



**TALENTALERTPRO™
LICENCE AGREEMENT**

between

INSIGHT OUT SOLUTIONS LTD t/a TalentAlertPro™

and

CUSTOMER

THIS AGREEMENT of equal date as per the signed Contract between

PARTIES

- (1) Insight Out Solutions Ltd, also trading as TalentAlertPro™ incorporated and registered in England and Wales with company number 9276074 whose registered office is at The Waterscape, 42 Leeds and Bradford Road, Leeds, LS5 3EG (**Supplier**)
- (2) Your Company as per your signed Contract with the Supplier which is incorporated and registered in the United Kingdom (**Customer**)

BACKGROUND

- (A) The Supplier has developed certain software applications and platforms which it makes available to subscribers via the internet for the purpose of recruitment.
- (B) The Customer wishes to use the Supplier's service in its business operations.
- (C) 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.

AGREED TERMS

1. INTERPRETATION

- 1.1 The definitions and rules of interpretation in this clause apply in this agreement.

Authorised Users: those employees, agents and independent contractors of the Customer who are authorised by the Customer to use the Services and the Documentation.

Business Day: any day which is not a Saturday, Sunday or public holiday in the UK.

Change of Control: the direct or indirect acquisition of either the majority of the voting stock, or of all, or substantially all, of the assets, of a party by another entity in a single transaction or a series of transactions.

Confidential Information: information that is proprietary or confidential and is either clearly labelled as such or identified as Confidential Information in clause 11.5.

Contract: the electronically signed agreement between the Supplier and the Customer by authorised representatives of each respective company documenting the services to be provided and the financial terms between the parties.

Customer Branding: any of the Customer's branding that it uses in its business including but not limited to trademarks and logos.

Customer Data: the data inputted by the Customer, Authorised Users, or the Supplier on the Customer's behalf for the purpose of using the Services or facilitating the Customer's use of the Services.

Documentation: the document made available to the Customer by the Supplier online via its platform or such other web address notified by the Supplier to the

Customer from time to time which sets out a description of the Services and the user instructions for the Services.

Effective Date: Contract Start Date as per the signed Contract

Group: the party, any Holding Company of the party and any Subsidiary of the party or of any such Holding Company;

Holding Company: has the meaning set out in section 1159 of the Companies Act 2006.

Initial Subscription Term: 12 months or as otherwise documented in the Contract.

Intellectual Property Rights: patents, utility models, rights to inventions, copyright and neighbouring and related rights, trade marks and service marks, business names and domain names, rights in get-up and trade dress, goodwill and the right to sue for passing off or unfair competition, rights in designs, rights in computer software, database rights, rights to use, and protect the confidentiality of, confidential information (including know-how and trade secrets) and all other intellectual property rights, in each case whether registered or unregistered and including all applications and rights to apply for and be granted, renewals or extensions of, and rights to claim priority from, such rights and all similar or equivalent rights or forms of protection which subsist or will subsist now or in the future in any part of the world.

Monthly or Annual Charges: Based on the costs documented in the Contract.

Normal Business Hours: 9.00 am to 5.00 pm local UK time, each Business Day.

Renewal Period: the period described in clause 14.1.

Service Credits: the service credits available to the Customer, as set out in Schedule 1, if the Supplier fails to achieve the Uptime Levels.

Services: the subscription services listed in Contract and provided by the Supplier to the Customer under this agreement via <https://talentalertpro.com> or any other website notified to the Customer by the Supplier from time to time, as more particularly described in the Documentation.

Setup Costs: if applicable, as set out in the Contract.

Software: the online software applications provided by the Supplier as part of the Services.

Subscription Fees: the Setup Costs and Monthly or Annual Charges payable by the Customer to the Supplier for the User Subscription(s), as set out in the Contract.

Subscription Term: has the meaning given in clause 14.1 (being the Initial Subscription Term together with any subsequent Renewal Periods).

Subsidiary: has the meaning set out in section 1159 of the Companies Act 2006.

Unauthorised Units: any Units provided to the Customer by anyone other than the Supplier.

Units: any of the McQuaig products or Video Assessments provided to the Customer, as set out in the Contract and/or the Schedule 1, for the Customer to use in its User Subscription(s) or purchase additionally from the Supplier at the rates shown in Schedule 1.

Uptime Levels: the uptime level in respect of the Services, as set out in Schedule 2.

User Subscription(s): the subscription as set out in Contract purchased by the Customer pursuant to clause 9.1 which entitle Authorised Users to access and use the Services and the Documentation in accordance with this agreement.

Virus: any thing or device (including any software, code, file or programme) which may: prevent, impair or otherwise adversely affect the operation of any computer software, hardware or network, any telecommunications service, equipment or network or any other service or device; prevent, impair or otherwise adversely affect access to or the operation of any programme or data, including the reliability of any programme or data (whether by re-arranging, altering or erasing the programme or data in whole or part or otherwise); or adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

- 1.2 Clause, schedule and paragraph headings shall not affect the interpretation of this agreement.
- 1.3 A person includes an individual, corporate or unincorporated body (whether or not having separate legal personality) and that person's legal and personal representatives, successors or permitted assigns.
- 1.4 A reference to a company shall include any company, corporation or other body corporate, wherever and however incorporated or established.
- 1.5 Words in the singular shall include the plural and vice versa.
- 1.6 A reference to one gender shall include a reference to the other genders.
- 1.7 A reference to a statute or statutory provision is a reference to it as it is in force for the time being, taking account of any amendment, extension, or re-enactment and includes any subordinate legislation for the time being in force made under it.
- 1.8 A reference to writing or written includes faxes but not e-mail.
- 1.9 References to clauses and schedules are to the clauses and schedules of this agreement; references to paragraphs are to paragraphs of the relevant schedule to this agreement.

