

TALENTCARE TERMS OF USE

This Terms of Use Agreement (this "Agreement") is a legal agreement between you ("you" or "your") and TalentCare, LLC, its affiliates, and each of their respective successors and assigns (collectively, "TalentCare") governing your use of (i) all services developed, operated, or maintained by TalentCare, or accessible through the portal operated by Henry Schein, Inc. Medical Division ("Henry Schein Medical") or directly via <http://www.TalentCare.us> or any other designated web site or IP address (the "Site"), (ii) the Content (as defined below) contained therein, including manuals, policies, procedural guides and other printed communications, and (iii) any offline components provided by TalentCare for use in connection therewith (collectively, the "Service").

Your rights and obligations under this Agreement are in addition to, and not in lieu of, any rights or obligations you may have under any agreement, including any online or clickthrough agreement, between you and Henry Schein Medical.

Content available through the Site has been prepared by TalentCare for informational purposes and is not legal advice. Your use of the Site or the Content is not intended to create, and receipt of it does not constitute, an attorney-client relationship. You should not act upon the information contained in the Site without seeking advice from a lawyer licensed in your own state or jurisdiction.

BY USING THE SERVICE, OR DOWNLOADING, INSTALLING, ACTIVATING OR USING ANY CONTENT AVAILABLE THROUGH THE SITE, YOU ARE AGREEING THAT YOU HAVE READ, AND AGREE TO COMPLY WITH AND BE BOUND BY, THE TERMS OF THIS AGREEMENT IN THEIR ENTIRETY WITHOUT LIMITATION OR QUALIFICATION AS WELL AS TALENTCARE'S PAYMENT AND REFUND POLICIES AND ALL APPLICABLE LAWS AND REGULATIONS. IF YOU DO NOT AGREE TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT AND TALENTCARE'S PAYMENT AND REFUND POLICIES AND TO FOLLOW ALL APPLICABLE LAWS, DO NOT ACCESS THE SITE OR USE THE SERVICE.

REPRESENTATION REGARDING COST REIMBURSEMENT

YOU HEREBY CERTIFY THAT YOU 1) ARE NOT A COST-BASED PROVIDER OF HEALTHCARE, 2) DO NOT AND WILL NOT SEEK REIMBURSEMENT FOR YOUR SERVICES FROM ANY HEALTH PROGRAM ON A COST-REIMBURSED BASIS, 3) DO NOT FILE ANY COST REPORTS WITH A THIRD PARTY PAYMENT PROGRAM OR PAYER, 4) DO NOT BILL THIRD PARTY PAYERS, INCLUDING MEDICARE (WHERE APPLICABLE), AS EITHER (I) A HOSPITAL OUTPATIENT OR HOSPITAL-BASED CLINIC OR DEPARTMENT, (II) PART OF A DENTAL OR MEDICAL SCHOOL IN AN ACADEMIC MEDICAL CENTER, (III) A SKILLED NURSING FACILITY, (IV) A COMMUNITY HEALTH CENTER (CHC), (V) A RURAL HEALTH CENTER (RHC), OR (VI) A FEDERALLY QUALIFIED HEALTH CENTER (FQHC), AND 5) DO NOT AND WILL NOT INCLUDE PRACTICE EXPENSES ON A MEDICAID COST REPORT (OR OTHER FEDERAL COST REPORT, SUCH AS MEDICARE OR VA) FOR ANY ENTITY, SUCH AS A HOSPITAL, DENTAL, OR MEDICAL SCHOOL, SKILLED NURSING FACILITY, CHC, RHC, OR FQHC. YOU ACKNOWLEDGE THAT BOTH TALENTCARE AND HENRY SCHEIN MEDICAL ARE RELYING ON THIS REPRESENTATION IN CONNECTION WITH THE SERVICES IN THIS AGREEMENT. YOU AGREE TO IMMEDIATELY NOTIFY TALENTCARE IN WRITING IF AT ANY TIME THIS REPRESENTATION BECOMES UNTRUE.

1. License Grant

Subject to the terms and conditions of this Agreement, TalentCare hereby grants you a limited, non-exclusive, non-transferable, license to access and use the Service solely on a server controlled by TalentCare and solely for your own purposes. All rights not expressly granted to you are reserved by TalentCare and its licensors. The license granted herein is expressly conditioned on your continued compliance with the terms and conditions of this Agreement.

