relevant particulars concerning the Services to be rendered by the Corporation to the Client, mutually executed by the Parties and which may be attached to this Agreement as SCHEDULE "A";
- (g) "**Claim**" has the meaning set out in Section 10.1;
- (h) "**Client Contributions**" has the meaning set out in Section 5.4;
- (i) "**Client's Failure to Perform**" has the meaning set out in Section 5.4;
- (j) "**Change Order Request**" has the meaning set out in Section 2.3;
- (k) "**Change Order Form**" has the meaning set out in Section 2.3;

- (l) **“Client”** has the meaning set forth in the preamble and includes the Client’s subsidiaries and affiliates;
- (m) **“Confidential Information”** has the meaning set out in Section 12.1;
- (n) **“Corporation’s Technology”** means the Software and any other tools, templates, technologies, software code including executable code and source code, engine, inventions, subroutines, techniques, tools, and any documentation or any other information, data, or materials, and any expressions of the foregoing, developed by, owned by, or licensed to the Corporation which are included in the Services or used in connection with the Corporation’s development and design of the Services, including any and all additions, enhancements, derivatives, upgrades, and modifications of such the Corporation’s Technology which may be developed by the Corporation during the course of the Services to be provided to the Client under this Agreement, the Software-as-a-Service Agreement, or the applicable Campaign Orders;
- (o) **“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;
- (p) **“Deliverable”** means any deliverable or deliverables that the Corporation is obligated to produce and provide to the Client under the applicable Campaign Order (and for clarity, Deliverables do not include the data of candidates or job applicants);
- (q) **“Delivery”** means a communication delivered to a Party in accordance with the Notice requirements;
- (r) **“Dispute”** has the meaning set out in Section 16.1;
- (s) **“Dispute Notice”** has the meaning set out in Section 16.1 ;
- (t) **“Fees”** has the meaning set out in Section 7.1;
- (u) **“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;
- (v) **“Engagement”** means the engagement (including the Candidate’s acceptance of the Client’s offer), employment, or use of the Candidate by the Client or by any third party to whom the Candidate has been introduced by the Client, on a permanent or temporary basis, whether under a contract of service or for services; under an agency, licence, franchise, partnership agreement, joint venture, or any other engagement; or through a company of which the Candidate is a member, shareholder, partner, director, manager, officer, employee, or other representative; and **“Engage”**, **“Engages”**, and **“Engaged”** shall be construed accordingly;
- (w) **“Indemnifying Party”** has the meaning set out in Section 10.1;
- (x) **“Indemnified Party”** has the meaning set out in Section 10.1;
- (y) **“Invoice”** has the meaning set out in Section 7.4;
- (z) **“Law”** means any statute, ordinance, regulation, rule, code, constitution, treaty, common law, governmental order, or other requirement or rule of law of any governmental authority;
- (aa) **“Notice”** has the meaning set out in Section 17.2;
- (bb) **“Person”** means, as applicable, an individual, corporation, partnership, unlimited liability company, unincorporated organization, trust, association, or other entity;
- (cc) **“Personal Information”** means any information that relates to an individual person and identifies or can be used to identify, locate, or contact that individual alone or when combined with other personal or identifying information that is or can be associated with that specific individual, including but not limited to (a) first and last name; (b) home or other physical address, including street name and name of city or town and/or province or territory; (c) email address or other online information, such as a user name and password; (d) telephone number; (e) government-issued identification or other number; (f) financial or payment card account number; (g) date of birth; or (h) health information, including information regarding the individual's medical history or mental

- or physical condition, or medical treatment or diagnosis by a health care professional; and (i) any information that is combined with any of (a) through (h) above, as further defined in applicable privacy Laws, as amended from time to time;
- (dd) **“Personnel”** means all resources assigned by the Corporation to provide or perform any of the Services, including, without limitation, the Corporation’s employees, contractors, and subcontractors;
  - (ee) **“Position”** means the role for which the Candidate is being presented based on the Requirements set out in the Campaign Order;
  - (ff) **“Requirements”** means any requirements provided to the Corporation by the Client as set out in the Campaign Order;
  - (gg) **“Review Period”** has the meaning set out in Section 4.2;
  - (hh) **“Right of Promotion”** has the meaning set out in Section 13.1;
  - (ii) **“Software-as-a-Service Agreement”** means the Software as a Service Agreement pursuant to which the Client is permitted to use the Software and related services provided by the Corporation to the Client as part of the Services;
  - (jj) **“Software”** means the Corporation’s software application or applications and any third-party or other software that the Corporation provides remote access to, and use of, as part of the Services, as detailed in the Campaign Order, and all new versions, updates, revisions, improvements, and modifications of the foregoing;
  - (kk) **“Term”** has the meaning set out in Section 14.1;
  - (ll) **“Third-Party Materials”** shall mean any technology, content, materials, audio-visual materials, software, or works of authorship which are not proprietary to the Corporation, including but not limited to open source code or code licensed under a general public use license; and
  - (mm) **“Work Product”** shall mean the Deliverables and the documents, records, metrics, reports, audio-visual materials, and works of authorship that are prepared or included in or as part of the Deliverables within the scope of Services described in the applicable Campaign Order, but shall not include under any circumstances any of the Corporation’s Technology or any Third-Party Materials (and for clarity, Work Product does not include the data of candidates or job applicants).

