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**SUBMITTAL TO THE BOARD OF SUPERVISORS  
COUNTY OF RIVERSIDE, STATE OF CALIFORNIA**

**FROM:** Riverside County Information Technology

**SUBMITTAL DATE:**  
May 3, 2012

**SUBJECT:** Approval of five-year client service and license agreements for implementation and maintenance of Talent Technology Corporation products

**RECOMMENDED MOTION:** That the Board of Supervisors:

1. Approve the Purchasing Agent to renew the client service agreement with Talent Technology Corporation for an additional five years for the use of Talemetry Apply and Search (formerly known as Resume Mirror EM and SE) for the aggregate cost of \$319,450 without securing competitive bids in accordance with ordinance 459.4; and;
2. Approve the five-year license agreement with Talent Technology Corporation for Talemetry Broadcast, Verify and Match for the aggregate cost of \$618,000 without securing competitive bids, and authorize the Purchasing Agent to execute the agreement and any amendments not to exceed the contract amount.

*Kevin K Crawford*

Kevin K Crawford  
Chief Information Officer

<b>FINANCIAL DATA</b>	<b>Current F.Y. Total Cost:</b>	\$ 217,890	<b>In Current Year Budget:</b>	YES
	<b>Current F.Y. Net County Cost:</b>	\$ 0	<b>Budget Adjustment:</b>	No
	<b>Annual Net County Cost:</b>	\$ 179,890	<b>For Fiscal Year:</b>	2011-12
<b>SOURCE OF FUNDS:</b> Human Resources contribution of \$200,000 and RCIT Operational Budget			<b>Positions To Be Deleted Per A-30</b>	<input type="checkbox"/>
			<b>Requires 4/5 Vote</b>	<input type="checkbox"/>

**C.E.O. RECOMMENDATION:**

**APPROVE**

BY: *Serena Chow*  
Serena Chow

**County Executive Office Signature**

Purchasing: *[Signature]*  
Marti Seifer, Assistant Director

Departmental Concurrence

DATE

Policy

Consent

Dep't Recomm.:  
Per Exec. Ofc.:

FORM APPROVED COUNTY COUNSEL  
BY: *[Signature]* 5/18/12

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**SUBJECT:** Approval of five-year client service and license agreements for implementation and maintenance of Talent Technology Corporation products

**BACKGROUND:**

On October 18, 2010, the Board approved the amendment and sole source purchase of a five year agreement of Talent Technology Telemetry Apply, and Telemetry Search (formerly known as Resume Mirror Extraction and Search Enterprise). The Talent Technology software products were part of the initial development to modernize the Human Resources Department's recruiting and job applicant tracking functions into the County's Enterprise Resource Planning (ERP) system, PeopleSoft.

The Human Resource Department has requested the purchase of three additional products, Talemtry Broadcast, Verify and Match to further enhance the automation of the recruitment process.

The three additional products offer the following features:

- Broadcast – Automates job postings to job boards, social networks and syndicated advertising networks. This saves clerical labor of typing in job vacancy announcements to multiple advertisement destinations, and automates the posting and removal of these posts. Announcement of vacancies through advertising is necessary in the County's Approved Local Merit System to attract candidates to employment opportunities with the County. The Broadcast product will also enable recruiters to post vacancy announcements in free destinations, saving advertising costs.
- Verify – Connects multiple third party human resources vendors to the PeopleSoft recruiting system in a single integration point. The recruiting and hiring process utilizes a variety of vendors such assessment providers, background screening services, and drug testing vendors. This product will consolidate the vendor integrations into a single point, and save development and maintenance work on these vendors. The Verify product will also enable the County to continue competitively bidding third party services at contract renewals because Verify supports integration of any vendor.
- Match – Allows access to external candidate resume pools so recruiters can search for candidates who may have posted resumes in other sites, but not within the County. This tool is critical to support recruiting of difficult to hire classifications, where prospecting for applicants is necessary. This tool brings applicant credentials seamlessly into the new PeopleSoft applicant tracking system.

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**SUBJECT:** Approval of five-year client service and license agreements for implementation and maintenance of Talent Technology Corporation products

Together, these products will help streamline the recruiting process, reduce staff time, and minimize advertising costs. At a time that departments are faced with staff reductions, automating processes will provide the leverage the county needs to support ongoing operations. Human Resources will be contributing \$200,000 towards this effort. The RCIT PeopleSoft FY13/14 rates will include these ongoing costs as well as all other HRMS operational costs.

The Talent Technology products are the only products that permit resume processing, applicant tracking, job candidate requisitioning, external resume search, job-board posting, pre-hire background and testing tracking integrations with PeopleSoft. All other vendors require customized interface programming to be added in order to provide data transfer within PeopleSoft, thus resulting in additional and expensive programming and maintenance costs.

**Price Reasonableness:**

Talent Technology Corporation has applied the full volume discount of 20% available for State and Local government customers to the current pricing.

Talent technology Corporation is the vendor and sole provider for Telemetry Apply, Telemetry Search, Telemetry Broadcast, Telemetry Match and Telemetry Verify software products. These products are only available through Talent Technology Corporation's direct sales channels. Talent Technology Corporation does not offer its products for sale or distribution through a reseller network.

## Talemetry Master Product Agreement – Order #1

INCORPORATION INTO MASTER TALEMETRY PRODUCT AGREEMENT	
<p>This Order #1 is entered into on June 1, 2012 (the "Order #1 Effective Date") and is hereby made a part of that certain Master Talemetry Product Agreement entered into between the parties on June 1, 2012, including any amendments thereto, (the "Agreement"). All terms and conditions within the Agreement apply to this Order #1. The term of this Order #1 begins on the Order # 1 Effective Date and ends on the last day of the last TTC Product Term ordered hereunder, unless otherwise terminated earlier pursuant to the terms and conditions of the Agreement.</p>	
<p>Acceptance:</p> <p><b>COUNTY of RIVERSIDE (CLIENT)</b></p> <p>_____</p> <p>(Signature)</p> <p>_____</p> <p>(Printed Name)</p> <p>_____</p> <p>(Title)</p>	<p>Acceptance:</p> <p><b>TALENT TECHNOLOGY CORPORATION</b></p> <p>_____</p> <p>(Signature)</p> <p>_____</p> <p>(Printed Name)</p> <p>_____</p> <p>(Title)</p>

CLIENT INFORMATION & GENERAL PAYMENT TERMS			
<b>Client Contact Name:</b>	Robin Downs	<b>Sales Rep:</b>	Kara Daugharty
<b>Email:</b>	rdowns@rc-hr.com	<b>Phone:</b>	(951) 955-5195
<b>Email Address for electronic delivery of software:</b>		<b>Fax:</b>	
<b>Billing Address:</b> City, State/Province, Zip/Postal Code	7898 Mission Grove Parkway S, Building B, Suite 200 Riverside CA 92508-6000	<b>Billing Phone:</b>	
<b>Billing Contact:</b>	Mary Cain	<b>Billing Fax:</b>	
<b>Billing Email:</b>	MCain@co.riverside.ca.us		
<b>Client ERP system and version:</b>	PeopleSoft 9.0	<b>No. of FTEs:</b>	18,000
<b>Payment Terms:</b>	Annual in Advance	<b>Currency:</b>	USD

TALEMETRY APPLY ORDER (Talemetry Apply Product)			
<b>TTC Product Term (months):</b>	60	<b>Last Day of TTC Product Term:</b>	May 31, 2017
<b>Number of Transactions per year:</b>	1,000,000		
<b>DESCRIPTION</b>	<b>Price per year</b>	<b># of Years</b>	<b>EXTENDED PRICE</b>
Talemetry Apply (formerly known as Resume Mirror Extraction) – including Social Media Apply	\$44,268	5	\$221,340
Multi-Year / Multi-Product Discount	(\$7,378)	5	(\$36,890)
<b>Implementation Services: for Social Media Apply functionality with PSFT 9.0</b>			\$5,000
<b>Implementation Services discount: for Social Media Apply functionality with PSFT 9.0</b>			(\$5,000)
<b>Other Fees:</b>			n/a
<b>TALEMETRY APPLY SUBTOTAL</b>			<b>\$184,450</b>