2. USER SUBSCRIPTION(S)

- 2.1 Subject to the Customer purchasing the User Subscription(s) in accordance with clause 3.3 and clause 9.1, the restrictions set out in this clause 2 and the other terms and conditions of this agreement, the Supplier hereby grants to the Customer a non-exclusive, non-transferable right to permit the Authorised Users to use the Services and the Documentation during the Subscription Term solely for the Customer's internal business operations.

- 2.2 In relation to the Authorised Users, the Customer undertakes that:
- (a) it shall not use any Unauthorised Units through its User Subscription(s) or use of the Services;
 - (b) it shall inform the Supplier within 5 Business Days of requiring further Units;
 - (c) it shall permit the Supplier to audit the Services in order to establish the proper use of the User Subscription by the Customer. Such audit may be conducted no more than once per month, at the Supplier's expense, and this right shall be exercised with reasonable prior notice, in such a manner as not to substantially interfere with the Customer's normal conduct of business; and
 - (d) if any of the audits referred to in clause 2.2(c) reveal that the Customer has used any Unauthorised Units, then without prejudice to the Supplier's other rights, the Customer shall pay to the Supplier an amount equal to such underpayment as calculated in accordance with the prices set out in Contract within 10 Business Days of the date of the relevant audit.
- 2.3 The Customer shall not access, store, distribute or transmit any Viruses, or any material during the course of its use of the Services that:
- (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive;
 - (b) facilitates illegal activity;
 - (c) depicts sexually explicit images;
 - (d) promotes unlawful violence;
 - (e) is discriminatory based on race, gender, colour, religious belief, sexual orientation, disability; or
 - (f) in a manner that is otherwise illegal or causes damage or injury to any person or property,
- and the Supplier reserves the right, without liability or prejudice to its other rights to the Customer, to disable the Customer's access to any material that breaches the provisions of this clause.
- 2.4 The Customer shall not, except to the extent expressly permitted under this agreement:
- (a) except as may be allowed by any applicable law which is incapable of exclusion by agreement between the parties:
 - (i) attempt to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Software and/or Documentation (as applicable) in any form or media or by any means; or
 - (ii) attempt to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Software; or

- (b) access all or any part of the Services and Documentation in order to build a product or service which competes with the Services and/or the Documentation; or
 - (c) use the Services and/or Documentation to provide services to third parties, save for in the normal course of the Customer's business; or
 - (d) subject to clause 19.1, license, sell, rent, lease, transfer, assign, distribute, disclose, or otherwise commercially exploit or otherwise make the Services and/or Documentation available to any third party except the Authorised Users; or
 - (e) attempt to obtain, or assist third parties in obtaining, access to the Services and/or Documentation, other than as provided under this clause 2.
- 2.5 The Customer shall use all reasonable endeavours to prevent any unauthorised access to, or use of, the Services and/or the Documentation and, in the event of any such unauthorised access or use, promptly notify the Supplier.
- 2.6 The rights provided under this clause 2 are granted to the Customer only, and shall not be considered granted to any members of the Customer's Group.

3. UPGRADING USER SUBSCRIPTION(S)

- 3.1 Subject to the remainder of this clause 3, the Customer may, from time to time during any Subscription Term, upgrade its use of the Services to any of the User Subscriptions set out in the Contract and the Supplier shall grant access to the Services and the Documentation to such upgraded User Subscription(s) in accordance with the provisions of this agreement.
- 3.2 If the Customer wishes to upgrade its User Subscription(s), the Customer shall notify the Supplier in writing. The Supplier shall evaluate such request for upgrade and respond to the Customer with approval or rejection of the request (such approval not to be unreasonably withheld).
- 3.3 If the Supplier approves the Customer's request to upgrade its User Subscription the Customer shall, within 30 days of the date of the Supplier's invoice, pay to the Supplier the relevant fees for such upgrade as set out in the Contract and, if such upgrade is purchased by the Customer part way through the Initial Subscription Term or any Renewal Period (as applicable), such fees shall be pro-rated for the remainder of the Initial Subscription Term or then current Renewal Period (as applicable).
- 3.4 Any upgrade in accordance with this clause 3 must be for a minimum of a new Initial Subscription Term, effective immediately on the Supplier's acceptance of the Customer's request. Any Units remaining under the Customer's previous User Subscription(s) will be carried over by the Supplier to the Customer's upgraded User Subscription(s).

4. SERVICES

- 4.1 The Supplier shall, during the Subscription Term, provide the Services and make available the Documentation to the Customer on and subject to the terms of this agreement.
- 4.2 The Supplier shall be allowed to add the Units to the Customer's particular User Subscription(s) as reasonable required for use by the Customer.
- 4.3 The Supplier shall use commercially reasonable endeavours to make the Services available 24 hours a day, seven days a week, except for:
 - (a) any planned maintenance; and
 - (b) unscheduled maintenance performed outside Normal Business Hours, provided that the Supplier has used reasonable endeavours to give the Customer at least 6 Normal Business Hours' notice in advance.
- 4.4 The Supplier will, as part of the Services and at no additional cost to the Customer, provide the Customer with technical support, for example in relation to major alteration or system blips and basic support, for example general help and guidance on use of the Services. The technical support shall be made available by the Supplier within 72 hours of the Customer's request for such support and the basic support shall be made available by the Supplier within 2 hours of the Customer's request for such support during Normal Business Hours and within 2 hours of the start of the next Business Day if requested by the Customer outside Normal Business Hours. The Supplier may amend the technical and/or basic support policies in its sole and absolute discretion from time to time.