## 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, or schedule is to a clause or paragraph of, or schedule to, this Agreement, and a reference to this Agreement includes any schedule to this Agreement;
- (d) a reference to a document or instrument includes the document and any amendments thereto;
- (e) a reference to CA\$, \$CA, dollar, or \$ is to Canadian currency;
- (f) a reference to time is to Pacific Time;
- (g) 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;
- (h) the meaning of general words is not limited by specific examples introduced by “including”, “for example”, or similar expressions;
- (i) 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;

- (j) 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;
- (k) 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
- (l) headings are for ease of reference only and do not affect interpretation.

### 1.3 Schedules

- (a) SCHEDULE A - Campaign Order;
- (b) SCHEDULE B – Software as a Service Agreement

## **2 SERVICES**

- 2.1 Services. The Client hereby retains the Corporation, and the Corporation agrees, to provide the Client with the Services described in one or more Campaign Orders. Once executed by the Parties, each Campaign Order will automatically be governed by, and incorporated into, this Agreement. The Corporation will not be required to perform any Services, or provide any Deliverables, unless such Services or Deliverables are described in the Campaign Order.
- 2.2 Terms of Campaign Order. To be valid, each Campaign Order must reference this Agreement, and must be executed by both Parties. If the terms of a Campaign Order directly and materially conflict with the terms of this Agreement, then the terms of the Campaign Order will control, but only regarding that particular Campaign Order. Notwithstanding the foregoing, if the conflicting terms modify the Corporation's liability (or any limitations of liability) or modify any warranties provided by the Corporation under this Agreement, then the terms of this Agreement will control unless the Campaign Order specifically acknowledges that particular conflict and specifically states that the Campaign Order will control on that issue. The termination of one Campaign Order will not, by itself, cause the termination of any other then-existing Campaign Order.
- 2.3 Change Orders. Either Party may propose additions or changes to the terms of a Campaign Order by making a request in writing to the other Party (a "**Change Order Request**"), which Change Order Request shall be Delivered to the other Party. Upon receipt of a Change Order Request, the receiving Party may agree to such changes by signing the Change Order Request. If the Change Order Request is not acceptable to the receiving Party, the Parties may discuss further changes or revisions, and if agreed to by both Parties, such additions or changes to the terms of a Campaign Order can be memorialized in a change order form signed by both Parties (the "**Change Order Form**"). Unless and until either (a) a Change Order Request is agreed to and signed by the receiving Party or (b) the Parties mutually agree to and sign the Change Order Form, the Corporation is only obligated to continue performing the Services under the original (i.e., unmodified) Campaign Order. Once a Change Order Request is signed by the receiving Party or a Change Order Form has been signed by both Parties, the additions or changes described therein shall automatically amend and become a part of the applicable Campaign Order.

## **3 CANDIDATES**

- 3.1 Candidate Introductions. Where the Corporation has been retained to find suitable candidates for the positions the Client wants filled, the Corporation shall endeavor to introduce to the Client suitable candidates by following the process outlined in the Campaign Order. The Client shall take commercially reasonable and practical steps to accurately convey the Position and Requirements to the Candidate so that the Candidate reasonably understands the Position and confirms that the Candidate is willing to work in the Position.
- 3.2 Suitability Check. Notwithstanding Section 3.1 above, the Client must satisfy itself as to the suitability of the Candidate for the position they are seeking to fill. Before Engaging the Candidate, the Client shall:
  - (a) verify the Candidate's qualifications and character and whether the Candidate meets the Requirements and understands the Position;
  - (b) check the references provided by the Candidate;
  - (c) confirm the Candidate's right to work in Canada;
  - (d) where applicable, arrange for medical examinations and investigations into the medical history of any Candidate

(including, but not limited to, any testing for drugs or alcohol), as and if required or permitted by applicable Law; and

(e) confirm that any medical and other requirements, qualifications, or permissions required for the Candidate to be Engaged in the Position, as and if required or permitted by applicable Law, are satisfied.

3.3 Client to Provide Information. To enable the Corporation to comply with its obligations under Section 3.1 above, the Client shall provide to the Corporation details of the Position, including, but not limited to, the following:

(a) an executive summary of the Client, including its areas of operation;

(b) a detailed description of the Position, including salary, benefits, conditions of employment, and other relevant considerations;

(c) the location and hours of work;

(d) the experience, training, qualifications, and any authorization which the Client considers necessary or are required by Law or any professional body for the Candidate to possess to work in that Position;

(e) any risks to health or safety known to the Client and what steps, if any, Client has taken to prevent or control such risks;

(f) the date the Client requires the Candidate to commence the Engagement;

(g) the duration or likely duration of the Engagement; and

(h) the length of notice that the Candidate would be entitled to give and receive to terminate their Engagement with the Client.