## Talemetry Master Product Agreement – Order #1

TALEMETRY BROADCAST ORDER (Talemetry Broadcast Product)			
TTC Product Term (months):	60	Last Day of TTC Product Term:	May 31, 2017
Number of Transactions per year:	Up to 20,000 electronic postings and up to 200 manual postings at no extra charge		
List of Additional Job Boards to be set-up: Craigslist (Inland Empire), Governmentjobs.com, Caljobs, EmployeeBenefitsJobs.com, CSAC, SHRM, JobsOnTheMenu, MiracleWorkers, and Career Rookie			
DESCRIPTION	Price per year	# of years	EXTENDED PRICE
Talemetry Broadcast	40,000	5	\$200,000
Multi Year / Multi Product Discount	(\$8,000)	5	(\$40,000)
Job Board Set-Up Fee (\$250 X 9 job boards)			\$2,250
Job Board Set-Up Discount (\$250 X 9 job boards)			(\$2,250)
Implementation Services:			\$4,500
Other Fees:			n/a
<b>TALEMETRY BROADCAST SERVICE SUBTOTAL</b>			<b>\$164,500</b>

TALEMETRY MATCH ORDER (Talemetry Match Product)				
TTC Product Term (months):	60	Last Day of TTC Product Term:	May 31, 2017	
DESCRIPTION	Number of Users	Price per Year	# of Years	EXTENDED PRICE
Talemetry Match Product	Upto 200	\$60,000	5	\$300,000
Multi Year / Multi Product Discount		(\$12,000)	5	(\$60,000)
Implementation Services:				\$15,000
Other Fees: Integration with PSFT 9.0 and any supported job boards.				\$10,000
<b>TALEMETRY MATCH SUBTOTAL</b>				<b>\$ 265,000</b>

TALEMETRY SEARCH ORDER (Talemetry Search Product)				
TTC Product Term (months):	60	Last Day of TTC Product Term:	May 31, 2017	
DocSet (Database record limit):	250,000	Number of Licensed Servers (either physical or virtual)	<input type="checkbox"/> 1_ Production <input type="checkbox"/> Mirror <input checked="" type="checkbox"/> 1_ Development / UAT	
DESCRIPTION	Price per Year	# of Years	EXTENDED PRICE	
Talemetry Search (formerly known as Resume Mirror Search Enterprise)	\$33,600	5	\$168,000	
Multi-Year / Multi-Product Discount	(\$5,600)	5	(\$28,000)	
One time discount for the development of Match	(\$1,000)	5	(\$5,000)	
Implementation Services:			n/a	
Other Fees:			n/a	
<b>TALEMETRY SEARCH SUBTOTAL</b>				<b>\$135,000</b>

TALEMETRY VERIFY ORDER (Talemetry Verify Product)			
TTC Product Term (months):	60	Last Day of TTC Product Term:	May 31, 2017
Number of Transactions per year:	100,000		
List of Additional Service Providers to be set-up: SHL Previsor, eScreen, TALX, and ScreeningOne			
DESCRIPTION	Price per Year	# of Years	EXTENDED PRICE
Talemetry Verify	\$45,000	5	\$225,000
Multi-Product / Multi-Year Discount	(\$9,000)	5	(\$45,000)
Implementation Services:			\$4,500
Other Fees: Custom Integration to PSFT 9.0			\$4,000
<b>TALEMETRY VERIFY SUBTOTAL</b>			<b>\$188,500</b>

## Talemetry Master Product Agreement – Order #1

TOTAL PRICE EXCLUDING TAXES (Taxes, if applicable, will be added to invoices)		\$937,450
FEE PAYMENT SCHEDULE		
DUE DATE (MM/DD/YYYY)	DESCRIPTION	AMOUNT
6/1/2012	Talemetry Apply License Fee (6/1/2012 – 5/31/2013)	\$36,890
6/1/2013	Talemetry Apply License Fee (6/1/2013 – 5/31/2014)	\$36,890
6/1/2014	Talemetry Apply License Fee (6/1/2014 – 5/31/2015)	\$36,890
6/1/2015	Talemetry Apply License Fee (6/1/2015 – 5/31/2016)	\$36,890
6/1/2016	Talemetry Apply License Fee (6/1/2016 – 5/31/2017)	\$36,890
6/1/2012	Implementation & Integration Services – Talemetry Match to PSFT 9.0	\$25,000
6/1/2012	Talemetry Match License Fee (6/1/2012 – 5/31/2013)	\$48,000
6/1/2013	Talemetry Match License Fee (6/1/2013 – 5/31/2014)	\$48,000
6/1/2014	Talemetry Match License Fee (6/1/2014 – 5/31/2015)	\$48,000
6/1/2015	Talemetry Match License Fee (6/1/2015 – 5/31/2016)	\$48,000
6/1/2016	Talemetry Match License Fee (6/1/2016 – 5/31/2017)	\$48,000
6/1/2012	Talemetry Search License Fee (6/1/2012 – 5/31/2013)	\$27,000
6/1/2013	Talemetry Search License Fee (6/1/2013 – 5/31/2014)	\$27,000
6/1/2014	Talemetry Search License Fee (6/1/2014 – 5/31/2015)	\$27,000
6/1/2015	Talemetry Search License Fee (6/1/2015 – 5/31/2016)	\$27,000
6/1/2016	Talemetry Search License Fee (6/1/2016 – 5/31/2017)	\$27,000
6/1/2012	Implementation Services – Talemetry Broadcast to PSFT 9.0	\$4,500
6/1/2012	Talemetry Broadcast License Fee (6/1/2012 – 5/31/2013)	\$32,000
6/1/2013	Talemetry Broadcast License Fee (6/1/2013 – 5/31/2014)	\$32,000
6/1/2014	Talemetry Broadcast License Fee (6/1/2014 – 5/31/2015)	\$32,000
6/1/2015	Talemetry Broadcast License Fee (6/1/2015 – 5/31/2016)	\$32,000
6/1/2016	Talemetry Broadcast License Fee (6/1/2016 – 5/31/2017)	\$32,000
6/1/2012	Implementation & Integration Services – Talemetry Verify to PSFT 9.0	\$8,500
6/1/2012	Talemetry Verify License Fee (6/1/2012 – 5/31/2013)	\$36,000
6/1/2013	Talemetry Verify License Fee (6/1/2013 – 5/31/2014)	\$36,000
6/1/2014	Talemetry Verify License Fee (6/1/2014 – 5/31/2015)	\$36,000
6/1/2015	Talemetry Verify License Fee (6/1/2015 – 5/31/2016)	\$36,000
6/1/2016	Talemetry Verify License Fee (6/1/2016 – 5/31/2017)	\$36,000
<b>TOTAL AMOUNT DUE EXCLUDING TAXES</b>		<b>\$937,450</b>

### Additional Terms:

1. The Talemetry Broadcast Product annual licensing Fees includes up to 200 manual posts per year. If Client exceeds 200 manual posts in a given contract year, then Client shall pay for such additional manual posts at a rate of \$15 per post. In addition, TTC shall provide Client with the following manually supported job boards: CSAC, SHRM, JobsOnTheMenu, MiracleWorkers, and Career Rookie.
2. The parties acknowledge that prior to the Effective Date of this Agreement, the parties entered into the following agreements: (1) that certain Resume Mirror Extraction Enterprise Agreement, dated April 6, 2007 and (2) that certain Resume Mirror Search Enterprise Agreement dated April 6, 2007 (the “**Previous Service Agreements**”). As such, the parties hereby terminate the Previous Service Agreements as of the Effective Date of the Agreement, excepting that any terms designated to survive within the Previous Service Agreements will survive as so provided therein.