5. CUSTOMER DATA

- 5.1 The Customer shall own all right, title and interest in and to all of the Customer Data and shall have sole responsibility for the legality, reliability, integrity, accuracy and quality of the Customer Data.
- 5.2 The Supplier shall not have access to or backup the Customer Data. The Customer Data shall be stored by a third party data centre provider on a PCI-compliant dedicated server. The Supplier shall not be responsible for any loss, destruction, alteration or disclosure of Customer Data caused by any third party.
- 5.3 The parties agree to comply with their respective obligations set out in Schedule 3 (Data Protection).

6. THIRD PARTY PROVIDERS

The Customer acknowledges that the Services may enable or assist it to access the website content of, correspond with, and purchase products and services from, third

parties via third-party websites and that it does so solely at its own risk. Such third party providers shall use reasonable efforts to ensure there are no problems with such third party goods and/or services and to make their third-party website available; however, the Customer acknowledges that such third-party websites may be unavailable from time to time for the purposes of maintenance and are supplied to Customer on an “as is” basis. Supplier makes no representation or commitment and shall have no liability or obligation whatsoever in relation to the content or use of, or correspondence with, any such third-party website, third-party provision of services, or any transactions completed, and any contract entered into by the Customer, with any such third party.

7. SUPPLIER'S OBLIGATIONS

- 7.1 The Supplier warrants that the Services will be performed substantially in accordance with the Documentation and with reasonable skill and care.
- 7.2 The warranty at clause 7.1 shall not apply to the extent of any non-conformance which is caused by use of the Services contrary to the Supplier's instructions, or modification or alteration of the Services by any party other than the Supplier or the Supplier's duly authorised contractors or agents. If the Services do not conform with the foregoing undertaking, Supplier will, at its expense, use reasonable commercial endeavours to correct any such non-conformance promptly, or provide the Customer with an alternative means of accomplishing the desired performance.
- 7.3 Subject to the additional terms set out in Schedule 2, in addition, if the availability of the Services falls below the Uptime Levels, the parties agree that the Supplier shall apply the Service Credits to the Customer's account by deducting the relevant amount from the Subscription Fees due to the Supplier for the following month. Such Service Credits constitute the Customer's sole and exclusive remedy for any unavailability of the Services.
- 7.4 Notwithstanding the foregoing, the Supplier:
 - (a) does not warrant that the Customer's use of the Services will be uninterrupted or error-free; or that the Services, Documentation and/or the information obtained by the Customer through the Services or their use by the Customer will meet the Customer's requirements; and
 - (b) is not responsible for any delays, delivery failures, or any other loss or damage resulting from the transfer of data over communications networks and facilities, including the internet, and the Customer acknowledges that the Services and Documentation may be subject to limitations, delays and other problems inherent in the use of such communications facilities.
- 7.5 This agreement shall not prevent the Supplier from entering into similar agreements with third parties, or from independently developing, using, selling or licensing documentation, products and/or services which are similar to those provided under this agreement.

- 7.6 The Supplier warrants that it has and will maintain all necessary licences, consents, and permissions necessary for the performance of its obligations under this agreement.

8. CUSTOMER'S OBLIGATIONS

The Customer shall:

- (a) provide the Supplier with:
 - (i) all necessary co-operation in relation to this agreement; and
 - (ii) all necessary access to such information as may be required by the Supplier; in order to provide the Services, including but not limited to Customer Data, security access information and configuration services;
- (b) comply with all applicable laws and regulations with respect to its activities under this agreement;
- (c) carry out all other Customer responsibilities set out in this agreement in a timely and efficient manner. In the event of any delays in the Customer's provision of such assistance as agreed by the parties, the Supplier may adjust any agreed timetable or delivery schedule as reasonably necessary;
- (d) ensure that the Authorised Users use the Services and the Documentation in accordance with the terms and conditions of this agreement and shall be responsible for any Authorised User's breach of this agreement;
- (e) obtain and shall maintain all necessary licences, consents, and permissions necessary for the Supplier, its contractors and agents to perform their obligations under this agreement, including without limitation the Services;
- (f) ensure that its network and systems comply with the relevant specifications provided by the Supplier from time to time; and
- (g) be solely responsible for procuring and maintaining its network connections and telecommunications links from its systems to the Supplier's data centres, and all problems, conditions, delays, delivery failures and all other loss or damage arising from or relating to the Customer's network connections or telecommunications links or caused by the internet.

9. SUBSCRIPTION FEES AND PAYMENT

- 9.1 The Customer shall pay the Subscription Fees to the Supplier for the User Subscriptions in accordance with this clause 9 and the Contract.
- 9.2 The Customer shall on the Effective Date provide to the Supplier valid, up-to-date and complete debit or credit card details, direct debit details or approved purchase order information acceptable to the Supplier and any other relevant valid, up-to-date and complete contact and billing details and, if the Customer provides:

- (a) Its direct debit details to the Supplier, the Customer hereby authorises the Supplier to charge via direct debit and will provide 7 days notice of its intention to charge:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- (b) Its debit or credit card details to the Supplier, the Customer hereby authorises the Supplier to bill such debit or credit card:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, on each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period;
- (c) its approved purchase order information to the Supplier, the Supplier shall invoice the Customer:
 - (i) on the Effective Date for the Subscription Fees payable in respect of the Initial Subscription Term; and
 - (ii) subject to clause 14.1, at least 30 days prior to each anniversary of the Effective Date for the Subscription Fees payable in respect of the next Renewal Period,

and the Customer shall pay each invoice within 7 days after the date of such invoice.