#### **4 DELIVERY AND ACCEPTANCE OF DELIVERABLES.**

4.1 Deliverables. Where the Corporation has been retained to provide specific Deliverables as set out in the Campaign Order, the Corporation agrees deliver such Deliverables to the Client in accordance with the timeframes set out in the applicable Campaign Order. The Corporation shall not be liable for any delay in the provision of the Services where the delay is caused by the Client's acts or omissions including, but not limited to, the Client's Failure to Perform, or the Client's failure to provide the Corporation in a timely manner with its Acceptance of a Deliverable as set out in Section 4.2 or the Client's failure to participate in the enhanced evaluation process set out in Section 4.3.

4.2 Acceptance. Client will have five (5) Business Days after receipt of a Deliverable (the "**Review Period**") to evaluate and review such Deliverable to determine whether such Deliverable comports with the relevant portions of the Campaign Order. If the Corporation does not receive a written rejection from the Client prior to the expiration of the Review Period, then the Deliverable will be deemed to be accepted by Client ("**Acceptance**"). Any rejection of a Deliverable must be accompanied by specific reasons for the rejection, and the Corporation shall have ten (10) days following its receipt of the Client's written rejection to cure any deficiencies with the Deliverable. Thereafter, the Corporation will re-submit the Deliverable to the Client for the Client's re-evaluation, which will be conducted under the same time frames described in this section.

4.3 Enhanced Evaluation Process. Both Parties acknowledge the importance of maintaining a productive collaboration. If the Client should, acting reasonably, reject the same Deliverable three (3) or more times, the Parties shall engage in a joint review of the rejected Deliverable to identify and address any concerns or adjustments required for successful alignment with the Client's expectations. This process shall be conducted within a commercially reasonable timeframe, as determined by both Parties acting in good faith, it being understood that the purpose of this enhanced evaluation process is to enhance the quality and accuracy of the Deliverable to meet the Client's needs effectively. The Corporation shall use all commercially reasonable efforts to address any feedback provided by the Client during this collaborative assessment.

#### **5 CLIENT RESPONSIBILITIES**

5.1 Workspace. For any work functions and tasks to be performed at the Client's premises, the Client shall provide all workspaces, facilities, and support that are reasonably requested the Corporation to allow its Personnel to perform the Services there, including without limitation secretarial support, telephone and email and digital communications,

computer facilities, and other forms of support specifically requested by the Corporation in the applicable Campaign Order(s).

5.2 Client Information and Request for Information. The Client shall:

- (a) ensure that the Client information it provides to the Corporation is accurate and up to date and shall inform the Corporation of any changes to such Client information within a commercially reasonable period; and
- (b) provide or make available all information reasonably requested by the Corporation to enable the Corporation to perform the Services including, but not limited to, information requested under Section 3.3.

5.3 Participation in Acceptance Process. The Client shall abide by the process and periods set out in Section 4, and participate fully in the enhanced evaluation process outlined in Section 4.3.

5.4 Client Failure to Perform. The Parties each agree and acknowledge that the Corporation's performance of the Services shall be conditional upon, and subject to, the Client's performance of its obligations hereunder (such obligations referred to as "**Client Contributions**"). The Client acknowledges and confirms that if Client fails to provide or delays the provision of Client Contributions (a "**Client's Failure to Perform**"), and such Client's Failure to Perform has a material impact on the Corporation's performance of the Services, then effective as of the date of occurrence of such Client's Failure to Perform, the Corporation may make adjustments to the provision of the Services, including any time frames for performance of any affected Services, either on a temporary basis or a permanent basis, which shall be communicated to the Client via a Change Order Request. The Corporation will not be responsible for any Damages, delays, increases in costs, or violation of any obligation under this Agreement which in any way directly or indirectly relates to a Client's Failure to Perform.

## 6 THE CORPORATION'S PERSONNEL.

6.1 General. The Corporation will manage, supervise, and provide direction to its Personnel and cause such Personnel to comply with the obligations and restrictions applicable to the Corporation under this Agreement and any Campaign Order.

6.2 Onsite Requirements. The Client will communicate to the Personnel all safety and security policies while such Personnel are performing Services at the Client's sites or accessing the Client's systems. The Client shall have the right to request the removal of any Personnel from performing the Services for any reasonable and lawful reason, and the Corporation will promptly comply with such request upon receipt of the same.

6.3 Authorized Representatives. If a Party designates one or more Authorized Representatives under a Campaign Order to liaise with the other Party, then the other Party shall be entitled to rely upon, and act in accordance with, the instructions, information, approval, or directions of that Authorized Representative. If a Party changes its Authorized Representative, that Party shall, at its own expense, educate the new Authorized Representative so that such Authorized Representative is adequately informed regarding the scope and requirements of the applicable Campaign Order.