## Talemetry Master Product Agreement – Order #1

3. Notwithstanding anything to the contrary in this Order #1 or the Agreement, Client has the right to terminate the Agreement after the end of third (3<sup>rd</sup>) year of the Term, provided that Client gives TTC written notice of its intent to so terminate no later than May 1, 2015.
4. Client acknowledges that TTC invoices #14444 (in the amount of \$36,890) and #14443 (in the amount of \$28,000) based on the Previous Service Agreements ("**Previous Invoices**") have been issued to and received by Client prior to the Order #1 Effective Date. In addition, Client further acknowledges that payment of the Previous Invoices will be applied as follows:
  - 4.1. For Invoice 14444, payments received in the amount of \$36,890 will be applied to the Talemetry Apply License Fee for the period of June 1, 2012 to May 31, 2013.
  - 4.2. For Invoice 14443, payments received in the amount of \$28,000 will be applied as follows: (1) \$27,000 to the Talemetry Search License Fee for the period of June 1, 2012 to May 31, 2013; and (2) \$1,000 to the Talemetry Match License Fee for the period of June 1, 2012 to May 31, 2013.

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**Master Talemtry Product Agreement**  
**General Terms and Conditions**

This Master Talemtry Product Agreement (this "**Agreement**") is effective June 1, 2012 (the "**Effective Date**")

BETWEEN

**Talent Technology Corporation**, a corporation existing under the federal laws of Canada, and having a place of business at 300 – 10991 Shellbridge Way, Richmond, British Columbia, Canada V6X 3C6 ("**TTC**")

AND

The County of Riverside, a corporation existing under the laws of the State of California ("**Client**"), who may be contacted at its place of business as follows:

Client's Address: 7898 Mission Grove Parkway S, Building B, Suite 200

City, State, Zip Code: Riverside, CA 92508-6000

Attention: Mary Cain

RECITALS:

WHEREAS, TTC is in the business of providing software for talent marketing.

WHEREAS, the parties desire that TTC make such software available to Client under the terms and conditions of this Agreement.

WHEREAS, each order as defined in an Order (defined below) will be performed under the terms and conditions herein.

NOW THEREFORE, in consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. **Schedules and Orders.** This Agreement is comprised of the Schedules indicated in this Agreement and any Order that expressly references this Agreement; the Schedules which are attached hereto and the Order(s) constitute an integral part of this Agreement.
2. **Precedence between Agreement and Orders.** In the event of any conflict between the terms of this Agreement and the terms of the Order(s), the terms of this Agreement will prevail and take precedence, unless the Order expressly excludes, modifies, or adds to a term of this Agreement.
3. **License and Services.** TTC and Client shall perform, in accordance with the terms and conditions of this Agreement, the activities set out in this Agreement and the Order(s), and such additional activities as the parties may agree to from time to time in writing. Client hereby subscribes pursuant to this Agreement to the TTC Product as indicated on the Order(s).
4. **Fees.** Client shall pay to TTC all Fees and applicable taxes associated with the provision of the TTC Product to Client as set forth in this Agreement and the Order(s), in addition to any applicable Fees incurred for transaction overages, professional services, or purchases made through the TTC Product.
5. **Definitions.** The following definitions apply to this Agreement (in addition to the other defined terms specified elsewhere in this Agreement):
  - 5.1. "**Client Data**" means resumes or other data provided to TTC by Client that may be processed by the Hosted Service (or the results of such processing) in the course of implementing and/or using the Hosted Service and Licensed Software.
  - 5.2. "**ERP System**" means Client's ERP System as indicated on an Order.
  - 5.3. "**Including**," whether or not capitalized, means "including, but not limited to."
  - 5.4. "**Licensed Software**" means the Talemtry Apply Licensed Software, Talemtry Broadcast Licensed Software, Talemtry Connect Licensed Software, Talemtry Match Licensed Software, Talemtry Profile Licensed Software, Talemtry Search Licensed Software, and Talemtry Verify Licensed Software subscribed to by Client under this Agreement and as indicated on the Order(s).
  - 5.5. "**Professional Service**" means the Talemtry Apply Professional Services, Talemtry Broadcast Professional Services, Talemtry Connect Professional Services, Talemtry Match Professional Services, Talemtry Profile Professional Services, Talemtry Search Professional Services, and



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Talemtery Verify Professional Services subscribed to by Client under this Agreement and as indicated on the Order(s).

- 5.6. **"Hosted Service"** means the Talemtery Apply Hosted Service, the Talemtery Broadcast Hosted Service, Talemtery Connect Hosted Service, Talemtery Match Hosted Service, Talemtery Profile Hosted Service, Talemtery Search Professional Services, and Talemtery Verify Hosted Service subscribed to by Client under this Agreement and as indicated on the Order(s).
- 5.7. **"Term"** means the term of this Agreement, which commences on the Effective Date herein and ends on either: (1) the last day of the last TTC Product Term on the Order(s); or (2) the date this Agreement is otherwise terminated in accordance with the terms and conditions herein.
- 5.8. **"TTC Data"** means data sourced or compiled by TTC, including information generated by the Talemtery Profile Product licensed to TTC from third parties, and aggregated statistical data obtained from TTC's customers, (in addition to Client's) use of the TTC Product.
- 5.9. **"TTC Product"** means, collectively, the Licensed Software, Hosted Service, and Professional Service.
- 5.10. **"TTC Product Term"** means the time period specified on an Order for which Client subscribes for a specific TTC Product.
6. **Orders.**
  - 6.1. **Order Procedure.** This Agreement does not by itself order any TTC Product. Client may purchase the TTC Product on a nonexclusive basis pursuant to the terms and conditions set forth in this Agreement by way of a completed Order signed by the parties hereto. Upon receipt of a fully executed Order which references this Agreement, TTC shall provide Client with the TTC Product purchased in accordance with the terms and conditions of this Agreement and as specified in the Order(s).
  - 6.2. **Definition.** "Order" means TTC's order form evidencing the initial subscription of a TTC Product and any subsequent order forms submitted online or in written form, specifying, among other things, the TTC Product subscribed for, other services contracted for, applicable fees, TTC Product Term, billing period, and other charges as agreed to between the parties.
  - 6.3. **Incorporation.** Upon execution, each Order will be incorporated into and become a part of this Agreement.
7. **License Grant.**
  - 7.1. **General License Grant.** Subject to Client's compliance with the terms and conditions of this Agreement, TTC grants to Client during the TTC Product Term(s) specified in the Order(s) a worldwide, non-exclusive, non-transferable (except in connection with an assignment under Section 19.5) and terminable license (the "License Grant") to access the Hosted Service and use the Licensed Software for the TTC Products indicated on the Order(s), and to display content solely for Client's internal business operations, provided the License Grant does not include service bureau use, outsourcing, renting, or time-sharing the Hosted Service separate from Client's ERP System indicated on the Order(s).
  - 7.2. For each specific TTC Product Client subscribes to, as indicated on the Order(s), and excepting the Talemtery Search Product, TTC shall provide Client with access to the Hosted Service, Professional Service, implementation, and, if applicable, the Licensed Software in object code form for use with the Hosted Service, and any new features that augment or enhance the Hosted Service and Licensed Software that TTC may provide. TTC shall host the Hosted Service and may update the content, functionality, and user interface of the Hosted Service from time to time in its sole discretion and in accordance with this Agreement.
8. **License Grant Restrictions.** The license(s), including the License Grant, and all rights granted to Client under this Agreement in relation to the TTC Product and TTC Data are provided to Client on the condition that Client shall not, and shall not allow any third party to, copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the TTC Product or TTC Data, or any part thereof, or otherwise attempt to discover any source code, modify the TTC Product or TTC Data in any manner or form (except as expressly permitted by this Agreement and solely through the modification tools and means provided by TTC), or use unauthorized modified versions of the TTC Product, including for the purpose of building a similar or competitive product or service or for the purpose of obtaining unauthorized access to the TTC Product. Client is expressly prohibited from sublicensing use of, or granting access to, the TTC Product,

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TTC Data, or the License Grant to any third parties other than Client employees and contractors performing services for the internal business operations of Client ("**Authorized Users**"). Except as provided in this Agreement, the license, including the License Grant, granted to Client hereunder does not convey any rights in the TTC Product or TTC Data, express or implied, or ownership in the TTC Product or TTC Data, or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by TTC and its licensors.