9.3 If the Supplier has not received payment within 7 days after the due date, and without prejudice to any other rights and remedies of the Supplier:

- (a) the Supplier may, without liability to the Customer, disable the Customer's password, account and access to all or part of the Services and the Supplier shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and
- (b) interest shall accrue on such due amounts at an annual rate equal to 5% over the then current base lending rate of the Supplier's bankers in the UK at the date the relevant invoice was issued, commencing on the due date and continuing until fully paid, whether before or after judgment.

9.4 All amounts and fees stated or referred to in this agreement:

- (a) shall be payable in pounds sterling;
- (b) are, subject to clause 13.4(b), non-cancellable and non-refundable;
- (c) are exclusive of value added tax, which shall be added to the Supplier's invoice(s) at the appropriate rate.

9.5 If, at any time whilst using the Services, the Customer exceeds the amount of disk storage space and/or bandwidth specified in the Fair Use Policy included in Schedule

2, the Customer must purchase additional User Subscription(s) as necessary for its uses from the Supplier.

- 9.6 The Supplier shall be entitled to increase the Subscription Fees by the Retail Price Index + 2.5%, the fees payable in respect of the additional User Subscriptions purchased pursuant to clause 3.3 and/or the excess storage fees payable pursuant to clause 9.5 at the start of each Renewal Period upon 90 days' prior notice to the Customer and Contract shall be deemed to have been amended accordingly.

10. PROPRIETARY RIGHTS

- 10.1 Subject to clause 10.3, the Customer acknowledges and agrees that the Supplier and/or its licensors own all Intellectual Property Rights in the Services, Software and the Documentation. Except as expressly stated herein, this agreement does not grant the Customer any rights to, or in any such Intellectual Property Rights.
- 10.2 The Supplier confirms that it has all the rights in relation to the Services, Software and the Documentation that are necessary to grant all the rights it purports to grant under, and in accordance with, the terms of this agreement.
- 10.3 The Supplier acknowledges and agrees that the Customer (or its licensors) owns all Intellectual Property Rights arising in the Customer Branding and the Customer hereby grants to the Supplier a royalty-free, worldwide, non-exclusive licence to use such Customer Branding but only to the extent necessary to perform its obligations under this agreement.
- 10.4 The Customer warrants that it has all the rights and consents that are necessary to grant to the Supplier the licence provided in clause 10.3.

11. CONFIDENTIALITY

- 11.1 Each party may be given access to Confidential Information from the other party in order to perform its obligations under this agreement. A party's Confidential Information shall not be deemed to include information that:
- (a) is or becomes publicly known other than through any act or omission of the receiving party;
 - (b) was in the other party's lawful possession before the disclosure;
 - (c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure;
 - (d) is independently developed by the receiving party, which independent development can be shown by written evidence; or
 - (e) is required to be disclosed by law, by any court of competent jurisdiction or by any regulatory or administrative body.

- 11.2 Each party shall hold the other's Confidential Information in confidence and, unless required by law, not make the other's Confidential Information available to any third party, or use the other's Confidential Information for any purpose other than the implementation of this agreement.
- 11.3 Each party shall take all reasonable steps to ensure that the other's Confidential Information to which it has access is not disclosed or distributed by its employees or agents in violation of the terms of this agreement.
- 11.4 The Supplier acknowledges that the Customer Data is the Confidential Information of the Customer.
- 11.5 Notwithstanding the remainder of this clause 11, the Customer grants the Supplier a right to publicise the parties' relationship in its general marketing and agrees to publicise any use of the Services by it as "*Customer* powered by TalentALertPro™".
- 11.6 This clause 11 shall survive termination of this agreement, however arising.

12. INDEMNITY

- 12.1 The Customer shall defend, indemnify the Supplier against claims, actions, proceedings, losses, damages, expenses and costs (including without limitation court costs and reasonable legal fees) arising out of or in connection with:
 - (a) the Customer's use of the Services, Software and/or Documentation (save for any Intellectual Property claim arising pursuant to clause 12.2); and/or
 - (b) the Supplier's use of the Customer Branding,provided that:
 - (i) the Customer is given prompt notice of any such claim;
 - (ii) the Supplier provides reasonable co-operation with the Customer in the defence and settlement of such claim, at the Customer's expense; and
 - (iii) the Customer is given sole authority to defend or settle the claim.
- 12.2 The Supplier shall defend the Customer, its officers, directors and employees against any claim that the Services, Software or Documentation infringes any third party Intellectual Property Rights, and shall indemnify and hold harmless the Customer for any amounts awarded against the Customer in judgment or settlement of such claims, provided that:
 - (a) the Supplier is given prompt notice of any such claim;
 - (b) the Customer provides reasonable co-operation to the Supplier in the defence and settlement of such claim, at the Supplier's expense; and
 - (c) the Supplier is given sole authority to defend or settle the claim.

- 12.3 In the defence or settlement of any claim, the Supplier may procure the right for the Customer to continue using the Services, replace or modify the Services so that they become non-infringing or, if such remedies are not reasonably available, terminate this agreement on 2 Business Days' notice to the Customer.
- 12.4 In no event shall the Supplier, its employees, agents and sub-contractors be liable to the Customer to the extent that the alleged infringement is based on:
- (a) a modification of the Services or Documentation by anyone other than the Supplier; or
 - (b) the Customer's use of the Services or Documentation in a manner contrary to the instructions given to the Customer by the Supplier; or
 - (c) the Customer's use of the Services or Documentation after notice of the alleged or actual infringement from the Supplier or any appropriate authority.
- 12.5 The foregoing and clause 13.4(b) states the Customer's sole and exclusive rights and remedies, and the Supplier's (including the Supplier's employees', agents' and sub-contractors') entire obligations and liability, for infringement of any patent, copyright, trade mark, database right or right of confidentiality.