## 7 INVOICES; PAYMENT.

7.1 Fees. The Client shall pay the Corporation all fees, costs, and expenses described in this Agreement in accordance with the applicable Campaign Order (collectively, the "**Fees**").

7.2 Taxes. All Fees and other amounts payable by the Client under this Agreement are exclusive of taxes and similar assessments. Without limiting the foregoing, the Client is responsible for all GST, service, use and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, provincial, or territorial governmental or regulatory authority on any amounts payable by the Client hereunder, other than any taxes imposed on the Corporation's income.

7.3 Reimbursable Expenses. When specifically provided for in the applicable Campaign Order, or as set out in a Change Order Request or Change Order Form agreed to and signed by the Parties, the Corporation shall be reimbursed for all reasonable travel and other out-of-pocket expenses incurred by the Corporation's employees and subcontractors in providing the Services. All such expenses for which the Corporation seeks reimbursement shall be supported by documentation described in the applicable Campaign Order.

- 7.4 Invoice and Interest. Unless otherwise stated in a Campaign Order, invoices rendered pursuant to this Agreement or a Campaign Order (the "**Invoice**") shall be due and payable on the 7<sup>th</sup> Business Day following the Delivery of such Invoice. The Client shall make all payments hereunder by cheque, wire transfer, or electronic funds transfer. The Client shall make payments to the address or account specified in the Campaign Order or such other address or account as the Corporation may specify in writing from time to time. If the Client fails to pay the Invoice 15 Business Days from Delivery of such Invoice, then, in addition to all other remedies that may be available to the Corporation:
- (a) the Corporation may charge interest on the past due amount at the rate of 1.5% calculated daily and compounded monthly;
  - (b) Client shall reimburse the Corporation for all reasonable costs incurred by the Corporation in collecting any late payments or interest, including legal fees on a solicitor-and-client basis, court costs, and collection agency fees; and
  - (c) if such failure continues for 30 Business Days following Delivery of the Invoice thereof, the Corporation may suspend performance of the Services until all past due amounts and interest thereon have been paid, without incurring any obligation or liability to the Client or any other Person by reason of such suspension.
- 7.5 No Deductions or Set-Offs. All amounts payable to the Corporation under this Agreement shall be paid by the Client to the Corporation in full without any set-off, recoupment, counterclaim, deduction, debit, or withholding for any reason (other than any deduction or withholding of tax required by applicable Law).

## **8 INTELLECTUAL PROPERTY; OWNERSHIP.**

- 8.1 Use of Software and Related Services. As part of the Services, the Client may be given access to the Software and certain related services as set out in the Campaign Order. Such access shall be provided under the Software-as-a-Service Agreement attached to this Agreement as SCHEDULE "B".
- 8.2 Ownership of Client Materials. The Client is and shall continue to be, the owner or licensor of all Client Materials, except that by providing the Client Materials to the Corporation or uploading, inputting, or otherwise transmitting the Client Materials to the Corporation, the Client agrees as follows:
- (a) the Client will have thereby granted to the Corporation a royalty-free, non-exclusive, worldwide, fully paid-up limited license to use, copy, distribute, transmit, display, edit, delete, publish, and translate such Client Materials to the extent reasonably required by the Corporation to perform the Services under this Agreement and the applicable Campaign Orders;
  - (b) the Client, and not the Corporation, will have sole responsibility for the accuracy, quality, integrity, legality, reliability, and appropriateness of all Client Materials, and the Corporation will not be responsible or liable for the deletion, correction, destruction, damage, loss, or failure to store any Client Materials provided to the Corporation; and
  - (c) if Client is storing third party data, the Client will have thereby confirmed, represented, and warranted to the Corporation that the Client has obtained all required consents and has obtained all rights, titles, and interests including all intellectual property rights as well as the power and authority necessary to grant the license set out in Section 8.2(a) above. The Client shall ensure it maintains such rights and consents during the Term and any renewal of this Agreement. Notwithstanding the foregoing, the Personal Information collected by the Client must be collected and held in accordance with the Client's standard privacy policies which, at minimum, will disclose to such third parties: (i) what personally identifiable information is collected and how it will be used by the Client; (ii) the identity of all parties (including the Corporation) collecting the personally identifiable information; and (iii) that such personally identifiable information is shared with the Corporation in accordance with this Agreement.
- 8.3 Ownership of Work Product. Subject to the Corporation's receipt of full payment for all amounts due and owing (and any interest thereon), the Corporation hereby assigns and transfers to the Client the Corporation's right, title, and interest in the Work Product. The Corporation agrees to provide reasonable assistance to the Client, at the Client's sole cost, to record or register the Client's ownership rights in the Work Product, and to promptly complete and execute any registration or recordation documents that might be reasonably required by the Client in connection therewith.
- 8.4 Ownership of The Corporation's Technology. The Corporation is, and at all times shall continue to be, the owner or

licensor of the Corporation's Technology. Notwithstanding any other provision in this Agreement, a Campaign Order, or any other agreement, to the contrary or otherwise, the Corporation shall at all times retain all rights and interests, including intellectual property rights, in the Corporation's Technology. Nothing contained in this Agreement, a Campaign Order, a Change Order Request or Change Order Form signed by the Parties, or any other agreement shall restrict the Corporation's use and exploitation of the Corporation's Technology in the design and development of other technologies, computer software, and products.