9. **Restricted Right to Make Copies.** Client may make necessary additional copies of the Licensed Software solely for emergency backup and archival purposes.
10. **License from Client.** Subject to the terms and conditions of this Agreement, Client grants TTC a worldwide, royalty free, non-exclusive, non-transferable (except in connection with a permitted assignment under this Agreement) license ("**Client License Grant**") to copy, store, record, transmit, maintain, display, view, print, or otherwise use Client Data to the extent necessary to provide, manage, operate, and/or optimize the TTC Product. The Client License Grant commences on the Effective Date and, on the date that is thirty (30) days following the termination or expiration of the TTC Product Term, will be reduced in scope for the sole purpose of allowing TTC to store backed up Client Data (if any) at an offsite storage facility. Furthermore, the Client License Grant will terminate in its entirety one (1) year following the termination or expiration of the TTC Product Term. For greater clarity, the term of the Client License Grant for a specific piece of Client Data is determined by the TTC Product Term of the TTC Product that utilized such Client Data.
11. **Fee – Travel Costs.**
  - 11.1. **Fee.** Client shall pay all fees specified in the Order(s) (the "**Fee**") for the TTC Product regardless of Client's utilization of the TTC Product. Currency is as specified on the Order(s). Client shall pay invoices no later than thirty (30) days after invoice receipt or the due date specified on the Order(s), if later. Should Client, acting reasonably, wish to dispute an invoice, or part thereof, Client shall deliver to TTC a written notice detailing the reasons for the dispute no later than twenty (20) days after the due date of the invoice in question. TTC shall respond to the dispute within fifteen (15) days of receipt of the notice and the parties shall in good faith endeavor to resolve the dispute within thirty (30) days of TTC's response. Any undisputed late payments are subject to a monthly service charge equal to one and one-half percent (1.5%) of the amount due or the maximum amount allowed by law, whichever is less. Client shall pay all costs TTC incurs to collect any overdue, undisputed Fees provided such costs occur subsequent to a request for payment sent to Client in accordance with the terms of this Agreement. Fees do not include sales or use taxes and Client shall pay all applicable foreign, federal, state, provincial, and local taxes pertaining to Client's access to, use, or receipt of the TTC Product. Client is not obligated to pay any taxes from any jurisdiction related to TTC's net income, capital, or assets.
  - 11.2. **Travel and Living Costs.** Fees do not include any travel and living costs incurred by TTC for any on-site Client implementation, training, consulting, or other services unless specifically shown as included on the Order(s). Client shall pre-approve any travel and living costs and Client shall reimburse TTC for such costs no later than thirty (30) days following receipt of invoice.
12. **Terms of Service.** The following terms of service apply to this Agreement:
  - 12.1. **New TTC Product Features.** Unless expressly stated otherwise in this Agreement, any new features that augment or enhance the TTC Product, and/or any new services subsequently purchased by Client from TTC, will be subject to this Agreement.
  - 12.2. **Minimum System Requirements.** Client acknowledges that Internet access, equipment, and specified software and operating systems must meet the minimum system requirements set out for each of the TTC Products, as the same may be amended or replaced from time to time with ninety (90) days' advance notice to Client (collectively, the "**Minimum System Requirements**"). In addition, Client is responsible for ensuring that the Minimum System Requirements are in place and acknowledges that a failure to meet the Minimum Systems Requirements may impair Client's successful use of the TTC Product and that TTC will not be responsible or liable for such impairment of use so caused.
  - 12.3. **Documentation.** Each TTC Product has implementation guides, user guides, interface guides, Minimum System Requirements, help files, and other documentation (collectively "**Documentation**") that describe the installation, configuration, requirements, and use of the TTC Product.

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- 12.4. **Passwords – Access – Notification.** Client shall not share any passwords, user names, access keys, and/or license keys (collectively, "**Passwords**") with any unauthorized third parties. Client is responsible for the confidentiality and use of all Passwords provided to Client. Client is responsible for all Electronic Communications, Client Data, and all other data of any kind contained within emails or otherwise entered electronically through the Hosted Service or under Client's account. TTC may act as though any Electronic Communication received under Client's passwords, user name, or account number has been sent by Client. "**Electronic Communication**" means any transfer of signs, signals, text images, sounds, data, or intelligence of any nature transmitted in whole or in part electronically. Client and TTC shall immediately notify the other party if it becomes aware of any loss, theft, or unauthorized use of any Passwords.
- 12.5. **Transmission of Data.** If the TTC Product requires Electronic Communication over the Internet, Client acknowledges that such Electronic Communication may be accessed by unauthorized parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Client further acknowledges that TTC is not responsible in any manner for any Electronic Communication or Client Data which are lost, altered, intercepted, or stored without authorization during the transmission of any data whatsoever across networks not owned or operated by TTC, unless such loss is caused by TTC's gross negligence or willful misconduct.
- 12.6. **Lawful Conduct.** Each party shall comply with all applicable local, state, provincial, federal, and foreign laws, treaties, regulations, and conventions in connection with its use of the Licensed Software, including those related to privacy, human rights, hiring practices, Electronic Communication, credit reporting, and anti-spamming legislation.
- 12.7. **Client Electronic Communications.** Client shall not send any unlawful, harassing, defamatory, indecent, or threatening Electronic Communication using any TTC Product. Client shall not upload, post, reproduce, or distribute any information, software, or other material protected by copyright or any other intellectual property right (including rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Client shall not in any way express or imply that any opinions contained in any Client Electronic Communication are endorsed by TTC. Client shall at all times ensure that any use of the TTC Product by Client and Client's Authorized Users is in accordance with the terms and conditions of this Agreement and the Order(s).
- 12.8. **Links.** Certain TTC Products provide links to other World Wide Web sites or resources controlled by third parties. Because TTC has no control over such sites and resources, Client acknowledges that TTC is not responsible for the availability of such external sites or resources, and does not endorse and is not responsible or liable for any content, products, or other materials on, or available from, such sites or resources.
- 12.9. **Modification to the TTC Product.** TTC reserves the right at any time and from time to time to modify, temporarily or permanently, the TTC Product or any part thereof (a "**Modification**"). In the event a Modification results in the removal or disability of the material functionality of such TTC Product, TTC shall give Client at least ninety (90) days' advance notice of the change and, if the functionality is materially relied upon by Client, then, upon Client's request, TTC shall use reasonable efforts to substantially restore such functionality to Client. In the event TTC is unable to substantially restore such functionality, Client will have the rights provided in Section 15.1. Except as expressly stated in Sections 12.9 and 15.1, TTC will not be liable to Client for any Modification.
- 12.10. **TTC Proprietary Rights.** Client acknowledges that the TTC Product contains proprietary and confidential information that is protected by applicable intellectual property and other laws and that, as between the parties, TTC is the sole owner of the TTC Product and all TTC Data. If the TTC Product provides access to specific TTC Data, then TTC grants Client a limited, worldwide, non-exclusive, non-transferable, and royalty free license to utilize the TTC Data in accordance with Section 7.
- 12.11. **Client Proprietary Rights.** Subject to the Client License Grant provided in Section 10, TTC acknowledges that, as between the parties, Client is the sole owner of the Client Data.
13. **Confidential Information.** For purposes of this Agreement, confidential information ("**Confidential Information**") includes: (1) the terms of this Agreement; (2) any Client Data or TTC Data; (3) the Documentation; and (4) any information clearly identified in writing at the time of disclosure as confidential. Each party shall: (a) keep confidential all Confidential Information disclosed to it by the other party; and (b)



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protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own, at all times exercising at least a reasonable degree of care in the protection of such Confidential Information. TTC shall restrict its employees' access to Client's Confidential Information to only those employees necessary to successfully provide the TTC Product. TTC may disclose Confidential Information on a need-to-know basis to its contractors who have executed written agreements requiring them to maintain such information in strict confidence and use it only to facilitate the performance of their services for TTC in connection with the performance of this Agreement. Confidential Information does not include information which the recipient can demonstrate: (i) is known publicly at the time of disclosure without the fault of the recipient; (ii) is generally known in the industry before disclosure; (iii) has become known publicly, without fault of the recipient, subsequent to disclosure by the disclosing party; (iv) the recipient becomes aware of from a third party not bound by nondisclosure obligations to the disclosing party and with the lawful right to disclose such information to the recipient; or (v) the recipient independently develops without the use of or reference to Confidential Information. This Section 13 will not be construed to prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority. Unless prohibited by law, each party shall give the other party prompt notice of the receipt of any subpoena or other request for such disclosure and reasonably cooperate with the party seeking a protective order or other confidential treatment of any Confidential Information which it has disclosed to the recipient. With respect to any information received by either party from the other as a result of any other relationship between the parties other than as licensor and licensee under this Agreement (e.g., business development, partnership, alliance, etc.), the parties shall abide by the terms and conditions of any nondisclosure agreement (or similar agreement) executed between the parties applicable to such other relationship. In addition, Confidential Information considered personal information ("**Personal Information**") under any relevant personal information security laws and regulations ("**Security Laws**") applicable to TTC and/or Client will be subject to the higher standard of such Security Laws for Personal Information as applicable to the recipient of such Personal Information.