13. LIMITATION OF LIABILITY

- 13.1 This clause 13 sets out the entire financial liability of the Supplier (including any liability for the acts or omissions of its employees, agents and sub-contractors) to the Customer:
- (a) arising under or in connection with this agreement;
 - (b) in respect of any use made by the Customer of the Services and Documentation or any part of them; and
 - (c) in respect of any representation, statement or tortious act or omission (including negligence) arising under or in connection with this agreement.
- 13.2 Except as expressly and specifically provided in this agreement:
- (a) the Customer assumes sole responsibility for results obtained from the use of the Services and the Documentation by the Customer, and for conclusions drawn from such use. The Supplier shall have no liability for any damage caused by errors or omissions in any information, instructions or scripts provided to the Supplier by the Customer in connection with the Services, or any actions taken by the Supplier at the Customer's direction;
 - (b) all warranties, representations, conditions and all other terms of any kind whatsoever implied by statute or common law are, to the fullest extent permitted by applicable law, excluded from this agreement; and
 - (c) the Services and the Documentation are provided to the Customer on an "as is" basis.

13.3 Nothing in this agreement excludes the liability of the Supplier:

- (a) for death or personal injury caused by the Supplier's negligence; or
- (b) for fraud or fraudulent misrepresentation.

13.4 Subject to clause 13.2 and clause 13.3:

- (a) neither party shall be liable to the other whether in tort (including for negligence or breach of statutory duty), contract, misrepresentation, restitution or otherwise for any loss of profits, loss of business, depletion of goodwill and/or similar losses or loss or corruption of data or information, or pure economic loss, or for any special, indirect or consequential loss, costs, damages, charges or expenses however arising under this agreement;
- (b) subject to clause 13.4(c) the Supplier's total aggregate liability in contract (including in respect of the indemnity at clause 12.2), tort (including negligence or breach of statutory duty), misrepresentation, restitution or otherwise, arising in connection with the performance or contemplated performance of this agreement shall be limited to the total Subscription Fees paid for the User Subscriptions during the 12 months immediately preceding the date on which the claim arose;
- (c) the Supplier's total aggregate liability in respect of the indemnity at clause 12.2 shall be limited to £500,000 (five hundred thousand pounds);
- (d) subject to clauses 13.4 (e) and 13.4 (f) the Customer's total aggregate liability shall be limited to the total amount of Subscription Fees paid in the twelve months preceding the date of a valid and successful claim;
- (e) the Customer's total aggregate liability in respect of their liability under clause 12.1 shall be limited to £500,000 (five hundred thousand pounds); and
- (f) the Customer's total aggregate liability in respect of their liability under Schedule 3 paragraphs 2.7 and 2.8 shall be limited to £500,000 (five hundred thousand pounds).

14. TERM AND TERMINATION

14.1 This agreement shall, unless otherwise terminated as provided in this clause 14, commence on the Effective Date and shall continue for the Initial Subscription Term and, thereafter, this agreement shall be automatically renewed for successive periods equal to the term of the initial term as documented in the Contract (each a **Renewal Period**), unless:

- (a) either party notifies the other party of termination, in writing, at least 90 days before the end of the Initial Subscription Term or any Renewal Period, in which case this agreement shall terminate upon the expiry of the applicable Initial Subscription Term or Renewal Period; or
- (b) otherwise terminated in accordance with the provisions of this agreement;

and the Initial Subscription Term together with any subsequent Renewal Periods shall constitute the **Subscription Term**.

- 14.2 The Supplier may terminate this agreement without cause with at least 60 days written notice to the Customer at any time. Where the Supplier terminates this agreement in accordance with this clause 14.2 it must reimburse the Customer for all Fees which can be solely attributable to future provision of the Services to be provided by the Supplier following the date of termination and which the Customer has already paid to the Supplier only.
- 14.3 Without prejudice to any other rights or remedies to which the parties may be entitled, either party may terminate this agreement without liability to the other if:
- (a) the other party commits a material breach of any of the terms of this agreement and (if such a breach is remediable) fails to remedy that breach within 30 days of that party being notified in writing of the breach; or
 - (b) an order is made or a resolution is passed for the winding up of the other party, or circumstances arise which entitle a court of competent jurisdiction to make a winding-up order in relation to the other party; or
 - (c) an order is made for the appointment of an administrator to manage the affairs, business and property of the other party, or documents are filed with a court of competent jurisdiction for the appointment of an administrator of the other party, or notice of intention to appoint an administrator is given by the other party or its directors or by a qualifying floating charge holder (as defined in paragraph 14 of Schedule B1 to the Insolvency Act 1986); or
 - (d) a receiver is appointed of any of the other party's assets or undertaking, or if circumstances arise which entitle a court of competent jurisdiction or a creditor to appoint a receiver or manager of the other party, or if any other person takes possession of or sells the other party's assets; or
 - (e) the other party makes any arrangement or composition with its creditors, or makes an application to a court of competent jurisdiction for the protection of its creditors in any way; or
 - (f) the other party ceases, or threatens to cease, to trade; or
 - (g) there is a change of control of the other party within the meaning of section 1124 of the Corporation Tax Act 2010; or
 - (h) the other party takes or suffers any similar or analogous action in any jurisdiction in consequence of debt.
- 14.4 On termination of this agreement for any reason:
- (a) all licences granted under this agreement shall immediately terminate;
 - (b) each party shall return and make no further use of any property, documentation and other items (and all copies of them) belonging to the other party; and
 - (c) the accrued rights of the parties as at termination, or the continuation after termination of any provision expressly stated to survive or implicitly surviving termination, shall not be affected or prejudiced.