- 8.5 **No Reverse Engineering.** The Client shall not (a) adapt, alter, modify, improve, translate, or create derivative works of the Corporation's Technology; or (b) reverse engineer, decompile, disassemble, or otherwise attempt to reconstruct or obtain the source code to all or any portion of the Corporation's Technology.
- 8.6 **Incorporation of Third-Party Materials.** The Corporation shall identify on the applicable Campaign Order any Third-Party Materials that are to be incorporated into the Work Product. The Corporation reserves the right to amend the list of Third-Party Materials in a Campaign Order if, during the development of the Work Product, it becomes necessary to include additional Third-Party Materials that were not reasonably anticipated or expected by the Corporation prior to the execution of the Campaign Order. Notwithstanding the foregoing, the Corporation shall not be required to specifically identify any Third Party Materials in a Campaign Order if such materials (i) do not and will not impose any substantive or material licensing requirements upon the Client, and (ii) do not and will not require the Client (or any of the Client's successors or assigns) to pay any additional amounts for the use and inclusion of such materials in the Work Product.

## 9 REPRESENTATIONS; WARRANTIES

- 9.1 **By The Corporation.** The Corporation hereby warrants and represents that (i) it has the legal power and authority to enter into this Agreement and to be bound by the terms hereunder, (ii) the Services will be performed in a timely and professional manner, and will conform in all material respects to the specifications in this Agreement and in the applicable Campaign Order, as well as the standards generally observed in the industry for similar services, and (iii) to the best of its knowledge, the Corporation's Technology and the Work Product do not violate the intellectual property rights or privacy rights of any third party.
- 9.2 **By Client.** The Client hereby warrants and represents that (i) it has the legal power and authority to enter into this Agreement and to be bound by the terms hereunder, (ii) the Client's business is, and shall continue to be, operated in accordance with all laws and regulations applicable to the Client's business operations, (iii) all Client Materials do not and will not violate the intellectual property or privacy rights of any third party, (iv) the Client shall promptly, timely, and diligently respond to the Corporation's request for information or, when applicable, the Corporation's request for Acceptance of a Deliverable, (v) the Client will comply with any restrictions in third-party licenses obtained for it by the Corporation, and (v) the Client has obtained the required consents required in Section 8.2(c).
- 9.3 **DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT OR THE APPLICABLE CAMPAIGN ORDER(S), SCOUT TALENT DOES NOT MAKE ANY EXPRESS OR IMPLIED REPRESENTATIONS, WARRANTIES, OR CONDITIONS OF ANY KIND IN RESPECT OF THE SERVICES, THE WORK PRODUCT, OR THE CORPORATION'S TECHNOLOGY INCLUDING BUT NOT LIMITED TO IMPLIED OR STATUTORY WARRANTIES OR CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SCOUT TALENT DOES NOT WARRANT THE VERACITY OF ANY CANDIDATE'S QUALIFICATIONS OR THAT A CANDIDATE MEETS THE REQUIREMENTS OF THE POSITION. SCOUT TALENT DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS THAT THE CORPORATION'S TECHNOLOGY OR THAT THE SERVICES PROVIDED IN CONNECTION THEREWITH WILL BE ACCURATE, WITHOUT INTERRUPTION, OR ERROR-FREE.

## 10 INDEMNIFICATION.

- 10.1 **Obligations.** Each Party (an "Indemnifying Party") agrees to indemnify, defend, and hold harmless the other Party (an "Indemnified Party") and the Indemnified Party's Authorized Representatives with respect to any claim, demand, cause of action, debt, or liability (including reasonable attorneys' fees) brought by a third party against the Indemnified Party or the Indemnified Party's Authorized Representatives, at trial and on appeal, to the extent that such action is based upon a claim ("Claim") that (i) if true, would constitute a material breach of any of the Indemnifying Party's representations, warranties, or covenants hereunder, or (ii) arises out of the negligence or willful misconduct of the Indemnifying Party. In addition to the foregoing, the Client shall indemnify and hold the Corporation harmless against any Claims arising from the Client's non-compliance with regulations specific to its products or services, misuse or failure to obtain the proper consents set out in Section 8.2(c), or Deliverables that were subsequently changed or used



by the Client in a manner that imposes liability upon the Corporation.