#### 14. Suspension – Termination.

- 14.1. **Suspension for Immediate or Ongoing Harm.** TTC reserves the right to temporarily suspend Client's access to or use of the Hosted Service, with reasonably contemporaneous telephonic notice to Client, if TTC reasonably concludes that Client's use of the Hosted Service is causing immediate or ongoing harm to TTC or others by causing a disruption of the Hosted Service. In the event TTC suspends Client's access to the Hosted Service, TTC and Client shall use their best efforts to resolve the issues causing the suspension of the Hosted Service. TTC will not be liable to Client for any suspension resulting from such circumstances as described in this Section 14.1.
- 14.2. **Suspension for Delinquent Account.** TTC reserves the right to suspend Client's License Grant(s) and/or use of the TTC Product(s) if Client fails to pay any undisputed invoice after it is due and TTC has provided Client at least 10 (ten) days' advance written notice of the overdue invoice following the due date of the invoice. Any disputed amounts must be disputed in accordance with Section 11.1. TTC will not be liable to Client for any suspension resulting from Client's nonpayment of Fees as described in this Section 14.2.
- 14.3. **In the Event of Breach.** Either party may terminate this Agreement and all Order(s) hereunder upon thirty (30) days' written notice to the other party in the event of a material breach of any provision of this Agreement by the other party and where the breaching party fails to cure such breach within the thirty (30) day cure period. If this Agreement is terminated as a result of a breach on TTC's part, TTC shall refund the pro-rata portion of any Fees that may have been paid by Client for the portion of the TTC Product not furnished to Client as of the termination date. If this Agreement is terminated as a result of a breach on Client's part, Client is responsible for and shall pay all Fees to TTC within thirty (30) days of such termination that would have occurred under the Order(s) then in effect. Upon any termination pursuant to this Section, Client will have no rights to the License Grant or to continue use of the Licensed Software.
- 14.4. **On Termination or Expiration of Agreement.** Upon the termination or expiration of a TTC Product Term, Client will have no rights to continue use of such TTC Product. Following the termination or expiration of a TTC Product Term, TTC may immediately deactivate Client's account related to such TTC Product, and shall delete related Client Data (if any) from TTC's servers within thirty (30) days after such termination or expiration. In addition, following the termination or expiration of a TTC Product Term, Client shall: (1) immediately cease to use the Licensed Software and, if applicable, delete the

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same from Client's servers no later than thirty (30) days after such termination or expiration; and (2) have no further rights to continue to use such TTC Product in any manner.

**15. Warranties.**

- 15.1. **Warranty of Functionality.** During the TTC Product Term(s) specified in the Order(s), TTC warrants to Client that the TTC Product will achieve in all material respects the functionality described in the Documentation and that such functionality will be maintained in all material respects in subsequent upgrades to the TTC Product. TTC does not warrant that the TTC Product will be error-free. In the event TTC breaches this warranty, Client's sole and exclusive remedy is that TTC will use reasonable efforts to modify the TTC Product to achieve in all material respects the functionality described in the Documentation, and if TTC is unable to restore such functionality, then Client will be entitled to terminate this Agreement within ninety (90) days of the date of the first instance of any material functionality problem as it relates to the TTC Product at issue and receive a pro-rata refund of the Fees paid under this Agreement for the remaining but undelivered use of the TTC Product as of the date of such termination. TTC will have no obligation with respect to any warranty claim unless Client provides TTC with written notice of such claim within sixty (60) days of the first instance of any material functionality problem.
- 15.2. **Non-Infringement Warranty.** TTC warrants it has the full power and authority to grant the License Grant and use of the Hosted Service, Licensed Software, and other rights granted by this Agreement to Client with respect to the Hosted Service and Licensed Software, and that the license of and authorized use by Client of the Hosted Service and Licensed Software as described herein will not in any way constitute an infringement or other violation of any Canadian, United States, or European Union Member country copyright, trade secret, patent, invention, proprietary information, non-disclosure, or other rights of any third party.
- 15.3. **Service Uptime Warranty.** TTC warrants that during the TTC Product Term(s) specified in the Order(s) the Hosted Service will meet 99.5% uptime, excluding scheduled maintenance windows when TTC conducts normal maintenance and upgrades. Scheduled maintenance windows are three (3) hour periods commencing at 11pm EST/EDT Wednesday and Friday nights, and five (5) hour periods commencing at 11pm Saturday nights. If in a given calendar month the uptime commitment is not met, then Client's sole and exclusive remedy will be to receive a credit of one (1) month of additional Hosted Service for the TTC Product so affected at no charge in the current TTC Product Term. Any credit is expressly conditioned upon Client providing TTC written notice of such failure by the twentieth (20<sup>th</sup>) day of the month following such service level failure. Failing to meet the uptime in three (3) of five (5) consecutive months will be deemed a breach of the warranty in Section 15.1. TTC does not and cannot control the transmission of data between the Hosted Service and Client. Such transmission depends in large part on the performance of the Internet services provided or controlled by third parties. At times, actions or inaction of such third parties can impair or disrupt Client's or TTC's connections to the Internet (or portions thereof); accordingly, TTC will have no liability or obligation to Client resulting from or related to such events. TTC shall use commercially reasonable efforts to notify Client of all regularly scheduled and emergency maintenance sessions.
- 15.4. **Other Warranty.** TTC warrants that the TTC Product will be free of viruses, Trojan horses, worms, spyware, or other malicious code or components.
- 15.5. **Voiding of Warranties.** The warranty in Section 15.1 will be void as to the TTC Product where the non-compliance is caused by or to the extent related to the use of the Licensed Software (other than by TTC) in conjunction with software or other products not included with the Licensed Software or contemplated to be used with the Licensed Software in the Documentation, or upon a use of the Licensed Software in a manner not contemplated in the Documentation.

**16. Disclaimer of Warranties.**

- 16.1. **General.** EXCEPT AS STATED IN SECTION 15, TTC DOES NOT REPRESENT OR WARRANT THAT CLIENT'S USE OF THE TTC PRODUCT WILL BE SECURE, TIMELY, UNINTERRUPTED, OR ERROR-FREE OR THAT THE TTC PRODUCT WILL MEET CLIENT'S REQUIREMENTS OR THAT ALL ERRORS IN THE TTC PRODUCT AND/OR DOCUMENTATION WILL BE CORRECTED. THE WARRANTIES STATED IN SECTION 15 ARE THE SOLE AND EXCLUSIVE WARRANTIES OFFERED BY TTC IN RELATION TO THE TTC PRODUCT. THERE ARE NO OTHER WARRANTIES OR

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CONDITIONS, EXPRESS OR IMPLIED, INCLUDING THOSE OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. EXCEPT AS STATED IN SECTION 15, THE TTC PRODUCT IS PROVIDED TO CLIENT ON AN "AS IS" AND "AS AVAILABLE" BASIS, AND IS FOR COMMERCIAL USE ONLY. CLIENT ASSUMES ALL RESPONSIBILITY FOR DETERMINING WHETHER THE TTC PRODUCT OR THE INFORMATION GENERATED THEREBY IS ACCURATE OR SUFFICIENT FOR CLIENT'S PURPOSES. CLIENT ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN THIS AGREEMENT.