15. FORCE MAJEURE

The Supplier shall have no liability to the Customer under this agreement if it is prevented from or delayed in performing its obligations under this agreement, or from carrying on its business, by acts, events, omissions or accidents beyond its reasonable control, including, without limitation, strikes, lock-outs or other industrial disputes (whether involving the workforce of the Supplier or any other party), failure of a utility service or transport or telecommunications network, act of God, war, riot, civil commotion, malicious damage, compliance with any law or governmental order, rule, regulation or direction, accident, breakdown of plant or machinery, fire, flood, storm or default of suppliers or sub-contractors, provided that the Customer is notified of such an event and its expected duration.

16. WAIVER

- 16.1 A waiver of any right under this agreement is only effective if it is in writing and it applies only to the party to whom the waiver is addressed and to the circumstances for which it is given.
- 16.2 Unless specifically provided otherwise, rights arising under this agreement are cumulative and do not exclude rights provided by law.

17. SEVERANCE

- 17.1 If any provision (or part of a provision) of this agreement is found by any court or administrative body of competent jurisdiction to be invalid, unenforceable or illegal, the other provisions shall remain in force.
- 17.2 If any invalid, unenforceable or illegal provision would be valid, enforceable or legal if some part of it were deleted, the provision shall apply with whatever modification is necessary to give effect to the commercial intention of the parties.

18. ENTIRE AGREEMENT

- 18.1 This agreement, and any documents referred to in it, constitute the whole agreement between the parties and supersede any previous arrangement, understanding or agreement between them relating to the subject matter they cover.
- 18.2 Each of the parties acknowledges and agrees that in entering into this agreement it does not rely on any undertaking, promise, assurance, statement, representation, warranty or understanding (whether in writing or not) of any person (whether party to this agreement or not) relating to the subject matter of this agreement, other than as expressly set out in this agreement.

19. ASSIGNMENT

- 19.1 The Customer shall not, without the prior written consent of the Supplier, assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.
- 19.2 The Supplier may at any time assign, transfer, charge, sub-contract or deal in any other manner with all or any of its rights or obligations under this agreement.

20. NO PARTNERSHIP OR AGENCY

Nothing in this agreement is intended to or shall operate to create a partnership between the parties, or authorise either party to act as agent for the other, and neither party shall have the authority to act in the name or on behalf of or otherwise to bind the other in any way (including, but not limited to, the making of any representation or warranty, the assumption of any obligation or liability and the exercise of any right or power).

21. THIRD PARTY RIGHTS

This agreement does not confer any rights on any person or party (other than the parties to this agreement and, where applicable, their successors and permitted assigns) pursuant to the Contracts (Rights of Third Parties) Act 1999.

22. NOTICES

- 22.1 Any notice required to be given under this agreement shall be in writing and shall be delivered by hand or sent by pre-paid first-class post or recorded delivery post to the other party at its address set out in this agreement, or such other address as may have been notified by that party for such purposes, or sent by fax to the other party's fax number as set out in this agreement.
- 22.2 A notice delivered by hand shall be deemed to have been received when delivered (or if delivery is not in business hours, at 9 am on the first business day following delivery). A correctly addressed notice sent by pre-paid first-class post or recorded delivery post shall be deemed to have been received at the time at which it would have been delivered in the normal course of post. A notice sent by fax shall be deemed to have been received at the time of transmission (as shown by the timed printout obtained by the sender).

23. GOVERNING LAW AND JURISDICTION

- 23.1 This agreement and any disputes or claims arising out of or in connection with it or its subject matter or formation (including non-contractual disputes or claims) are governed by, and construed in accordance with, the law of England.

- 23.2 The parties irrevocably agree that the courts of England have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this agreement or its subject matter or formation (including non-contractual disputes or claims).

This agreement has been entered into on the date of the signed Contract between the Supplier and the Customer.

Schedule 1 – Ancillary Costs for Additional Purchases

TalentAlertPro™ PRICING SCHEDULE

Service Module	# Included (as per Contract) Solopreneur	# Included (as per Contract) PRO
TalentAlertPro™ White Label Tech Platform (integrated into Customer website)	✓	✓
TalentAlertPro™ Campaigns ²	✓	✓
Candidate Freestyle Video Introductions ²	✓	✓
Candidate Asynchronous Video Assessments ²	✓	✓
Ancillary Costs for Additional Purchases	Cost	Cost
Additional User Licence	\$1,250pa or \$125pcm	\$600pa or \$60pcm
McQuaig Starter Pack ³	\$750	\$750
McQuaig Level 1 Training	\$350	\$350
Additional McQuaig Word Surveys ⁴	\$75	\$75
Asynchronous Video Assessments ⁴	\$25	\$25

The Small Print

1. Training is delivered remotely for the number of Users as detailed in the Contract, if delivered at the premises of the client, the client will incur a trainer day rate and reasonable travel/accommodation costs
2. Subject to the TalentAlertPro™ Fair Use Policy as follows: 20gb bandwidth per month and 50gb server storage per User Subscription
3. McQuaig Starter Pack includes Unlimited Job Surveys and 10 McQuaig Word Surveys.
4. Cost shown is the unit cost and there is a minimum purchase of 5 units. Further volume discounts available

Schedule 2 – Uptime Levels/Service Credits/Fair Usage

The Uptime Levels in respect of the Services and Service Credits available to the Customer are set out in the table below.