- 10.2 Procedures. In order to be indemnified under this Agreement, the Indemnified Party must promptly provide the Indemnifying Party with written notice of any Claim which the Indemnified Party believes falls within the scope of this Section 10. The Indemnifying Party shall control the intake, defense, and settlement of the matter; provided, however, that the Indemnifying Party shall not settle any Claim without the Indemnified Party's prior written consent, which shall not be unreasonably withheld. The Indemnified Party may, at its own cost, select counsel of its choosing to participate in the defense of any Claim; provided, however, that the costs of the Indemnified Party's counsel shall not be reimbursed by the Indemnifying Party nor subject to indemnification under this Agreement. The Parties further agrees that the existence and details of any Claim shall be considered the Corporation's Confidential Information and may not be disclosed by the Client except in accordance with Section 12.

## 11 LIMITATION OF LIABILITY

- 11.1 LIABILITY EXCLUSIONS. REGARDING ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT, THE SERVICES, THE WORK PRODUCT, OR THE CORPORATION'S TECHNOLOGY, UNDER NO CIRCUMSTANCES (EXCEPT AS PROVIDED IN SECTION 9.1) WILL SCOUT TALENT BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES; LOSS OF REVENUE; LOSS OF ACTUAL OR ANTICIPATED PROFITS; LOSS OF CONTRACTS; LOSS OF THE USE OF MONEY; LOSS OF ANTICIPATED SAVINGS; LOSS OF BUSINESS; LOSS OF OPPORTUNITY; DAMAGE TO REPUTATION AND/OR GOODWILL; OR LOSS OF, DAMAGE TO, OR CORRUPTION OF DATA, WHETHER FORESEEABLE OR UNFORESEEABLE, BASED ON CLAIMS OF THE CLIENT OR ANY THIRD PARTY ARISING OUT OF ANY BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY CONDITIONS OR OTHER TERM, BREACH OF CONTRACT, MISREPRESENTATION, NEGLIGENCE, OTHER LIABILITY IN TORT, FAILURE OF ANY REMEDY TO ACHIEVE ITS ESSENTIAL PURPOSE, OR OTHERWISE.
- 11.2 LIABILITY CAP. NOTWITHSTANDING THE FORM (E.G., CONTRACT, TORT, OR OTHERWISE) IN WHICH ANY LEGAL OR EQUITABLE ACTION MAY BE BROUGHT, IN NO EVENT WILL SCOUT TALENT BE LIABLE FOR DAMAGES, EXPENSES, COSTS, LIABILITIES, SUITS, CLAIMS, RESTITUTION, OR LOSSES, THAT EXCEED, IN THE AGGREGATE, THE LESSER OF (A) THE AMOUNT OF FEES PAID BY THE CLIENT FOR THE SERVICES SET OUT IN THE APPLICABLE CAMPAIGN ORDER OR (B) \$10,000.

## 12 CONFIDENTIALITY

- 12.1 Defined. "Confidential Information" shall mean any non-public or highly sensitive information provided by one Party (a "Disclosing Party") to the other Party (a "Recipient") pursuant to or in furtherance of this Agreement. Confidential Information shall not include information: (i) that was known to a Recipient prior to receiving the information from the Disclosing Party, or (ii) that is disclosed to a Recipient by a third party who is under no duty of confidentiality to the owner of the Confidential Information, or (iii) that has entered the public domain through no fault, action, or omission of the Recipient, or (iv) that is required to be disclosed pursuant to any federal, state, or provincial law or regulation, or pursuant to an order of a court of competent jurisdiction; provided, however, that prior to disclosing Confidential Information pursuant to law or court order, the Recipient shall notify the Disclosing Party of its disclosure requirement in a manner sufficient to allow the Disclosing Party to seek injunctive or other equitable relief. Without limiting the foregoing all of the Corporation's Technology, unpaid Work Product, and the financial terms and existence of this Agreement or any Claim are the Confidential Information of the Corporation and the Client Materials are the Confidential Information of the Client.
- 12.2 Use. Except as provided in this Agreement or an applicable Campaign Order, neither Party shall make any disclosure of the other Party's Confidential Information, except to those Persons who have a need to know such information in connection with this Agreement or Campaign Order.
- 12.3 Return of Confidential Information. Upon request of a Disclosing Party, a Recipient shall return the Disclosing Party's Confidential Information or, if so directed by the Disclosing Party, destroy the Disclosing Party's Confidential Information and, if requested by the Disclosing Party, affirm in a certificate signed by a senior officer of the Recipient that such destruction has taken place. Notwithstanding the foregoing, the Corporation shall be permitted to keep a single copy of the Client's Confidential Information for archival purposes only or in its backups, archives, and disaster recovery systems until such Confidential Information is deleted in the ordinary course, or as otherwise permitted or required by Law.

12.4 Personal Information. The Parties agree that all Personal Information relating to a Candidate is confidential and subject to applicable Laws relating to personal information privacy, including British Columbia *Personal Information Protection Act*. Each Party shall abide by the provisions of the applicable Laws in receiving and processing such Personal Information.