- 16.2. In addition, Client acknowledges that TTC does not fact check or verify TTC Data, including resumes or other information provided by the TTC Products. Accordingly, Client utilizes all TTC Data and any other information provided by the TTC Products at its own risk.

**17. Limitation of Liability.**

- 17.1. **No Consequential Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES OF ANY TYPE OR KIND, INCLUDING LOSS OF CLIENT DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE, ARISING FROM ANY BREACH OF WARRANTY OR BREACH OF CONTRACT, OR NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS IT CONTEMPLATES.
- 17.2. **Limitation on Damages.** The maximum liability of either party to the other party arising out of or related to this Agreement or any of the transactions it contemplates, other than as a result of the willful misconduct of a party, whether such liability arises from any claim based on breach or repudiation of contract, breach of warranty, tort, or otherwise, will in no case exceed the equivalent of twelve (12) months in Fees related to the applicable TTC Product as of the time of the event. The essential purpose of this provision is to limit the potential liability of the parties arising out of or related to this Agreement or any of the transactions it contemplates.
- 17.3. **Indemnity Obligations Excluded.** The limitation of liability set forth in this Section 17 does not apply to either party's indemnity obligations set forth in Section 18 below.

**18. Indemnification.**

- 18.1. **Infringement.** TTC shall indemnify, defend, and hold Client harmless from and against any costs, liabilities, losses, and expenses, including reasonable attorneys' fees and legal costs (collectively, "**Losses**") arising out of or in connection with a claim, demand, suit, action, or proceeding brought by any third party against Client (a "**Third Party Claim**") which arises out of or results from the infringement of any Canadian, United States, or European Union Member Country copyright, patent, or misappropriation of a trade secret relating to the Licensed Software, provided that: (1) Client promptly, and in no event later than thirty (30) days of the Third Party Claim or the deadline for filing defense related documents in accordance with applicable rules of procedure, gives TTC notice of the Third Party Claim; (2) Client gives TTC sole control of the defense and related settlement negotiations; (3) Client provides TTC with all reasonably available information and assistance necessary to perform TTC's obligations under this Section 18.1; and (4) the Third Party Claim does not result from the use of the Licensed Software in conjunction with software or other products not included with the Licensed Software or contemplated to be used with the Licensed Software in the Documentation, or upon a use of the Licensed Software in a manner not contemplated in the Documentation. If the Licensed Software is held to infringe any intellectual property right, TTC may, in its sole discretion and at its own expense: (a) procure a license that will protect Client against such Third Party Claim without cost to Client; (b) replace the Licensed Software with non-infringing Licensed Software; or (c) terminate this Agreement if neither of these alternatives is commercially reasonable. Provided TTC complies with this Section 18.1, Client will have no other remedy against TTC, with the sole exception of terminating this Agreement; upon any such termination of this Agreement, TTC shall provide Client a pro-rata refund of the Fees paid under this Agreement for the remaining but undelivered use of such TTC Product as of the date of such termination.
- 18.2. **Disclosure of Client Data.** TTC shall indemnify, defend, and hold Client harmless from and against any Losses arising out of or in connection with a Third Party Claim which arises out of or results from TTC's negligence or willful misconduct in disclosing or preventing unauthorized access to Client Data,



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as determined by a court of competent jurisdiction in connection with a Third Party Claim alleging a breach of confidentiality, provided Client: (1) promptly, and in no event later than thirty (30) days of the Third Party Claim or the deadline for filing defense related documents in accordance with applicable rules of procedure, gives TTC notice of any such third party Third Party Claim; (2) gives TTC sole control of the defense and related settlement negotiations; and (3) promptly provides TTC with all reasonably available information and assistance necessary to perform TTC's obligations under this Section 18.2. Provided TTC complies with this Section 18.2, Client will have no other remedy against TTC, with the sole exception of terminating this Agreement; upon any such termination of this Agreement, TTC shall provide Client a pro-rata refund of the Fees paid under this Agreement for the remaining but undelivered use of such TTC Product as of the date of such termination.

**18.3. Client's Indemnity Obligations.** Client shall indemnify, defend, and hold TTC harmless from and against any Losses arising out of or related to a Third Party Claim against TTC: (1) alleging that the Client Data, or any use thereof: (a) infringes the legal or intellectual property rights of any third party; or (b) has caused harm to any third party; (2) arising out of Client's breach of Section 12.6 (Lawful Conduct) or Section 19 (Export Controls); or (3) if the Third Party Claim results from the use of the Licensed Software in conjunction with software or other products not included with the Licensed Software or contemplated to be used with the Licensed Software in the Documentation, or upon a use of the Licensed Software in a manner not contemplated in the Documentation, provided that TTC: (i) promptly, and in no event later than thirty (30) days of the Third Party Claim or the deadline for filing defense related documents in accordance with applicable rules of procedure, provides Client notice of the Third Party Claim; (ii) gives Client sole control of the defense and related settlement negotiations; and (iii) provides Client with all reasonably available information and assistance necessary to perform Client's obligations under this Section 18.3. Provided Client complies with this Section 18.3, TTC will have no further remedy against Client.

**18.4. Survival of Indemnification Obligations.** The indemnification obligations contained in this Section 18 will survive the termination or expiration of the Term of this Agreement for five (5) years.

**19. General.**

**19.1. Export Controls.** Client acknowledges that the Licensed Software may be subject to the export control laws of Canada, the United States, or other jurisdictions. Client shall comply with all applicable export and import laws, regulations, and restrictions of Canada, the United States, or a foreign agency or authority.

**19.2. Choice of Law – Designation of Forum – Waiver of Jury Trial.** The laws of the State of California and the applicable federal laws of the United States (without giving effect to any conflicts of laws principles in either case) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including its interpretation, construction, performance, and enforcement. Any party bringing a legal action or proceeding against any other party arising out of or relating to this Agreement shall bring such legal action or proceeding in the courts of the State of California, County of Riverside. Each party waives, to the fullest extent permitted by law: (1) any objection which it may now or later have to the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any court in the State of California, County of Riverside; and (2) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. In addition, each party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates; this waiver applies to any action or legal proceeding, whether sounding in contract, tort, or otherwise. In the event of any legal action or proceeding arising out of or relating to this Agreement, the prevailing party will be entitled to an award of reasonable attorney fees and costs. In addition, the *International Sale of Goods Act* and the *United Nations Convention on Contracts for the International Sale of Goods* have no application to this Agreement.

**19.3. Trademark Information.** The trademarks and service marks of each party will not be used in any manner without the other party's prior written consent. Notwithstanding the foregoing, TTC has the right to name Client as a user of the TTC Product.

**19.4. Notices.** Except as otherwise provided in this Agreement, the parties shall provide all notices required under this Agreement in writing and such notices will be deemed given when delivered by hand or courier, facsimile, electronic transmission, or five (5) days after mailing, postage prepaid, by certified

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mail, return receipt requested. The address for notices in the case of Client is as appears on page 1 of this Agreement; and in the case of TTC, to: Talent Technology Corporation, Attention: Corporate Secretary, 300 – 10991 Shellbridge Way, Richmond British Columbia, V6X 3C6, Canada, (email: corporate.secretary@talenttech.com). In all cases in this Agreement where an address, telephone number, email address, or Internet web page is specified, the same may be changed at any time by a party notifying the other party in accordance with this Section 19.4.

**19.5. Assignment and Delegation – Successors and Assigns.**

19.5.1. Neither party may assign any of its rights nor delegate any performance under this Agreement without the prior written consent of the other party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, such consent is not required to assign: (1) to the successor of all or substantially all of either parties' business or assets; or (2) for TTC to make an assignment or delegation to a subsidiary or affiliate that provides the TTC Product to Client. Any purported assignment of rights or delegation of performance in violation of this Section 19.5.1 is void.

19.5.2. This Agreement binds and benefits the parties' respective successors and permitted assigns. This Section 19.5.2 does not address, directly or indirectly, whether: (1) rights under this Agreement are assignable; or (2) performance under this Agreement is delegable. Section 19.5.1 addresses these matters.