UPTIME LEVELS	SERVICE CREDIT
99.9% to 99.6%	0.5% of Subscription Fee for the relevant month
99.5% to 99.1%	1% of Subscription Fee for the relevant month
Less than 99%	2% of Subscription Fee for the relevant month

The Uptime Levels shall be calculated on a monthly basis based on the number of minutes in each month. The calculation shall not include any unavailability of the Services caused by or due to:

- any software or equipment not provided by the Supplier;
- the Customer having made any changes to the Services or the configuration or set up thereof that has not been authorised by the Supplier;
- any periods of routine maintenance (which have been notified to the Customer in advance);
- the Customer preventing the Supplier from performing required maintenance and update tasks; or
- a force majeure event (as defined in clause 15).

Service credits are capped at 50% of the Subscription Fee due in the relevant month

TalentAlertPro™ – Fair Use Policy is as follows:

20gb bandwidth per month and 50gb server storage per User Subscription.

Schedule 3 – Data Protection

1. DEFINITIONS

Applicable Law means any law, statute, regulation, byelaw or subordinate legislation in force from time to time which a party is subject and/or in any jurisdiction which the party operates;

Appropriate Safeguards means such legally enforceable mechanism(s) for transfers of Personal Data as may be permitted under Data Protection Laws from time to time;

Data Controller has the meaning given to that term (or to the term 'controller') in Data Protection Laws;

Data Processor has the meaning given to that term (or to the term 'processor') in Data Protection Laws;

Data Protection Legislation means as applicable and binding on the Customer, the Supplier and/or the Services:

(a) **in the United Kingdom:**

- (i) the Data Protection Act 1998 and any laws or regulations implementing Directive 95/46/EC (Data Protection Directive); and/or
- (ii) the GDPR, and/or any and/or any corresponding or equivalent national laws or regulations;

(b) in member states of the European Union: the Data Protection Directive or the GDPR, once applicable, and all relevant members state laws or regulations giving effect to or corresponding with any of them; and

(c) any Applicable Laws replacing, amending, extending, re-enacting or consolidating any of the above Data Protection Legislation from time to time;

Data Protection Losses means all liabilities, including all:

- (a) costs (including legal costs), claims, demands, actions, settlements, interest, charges, procedures, expenses, losses and damages (including relating to material or non-material damage); and
- (b) to the extent permitted by Applicable Law:
 - (i) administrative fines, penalties, sanctions, liabilities or other remedies imposed by a Supervisory Authority;
 - (ii) compensation which is ordered by a Supervisory Authority to be paid to a Data Subject; and
 - (iii) the reasonable costs of compliance with investigations by a Supervisory Authority;

Data Subject has the meaning given to that term in Data Protection Legislation;

Data Subject Request means a request made by a Data Subject to exercise any rights of Data Subjects under Data Protection Legislation;

GDPR means the General Data Protection Regulation (EU) 2016/679;

Personal Data has the meaning given to that term in Data Protection Legislation;

Personal Data Breach means any breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, any Personal Data processed in connection with this agreement;

Processing has the meanings given to that term in Data Protection Legislation (and related terms such as **process** have corresponding meanings);

Protected Data means Personal Data received from or on behalf of the Customer in connection with the Supplier's obligations under this agreement;

Sub-Processor means another Data Processor engaged by the Supplier for carrying out processing activities in respect of the Protected Data on behalf of the Customer; and

Supervisory Authority means any local, national or multinational agency, department, official, parliament, public or statutory person or any government or professional body, regulatory or supervisory authority, board or other body responsible for administering Data Protection Legislation.

In this Schedule:

- (a) references to any Applicable Laws (including to the Data Protection Legislation) shall be replaced with or incorporate (as the case may be) references to any Applicable Laws replacing, amending, extending, re-enacting or consolidating such Applicable Law (including the GDPR and any new Data Protection Legislation from time to time) and the equivalent terms defined in such Applicable Laws, once in force and applicable; and
- (b) a reference to a law includes all subordinate legislation made under that law.

2. TERMS

- 2.1 The parties agree, for the purpose of this agreement, the Customer shall be the Data Controller and the Supplier shall be the Data Processor.
- 2.2 The Supplier shall process Protected Data in compliance with the obligations of Data Processors under Data Protection Legislation in respect of the performance of its obligations under this agreement and the terms of this agreement.
- 2.3 The Customer shall comply with Data Protection Legislation in connection with the Processing of Protected Data, the Services and the exercise of its respective rights and obligations under this agreement, including maintaining all relevant regulatory registrations and notifications as required under Data Protection Legislation and the terms of this agreement.
- 2.4 The Customer warrants, represents and undertakes that all Personal Data sourced by the Customer for use in connection with the Services shall comply in all respects, including in terms of its collection, storage and Processing with Data Protection Legislation and all instructions given by the Supplier in respect of Personal Data are in accordance with Data Protection Legislation.
- 2.5 When Processing Protected Data received from or on behalf of the Customer or otherwise obtained in connection with the performance of the Supplier's obligations under this agreement the Supplier shall:
 - 2.5.1 process the Protected Data only on and in accordance with the Customer's documented instructions as set out in this Schedule and Appendix 1 (Data Processing Details) as updated from time to time by the written agreement of the parties (**Processing Instructions**) or if the Applicable Law requires it to process Protected Data otherwise than in accordance with the Customer's instructions the Supplier shall notify the Customer of any such requirement (unless the legal requirement prohibits this);
 - 2.5.2 inform the Customer if the Supplier becomes aware of an instruction that may infringe Data Protection Legislation (without prejudice to paragraphs 2.3 and 2.4) and to the extent permitted by law the Supplier shall have no liability however so arising for any losses, costs, expenses or liabilities in connection with Processing in accordance with the Customer's instructions, once the Customer has received such information;
 - 2.5.3 taking into account the nature of the Processing, implement and maintain at its cost and expense as appropriate the technical and organisational measures in relation to the Processing of Protected Data by the Supplier and assisting the Customer in its obligations to respond to Data Subject Requests;
 - 2.5.4 not engage any Sub-Processor for carrying out any Processing activities in respect of the Protected Data without the Customer's written authorisation (not to be unreasonably withheld, conditioned or delayed) and shall ensure that any such Sub-Processor engaged enters into a written contract containing materially the same obligations under this Schedule;
 - 2.5.5 ensure that all persons authorised by it or by any Sub-Processor to process Protected Data are subject to an obligation to keep the Protected Data confidential (except where disclosure is required in accordance with Applicable Law, in which case the Supplier shall notify the Customer before disclosure);