### 13 PROMOTION.

13.1 Right of Promotion. The Parties agree that upon the Client's use (or the Client's Authorized Representative's use) of the Work Product, the Corporation shall be permitted to display and incorporate portions of the Work Product in, or as part of, the Corporation's professional portfolio, as that portfolio may be offered or displayed by the Corporation in any medium, media, or format desired by the Corporation ("**Right of Promotion**"). This Right of Promotion shall continue until revoked in writing by the Client; however, the Client agrees to refrain from revoking this Right of Promotion unless the Client is required to do so (i) by operation of law or (ii) by demand of the Client's customers (if applicable). This Right of Promotion also includes the right to submit the Work Product on the Corporation's behalf to various industry competitions relevant to the Corporation's business and/or the digital marketing / advertising industry in general, or in case studies or for research/educational purposes; provided, however, that the Client (or any other party designated by the Client) is referenced in any submission as the current owner of the Work Product, and to use the Client's name, trademark, and biographical information for purposes of inclusion in the Corporation's professional portfolio as described herein. Other than the Right of Promotion described herein, the Corporation shall not use the Work Product for any other purpose unless otherwise authorized to do so in writing by the Client.

### 14 TERM; TERMINATION.

14.1 Term. This Agreement shall commence on the Effective Date and shall continue until terminated as provided in this Agreement (the "**Term**").

14.2 Termination by the Corporation. The Corporation may terminate this Agreement:

- (a) effective upon 30 days upon Notice to the Client, provided that the Corporation will refund the Fees paid in advance by the Client for Services that the Corporation has not performed as of the effective date of termination;
- (b) effective immediately upon Notice to the Client, if the Client: (i) fails to pay any amount when due hereunder, (ii) breaches any of its obligations under Section 5 (Client Responsibilities), Section 8.2 (Ownership of Client Materials), 8.5 (No Reverse Engineering), or Section 12 (Confidentiality) and such failure to pay or breach continues more than fifteen (15) days after Notice of such failure or breach;
- (c) effective immediately upon Notice to the Client, if the Client: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business;
- (d) effective immediately upon Notice to the Client, if the Client is subject to any change in direct or indirect control of Client's ownership, or voting or controlling interest, whether by merger, transfer, sale, or otherwise, unless the Client has provided Notice of such pending event to the Corporation at least 30 days prior to that change in control.

14.3 Termination by Client. The Client may terminate this Agreement at any time, effective immediately upon Notice to the Corporation and upon payment of: (i) all previously-accrued but not yet paid Fees on receipt of the Corporation's invoice therefor and (ii) all Fees that would have become payable had the Agreement remained in effect until expiration of the Term.

14.4 Termination by either Party. Either Party may terminate this Agreement, effective immediately upon Notice to the other Party, if the other Party materially breaches this Agreement and such breach: (A) is incapable of cure; or (B) is capable of being cured but remains uncured 30 days after the non-breaching Party provides the breaching Party with Notice of such breach.

14.5 Outstanding Payments. Any payment obligation of the Client outstanding as of the date of expiration or termination of this Agreement shall survive such expiration or termination.

## 15 NO SOLICITATION.

- 15.1 Non-Solicitation Restrictions. During the Term and for 12 months after such expiration or termination of the Term, the Client shall not, and shall not assist any other Person to, directly or indirectly, in any manner recruit or solicit for employment or engagement as an independent contractor any Person then or within the prior 12 months employed or engaged by the Corporation and involved in any respect with the Services or the performance of this Agreement.
- 15.2 Breach of Non-Solicitation. In the event the Client violates Section 15.1 above, the Client shall, on demand by the Corporation, pay to the Corporation as liquidated damages (and not as a penalty) a sum equal to one year's remuneration that would have been payable by the Corporation (or its subcontractor) to that employee, worker, or independent contractor plus all recruitment costs incurred by the Corporation (or such subcontractor) in replacing such Person.

## 16 DISPUTE RESOLUTION

- 16.1 No Commencement of Court Proceedings. Each Party covenants that neither of them may initiate court proceedings, excluding interlocutory relief, until the Parties have attempted (and failed) to resolve the Dispute in the manner set out in this Section 16.
- 16.2 Notice of Dispute. If a Party asserts the existence of a dispute, difference, or question arising from this Agreement (a "Dispute"), such Party shall give Notice of such Dispute to the opposing Party ("Dispute Notice") detailing the specifics of the Dispute.
- 16.3 Escalation Procedure. The Parties shall diligently engage in attempts to amicably resolve any Dispute through a graduated negotiation process as outlined below:
- (a) Upon receipt of a Dispute Notice, a designated representative of each Party shall make commercially reasonable efforts to settle the Dispute.
  - (b) Should the Dispute remain unresolved five (5) Business Days subsequent to the issuance of the Dispute Notice, the matter shall be elevated to the chief executive officer or equivalent of each respective Party, who shall then endeavor to reach a resolution.
- 16.4 Dispute Resolution. Should the Dispute persist beyond a period of 10 Business Days following issuance of the Dispute Notice, the Parties may commence court proceedings or mutually agree to alternative means of resolving the Dispute such as mediation or arbitration.
- 16.5 Continuing Obligations. Notwithstanding the existence of a Dispute, the obligations of the Parties under this Agreement shall remain in full force and effect, including either Party's right of termination under Section 14.
- 16.6 Costs. Each Party shall bear its own costs related to fulfilling the obligations in this section.