19.6. **Force Majeure.** Neither party will be liable for any failure or delay in performance under this Agreement (other than for a delay in the payment of money due and payable hereunder) to the extent such failure or delay is caused by conditions beyond the reasonable control of and not the fault of the nonperforming party, including Acts of God, earthquakes, floods, fire, hurricanes, unusually extreme or severe weather, wars, insurrections, terrorism, riots, labor stoppage, criminal acts of third parties, provided that the nonperforming party gives the other party prompt written notice, with full details following the occurrence of the cause relied upon. Dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any delay so caused.

19.7. **Authority to Contract.** Each party represents and warrants to the other that it has the authority to enter into this Agreement, that the entity or individual name which it has provided on its own behalf for this Agreement is a true and accurate representation of its legal identity, and that the execution and performance of this Agreement has been duly authorized by all requisite formalities.

19.8. **Independent Parties.** Nothing in this Agreement is intended to create a joint venture, partnership, agent, or employment relationship between the parties. Neither party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other party.

19.9. **Rights and Remedies Cumulative.** The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist in law or in equity or by statute or otherwise.

19.10. **Amendments – Waiver.** Any amendment to this Agreement must be in writing and signed by both parties. No provision, right, power, or privilege in this Agreement may be waived, except pursuant to a writing executed by the party against whom the waiver is sought to be enforced.

19.11. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, such provision will be ineffective to the extent of such illegality, invalidity, or unenforceability without invalidating the remainder of such provision or the remainder of this Agreement.

19.12. **Headings.** The section headings used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.

19.13. **Survival.** Sections 10, 12.6, 12.10, 13, 14.4, 17, 18, 19.2, 19.3, 19.4, and 19.13 will survive the termination or expiration of this Agreement.

19.14. **Client Purchase Orders.** If Client issues a purchase order in respect of this Agreement, Client acknowledges that such purchase order is solely for the convenience of Client's purchasing system and does not in any way modify or add to this Agreement or the rights or obligations of TTC or Client.



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- 19.15. **Construction.** This Agreement will be construed as if drafted by both parties and will not be strictly construed against either party.
- 19.16. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which will constitute one and the same agreement. Receipt of an originally executed counterpart signature page by facsimile or an electronic reproduction of an originally executed counterpart signature page by electronic mail or by e-signing is effective execution and delivery of this Agreement.
- 19.17. **Entire Agreement.** This Agreement constitutes the final agreement between the parties. It is the complete and exclusive expression of the parties' agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

**EXECUTION.** The parties, by their duly authorized representatives, are signing this Agreement as of the Effective Date above.

**THE COUNTY OF RIVERSIDE  
(CLIENT)**

**TALENT TECHNOLOGY CORPORATION**

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Signature)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Printed Name)

\_\_\_\_\_  
(Title)

\_\_\_\_\_  
(Title)

FORM APPROVED COUNTY COUNSEL  
BY: Neal R. Kipnis DATE: 5/8/12  
NEAL R. KIPNIS

For each TTC Product Client subscribes to as indicated on the Order(s), the following TTC Product specific terms and conditions apply:

**1. Talemtery Apply Product.**

- 1.1. In addition to the License Grant in Section 7, the Talemtery Apply license grant is limited to a specified number of resume processing transactions ("**Transactions**") in a particular period (usually a year) as indicated on the Order(s). A Transaction is the submission of a file to the Apply Hosted Service by Client for processing and which is processed (a return code value of 0).
- 1.2. In the event Client exceeds the number of Transactions for a particular year, as indicated on the Order(s), Client will be billed for a block of transactions equal to ten percent (10%) of the number of transactions set forth on the Order(s) ("**Transaction Overage Block**") at the average price per Transaction that Client is paying for Transactions in that year. Additional Transaction Overage Blocks will be billed as required based upon Client usage. Transaction Overage Blocks are only usable until the anniversary of the Order Effective Date.

**2. Talemtery Broadcast Product.**

- 2.1. Client shall utilize the Talemtery Broadcast Product by requesting the publishing of jobs from within the interfaces provided to Client by TTC to various job boards (each a "**Publishing**") for the job board to display the job within the job board's interface (a "**Job Posting**"). For greater clarity, a successful Publishing is when a job is accepted by a requested job board as a Job Posting. Publishing requests are generally completed by 6:00am EST the day following the day the request is made by Client.
- 2.2. Client is responsible for: (1) opening all accounts with the job boards to which it publishes a Job Posting; and (2) any fees levied by such job boards for such Job Postings.
- 2.3. TTC may offer to Client the ability to purchase Job Postings from job boards that Client does not have a direct account with. The purchase of the Job Posting on behalf of Client may be made by TTC directly or by a third party partner of TTC. If TTC directly makes the Job Posting purchase on behalf of Client, then Client shall: (1) complete a credit application for which credit may be offered in such amount (if at all) in TTC's sole discretion; and (2) pay TTC for the Job Posting in the amount of the fee from the job board plus an administration fee levied by TTC. TTC may require a valid credit card number to provide this service to Client. If TTC's third party partner directly makes the Job Posting purchase on behalf of Client, then Client shall: (a) complete a credit application for which credit may be offered in such amount (if at all) in TTC's third party partner's sole discretion; and (b) pay TTC's third party partner for the Job Posting in the amount of the fee from the job board plus any administration fee levied by TTC's third party partner. TTC's third party partner may require a valid credit card number to provide this service to Client. TTC or TTC's third party partner may change or cease to provide Client with credit or this Job Posting purchasing service at any time in their sole discretion.
- 2.4. The Talemtery Broadcast Product only supports the job boards indicated in the Documentation related to the Talemtery Broadcast Product. Client may request the addition of a specific job board to those supported by the Talemtery Broadcast Product for an additional Fee.
- 2.5. TTC's sole obligation to Client with respect to the Talemtery Broadcast Product is to make reasonable efforts to complete publishing to the job boards indicated by Client.

**3. Talemtery Connect Product.**

- 3.1. Client is solely responsible for providing the content displayed in the Connect Hosted Service.
- 3.2. Client acknowledges that content displayed in the Connect Hosted Service is available to the public and content that is deleted from the Connect Hosted Service may nevertheless still be available or referenced on the Internet due to Internet caching on the part of third parties.
- 3.3. TTC has the unilateral right, but has no obligation, to remove any content it reasonably determines is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene, or otherwise objectionable, or violates a party's or third party's intellectual property rights.

**4. Talemtry Match Product.**

- 4.1. Client's user accounts are for named users and are to be used by only the single Client employee or subcontractor assigned to the account. Client may reassign user accounts to different Client employees or subcontractors, but not so as to defeat the concept that the user account is for the use of a single individual and not to be shared.
- 4.2. Each Client user account allows up to eighty (80) job searches to be active per user concurrently
- 4.3. Client may configure the Match Hosted Service to access proprietary third party data sources with which Client has an account. Client is responsible for all charges that may be levied by such proprietary third party data sources as a result of any access through the Match Hosted Service.

**5. Talemtry Profile Product.**

- 5.1. The Talemtry Profile Product generates information (included as part of TTC Data) about a person ("**Candidate**") who has provided a resume to Client.
- 5.2. Candidates have the ability to review the data generated by the Talemtry Profile Product, edit such information, and choose whether to share such information with Client. Candidates may choose to cease sharing information with Client at any time and TTC will no longer provide Client with such information following such time.
- 5.3. The TTC Data provided by the Talemtry Profile Product and its use by Client is governed by various laws related to the jurisdiction of the Candidate, Client, or both. Client shall, and warrants to TTC that it will do the same, comply with all applicable laws, regulations, and rules related to the storing and use of such data, including personal information laws and the United States Fair Credit Reporting Act.
- 5.4. Not all Candidates have similar types and amounts of (or any) information available to the Talemtry Profile Product and, as a result, the TTC Data provided by the Talemtry Profile Product will vary from Candidate to Candidate as will the information a Candidate chooses to share with Client. TTC makes no representation or warranty regarding the amount or quality of the TTC Data the Talemtry Profile Product will produce on any Candidate.
- 5.5. TTC shall manage the information generated by the Talemtry Profile Product in accordance with its privacy policy related to the Talemtry Profile Product and which privacy policy is made available to the Candidate.