- 2.5.6 promptly refer all Data Subject Requests it receives to the Customer and provide such reasonable assistance as the Customer reasonably requires (taking into account the nature of Processing and the information available to the Supplier) in ensuring compliance with the Customer's obligations under Data Protection Legislation with reference to security of Processing, data protection impact assessments, prior consultation with a Supervisory Authority high risk processing, and notifications to the Supervisory Authority and/or communications to Data Subjects by the Customer in response to any Personal Data Breach, provided the Customer shall pay the Supplier's charges for providing the assistance;
- 2.5.7 maintain written records of all categories of Processing activities carried out on behalf of the Customer and make available to the Customer such information as is reasonable necessary to demonstrate the Supplier's compliance with the obligations of Data Processing under Data Protection Legislation and allow for audits and inspections by the Customer for this purpose subject the Customer giving reasonable prior notice, ensuring all information obtained is kept strictly confidential (save as otherwise required by Applicable Law), ensuring the audit/inspection is undertaken during normal business hours with minimal disruption to the Supplier's (or Sub-Processors') business and paying the Supplier's reasonable costs in connection with this;
- 2.5.8 notify the Customer of any Personal Data Breach without undue delay and provide the Customer with details of the Personal Data Breach;
- 2.5.9 delete or return all Protected Data to the Customer, at the Customer's written request, in such form as the Customer reasonable requests within a reasonable time at the earlier of:
 - 2.5.9.1 the end of the provision of the relevant Services related to Processing; or
 - 2.5.9.2 once Processing by the Supplier of any Protected Data is no longer required for the Supplier's performance of its obligations under the agreement;and delete existing copies (unless storage of any data is required by Applicable Law in which case the Supplier shall notify the Customer).
- 2.6 The Customer agrees that the Supplier may transfer Protected Data to countries outside the United Kingdom provided all transfers by the Supplier of Protected Data shall be effected by way of Appropriate Safeguards and in accordance with Data Protection Legislation.
- 2.7 Each party shall indemnify and keep indemnified the other party in respect of all Data Protection Losses suffered or incurred by the other party arising from or in connection with any:
 - 2.7.1 non-compliance with the Data Protection Legislation; and
 - 2.7.2 breach of its obligations under this Schedule.
- 2.8 The Supplier shall be liable for Data Protection Losses under or in connection with this agreement:
 - 2.8.1 only to the extent caused by the Processing of Protected Data under this agreement and directly resulting from the Supplier's breach of this Schedule; and
 - 2.8.2 in no circumstances to the extent that any Data Protection Losses are contributed to or caused by any breach of this agreement by the Customer.
- 2.9 If a party receives a compensation claim from a person relating to the Processing of Protected Data, it shall promptly provide the other party with notice and full details of such claim and the party with conduct of the action shall make no admission of liability nor agree any settlement without prior written consent of the other party and shall consult fully with the other party in relation to any such action.

APPENDIX 1
DATA PROCESSING DETAILS

1. SUBJECT-MATTER OF PROCESSING:

- a. Processing Protected Data for the purpose of delivering the Services to the Customer.

2. DURATION OF THE PROCESSING:

- a. For the duration of the Subscription Term and for a period of six months thereafter.

3. NATURE AND PURPOSE OF THE PROCESSING:

- a. The collection, recording, organisation, storage, adaption or alteration, retrieval, consultation, use, disclosure by transmission, dissemination or otherwise making available, alignment or combination, restriction, erasure or destruction of data (whether or not automated) of Protected Data for the purpose of undertaking candidate selection, scientific and non-scientific candidate assessment, candidate video introductions and candidate video assessment in relation to the provision of recruitment services to employers on behalf of the Customer.

4. TYPE OF PERSONAL DATA:

- | | |
|---|---|
| i. Full name | 5. Passport |
| ii. Email Address | 6. National Insurance Number |
| iii. Contact Telephone Numbers | 7. Biometric Residence Permit |
| iv. Curriculum Vitae/Employment History | 8. Residence Card |
| v. References | 9. UK Birth/Adoption Certificate |
| vi. Photographic Images | 10. Certificates of Registration or Naturalisation as a British Citizen |
| vii. Video Recordings | 11. Right of Abode Certificates |

5. CATEGORIES OF DATA SUBJECTS:

- a. Candidates being assessed in consideration for a position with an employer
- b. Employees of the Customer that are users of the Services
- c. Employees of employers invited to review Campaigns

6. PROCESSING INSTRUCTIONS

The Protected Data may be processed by the Supplier as required for the purpose of delivering the Services.