## 17 MISCELLANEOUS.

- 17.1 Force Majeure. Except for Client's obligations to make payments under this Agreement (which are always applicable and are not subject to any deferral, delay (including due to force majeure), or set-off), in no event shall either Party be liable to the other Party, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond such Party's reasonable control, including but not limited to acts of God, flood, fire, earthquake, epidemic, pandemic, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labour stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including the imposition of an embargo.
- 17.2 Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "Notice") must be in writing and addressed to the Parties at the addresses set out on the first page of this Agreement (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this section). Notices sent in accordance with this Section will be deemed effectively given: (a) when received, if delivered by hand at the address of the receiving Party set out on the first page of this Agreement (or such other address that may be designated by the receiving Party in accordance with the Notice provisions hereunder); (b) when received, if sent by a nationally recognized overnight courier with a signature requirement at the point of delivery; (c) when sent, if by fax or email (to the last known fax number or e-mail address of the receiving Party, as evidenced by prior received transmissions, or as designated by the receiving Party from time to time in accordance with the Notice provisions hereunder) if sent during the addressee's normal business hours, and on the next Business Day if sent after the

addressee's normal business hours; and (d) on the 7<sup>th</sup> Business Day after the date mailed by certified or registered mail by the Canada Post Corporation, return receipt requested, postage prepaid.

- 17.3 Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 12 (Confidentiality) or Section 16 (Dispute Resolution) would cause the other Party irreparable harm for which monetary Damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance, and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual Damages or that monetary Damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity, or otherwise.
- 17.4 No Authority. It is expressly understood and agreed that no employee, agent, or other representative of one Party has any authority to bind the other Party with respect to any statement, representation, warranty, covenant, or other expression unless such statement, representation, warranty, covenant, or other expression is specifically set forth in this Agreement or in an applicable Campaign Order.
- 17.5 Amendment. No amendment, waiver, or modification of this Agreement shall be valid unless it is in writing and states, with specificity, the particular amendment or modification to be made, and is duly executed by the Parties.
- 17.6 No Waiver. Nothing contained in this Agreement shall cause the failure of either Party to insist upon strict compliance with any covenant, obligation, condition, or agreement contained in this Agreement or any Campaign Order to operate as a waiver or continuing waiver of any such covenant, obligation, condition, or agreement.
- 17.7 Accumulation of Remedies. All remedies available to either Party for breach of this Agreement are cumulative and may be exercised concurrently or separately, and the exercise of any one remedy shall not be deemed an election of such remedy to the exclusion of all other remedies.
- 17.8 Limitation on Actions. No action, regardless of form, relating to this Agreement may be brought by either Party more than one year after the cause of action has accrued, except that an action for non-payment may be brought by a Party not later than one year following the date of the last payment due to such Party hereunder.
- 17.9 Survival. All terms and provisions in this Agreement which, by their nature, are intended to survive the termination of this Agreement shall survive such termination, including but not limited to those provisions relating to warranties, limitations of liability, ownership, confidentiality, indemnification, and non-solicitation.
- 17.10 Governing Law; Jurisdiction and Venue. This Agreement and the interpretation of its terms shall be exclusively governed by and construed in accordance with the laws of British Columbia, Canada, without regard to its conflicts of laws rules. The Parties irrevocably submit and consent to the jurisdiction and venue of the Supreme Court of British Columbia; provided, however, that to prevent an actual or reasonably anticipated breach of this Agreement, an aggrieved Party may bring an action for temporary relief in any court otherwise having jurisdiction over the matter. The Parties waive all rights to trial by jury in any action or proceeding instituted in connection with this Agreement.
- 17.11 Entire Agreement. This Agreement (including all Campaign Orders incorporated into this Agreement and the Software-as-a-Service Agreement) contains the sole and entire agreement between the Parties with respect to the subject matter of this Agreement and supersedes any and all other prior or contemporaneous written or oral agreements or understandings between them with respect to the subject matter contained herein. The Client affirms that no promises, guarantees, or warranties related to the Services or the Work Product have been made, offered, or suggested to the Client unless such promises, guarantees, or warranties are expressly stated in this Agreement or an applicable Campaign Order.
- 17.12 Counterparts. The Parties may execute and deliver this Agreement and any Campaign Order in any number of counterparts, each of which shall be deemed an original and all of which, when taken together, shall be deemed to be a single document.