**6. Talemtry Search Product.**

- 6.1. TTC shall provide Client with the Professional Service, implementation, Licensed Software in object code form, and any new features that augment or enhance the Licensed Software that TTC may provide. TTC may update the content, functionality, and user interface of the Licensed Software from time to time in its sole discretion and in accordance with this Agreement.
- 6.2. The License Grant in Section 7 of the General Terms and Conditions with respect to the Talemtry Search Product is limited to: (1) a specified maximum database record size ("**DocSet**"); and (2) the number of servers and type (use) of such servers as indicated on the Order(s).
- 6.3. Client shall at all times maintain records specifically identifying the location of the Talemtry Search Licensed Software, including the server(s) on which the Talemtry Search Licensed Software is installed. Upon TTC's reasonable request, Client shall provide TTC, or an accounting firm chosen by TTC, reasonable access during normal business hours to the records of Client and to the servers(s) of Client for the sole purpose of ensuring compliance with the terms and conditions of this Agreement.

**7. Talemtry Verify Product.**

- 7.1. Client shall utilize the Talemtry Verify Product by requesting from within the interfaces provided to Client by TTC a service from a specified service provider (each, a "**Service Order**"). For greater clarity, a successful Service Order is when a Service Order is accepted by a requested service provider.
- 7.2. Client is responsible for: (1) opening all accounts with the service providers it wishes to utilize; and (2) any fees levied by such service providers.
- 7.3. TTC's sole obligation to Client with respect to the Talemtry Verify Product is to make reasonable efforts to complete delivery of the Service Order(s) to the service provider(s) indicated by Client.

**Schedule A – TTC Product Specific Terms and Conditions**

- 7.4. Client is responsible to ensure that its use of the Talemtry Verify Product, and the information generated by Service Orders, is in compliance with all applicable laws, regulations, and rules.

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## Schedule B – Implementation and Support

1. TTC shall generally initiate the implementation kick-off meeting for the TTC Product with Client at a mutually agreed upon time within eight (8) business days following the Effective Date of this Agreement.
2. For the Talemtery Search Product, TTC shall make the Licensed Software accessible to Client by download from a website location. TTC shall inform Client via email of the website location, login information, and any associated License Keys.
3. The Licensed Software may be activated, controlled, and expired by a License Key. A License Key has an expiration life related to the period for which Fees are paid. A License Key may be restricted to one or more specific servers and TTC may require Client to submit the unique identifiers of such servers to generate the License Key(s). TTC has no obligation to provide a License Key for a TTC Product to Client if Client has any overdue invoices outstanding.
4. Client is responsible for the procurement and set up of Client's servers, configuring Client's ERP systems, and the installation of the Licensed Software onto the Client's servers.
5. TTC shall provide Client with the following implementation services ("**Implementation Services**") for the TTC Products subscribed to for up to two (2) non-customized environments (i.e. Development and Production) of the ERP system and version indicated on the Order(s):

Implementation Service	Talemtery Apply Product	Talemtery Broadcast Product	Talemtery Connect Product	Talemtery Match Product	Talemtery Profile Product	Talemtery Search Product	Talemtery Verify Product
Formal scoping exercise				✓		✓	✓
Project management for TTC deliverables	✓	✓	✓	✓	✓	✓	✓
Project plan and task list for TTC deliverables	✓	✓		✓		✓	✓
Internal planning and communication	✓	✓	✓	✓	✓	✓	✓
Client-facing planning and communication	✓	✓	✓	✓	✓	✓	✓
Implementation support	✓	✓	✓	✓	✓	✓	✓
Application design review	✓						
Architecture design review	✓						
ERP integration plan	✓	✓	✓			✓	
Assist Client with plan for hardware architecture and software installation	✓	✓				✓	
Assist Client with definition and initial creation of DocSet(s)						✓	
Plan for Concept Space creation and maintenance						✓	
Configure and test user interface screens						✓	✓
Work with Client to determine database synchronization plan between the DocSet and ERP database						✓	
Assist Client with plan for migration of data from Client system to the DocSet						✓	
Account set-up and configuration	✓	✓	✓	✓	✓		✓
Sub-account set-up and configuration	✓						✓
Email set-up and configuration	✓						✓
Desktop Tools install and configuration	✓						

## Schedule B – Implementation and Support

Implementation Service	Talemetry Apply Product	Talemetry Broadcast Product	Talemetry Connect Product	Talemetry Match Product	Talemetry Profile Product	Talemetry Search Product	Talemetry Verify Product
Connector/Listener install and configuration	✓		✓				
DNS configuration if required			✓				
NB3 file creation to a maximum of 1,000 terms	✓						
ERP career portal integration and configuration	✓						
System Admin training	✓	✓	✓	✓		✓	✓
Customer Account Manager training	✓						✓
Desktop Tools training	✓						
End-user training, only if specified	✓	✓		✓		✓	✓
ERP integration support	✓	✓			✓	✓	✓
Coordination with third-party integration providers	✓	✓				✓	✓
Debugging/Testing	✓				✓	✓	✓
Go-Live Support	✓		✓	✓	✓	✓	✓

Any customizations that are required based upon Client's unique workflow requirements or customized deployment of the Client's solution may result in additional implementation fees. A separate TTC Professional Services Agreement ("**PSA**") will be created for each such project and both TTC and Client shall execute the PSA before commencing any work against it.

6. TTC shall provide reasonably trained and skilled resources to complete the implementation of the TTC Product acquired by Client and Client shall provide its reasonable cooperation pertaining to the implementation endeavors. Implementation Services do not include troubleshooting and resolving configuration or installation problems in Client's ERP environment unrelated to the TTC Product installation.
7. Client technical staff shall be available as required during the TTC Product implementation. Implementation will be deemed complete when all Implementation Services have been delivered by TTC or after nine (9) months from the Effective Date of this Agreement if Customer fails to provide the required resources or reschedules the Implementation. Any Implementation Services provided after nine (9) months from the Effective Date of this Agreement will be subject to additional fees unless TTC has caused the delay.
8. TTC shall provide Client with support services for the TTC Product ("**Support Services**"). Support Services are assistance with basic troubleshooting, technical and usage questions, and problem reporting. Unless end-user training is indicated as part of the Implementation Services to be provided by TTC, Client is responsible to provide training to Client's end-users of the TTC Product. In addition, Client is responsible to provide support to Client's end-users of the TTC Product. Support Services are available between 9am and 9pm EST/EDT Monday through Friday, excluding the following holidays common to Canada and the USA: New Year's Day, Good Friday, Labor Day, Thanksgiving Day (Canada), Columbus Day (USA), and Christmas Day ("**Business Hours**"). Support Services are available via:
  - a. Support E-mail – [support@talenttech.com](mailto:support@talenttech.com)
  - b. Business Hours Support Line – 1-866-447-3933 or +1-604-278-4414
  - c. Online at [www.talenttech.com](http://www.talenttech.com)
9. TTC's online client support site can be used to access software downloads and Documentation downloads. TTC shall reply to emails received during Business Hours within four (4) business hours. TTC shall reply to emails received after Business Hours by 12 noon on the next day the Business Hours Support Line is normally staffed.



## Schedule B – Implementation and Support

10. During the TTC Product Term(s) specified in the Order(s), TTC shall provide the following Support Services for problems encountered by Client with the Licensed Software:
  - 10.1. For any demonstrable malfunction in the Licensed Software which causes Client to be unable to perform a critical business function that Client was previously able to perform while using the Licensed Software ("**Critical Problem**"), TTC shall address the Critical Problem and respond to Client within one (1) Business Hour of Client logging the Critical Problem with the Business Hours Support Line. TTC shall use reasonable efforts to provide a solution or workaround to the Critical Problem to Client as soon as possible.
  - 10.2. For any other issue with the Licensed Software that does not meet the description of a Critical Problem ("**Other Problem**"), TTC shall address the Other Problem and respond to Client within two (2) Business Hours of Client logging the Other Problem with the Business Hours Support Line or Support E-mail.

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