2. Restrictions on License Grant

Your use of the Service is limited to the scope of the license granted in this Agreement and this Agreement does not permit you to use the Service other than as provided herein. You acknowledge that the Service constitutes valuable trade secrets and/or the confidential information of TalentCare or its licensors. You acknowledge and agree that except as otherwise authorized under this Agreement or otherwise specified in writing between the parties:

- a. You shall not license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, grant a security interest in, or otherwise transfer any rights to, or commercially exploit, the Service or any information, documents, software, products and services contained or made available to you in the course of using the Service (the "Content") or use the Service to run or as part of a service bureau, outsourced, or managed services arrangement;
- b. You shall not republish, upload, post, transmit or distribute the Service or the Content in any way;

- c. You shall not modify, translate, alter, adapt, decompile, disassemble (except to the extent applicable laws specifically prohibit such restriction), reproduce, distribute or display, or create derivative works, compilations or collective works based on the Service or the Content;
- d. You shall not knowingly or negligently permit other individuals or entities to use or copy the Service, or create Internet "links" to the Service or "frame" or "mirror" the Service on any other server or wireless or Internet-based device;
- e. You shall not access the Service to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, (c) copy any ideas, features, functions or graphics of the Service, (d) monitor its availability, performance or functionality, or (e) for any other benchmarking or competitive purposes;
- f. You shall not access the Service if you sell or provide any service, software, or product that may compete with TalentCare's services, software, or products (a "Competitor");
- g. You shall not attempt to use or gain unauthorized access to data, accounts, hosts, systems or networks of TalentCare or any of its customers or suppliers, or those of any other party; breach the security of another user or system, or attempt to circumvent the user authentication or security of any host, network, or account, including, without limitation, accessing data not intended for you or logging into or making use of a server or account you are not expressly authorized to access;
- h. You shall not attempt to probe, scan or test the vulnerability of a system, account or network of TalentCare or any of its customers or suppliers, any TalentCare product or service, or those of any other party;
- i. You shall not interfere, or any attempt to interfere, with service to any user, host or network including, without limitation, mail-bombing, flooding, and attempting to deliberately overload the system or distribute programs that "crack," or make unauthorized changes to, the software;
- j. You shall not forge any TCP-IP packet header or any part of any header information, falsify, alter or remove address information or other modification of e-mail headers; collect responses from unsolicited bulk messages, falsify references to TalentCare or the Service, by name or other identifier, in messages; impersonate any person or entity, engage in sender address falsification, forge anyone else's digital or manual signature, or perform any other similar fraudulent activity;
- k. You shall not restrict, inhibit, or otherwise interfere with the ability of any other person, regardless of intent, purpose or knowledge, to use or enjoy the Service (except for tools for safety and security functions), including, without limitation, posting or transmitting any information or software which contains a worm, virus, or other harmful feature, or generating levels of traffic sufficient to impede others' ability to use, send, or retrieve information;
- l. You shall not restrict, inhibit, interfere with, or otherwise disrupt or cause a performance degradation, regardless of intent, purpose or knowledge, to the Service or any TalentCare (or TalentCare supplier) host, server, backbone network, node or service, or otherwise cause a performance degradation to any TalentCare (or TalentCare supplier) facilities used to deliver the Service; and
- m. You shall not create or use any program, tags, markers, bots, mousetraps, highjackers or other similar computer routines or sub-routines to automatically access or manipulate the Service.

Because of the difficulty associated with quantifying damages, in addition to any other damages to which TalentCare may be entitled, if actual damages cannot be reasonably calculated then you agree to pay TalentCare liquidated damages of \$250 for each violation of this Section 2 or the maximum liquidated damages permitted under law, whichever is greater; otherwise you agree to pay TalentCare's actual damages, to the extent such actual damages can be reasonably calculated.

3. Fees

You will be charged some or all of the following fees for accessing and using the Service:

- (i) *Engagement Fee.* a non-refundable fee to initiate the search process;
- (ii) *Placement Fee.* a fee assessed on the date on which you and the candidate sign an employment offer or other document evidencing your intent to retain the candidate's services as an independent contractor, employee or otherwise; and
- (iii) *Retention Fee.* a fee assessed on the 90th day after the day on which the candidate commenced providing services for you provided such candidate is still providing services for you, as an independent contractor, employee or otherwise, on such date.

If a candidate agrees to provide part-time services to you and that candidate is subsequently converted to a full-time position within 12 months of the original hire date, the full Placement Fee and the Retention Fee, less any amounts already paid, will be due and payable on the date the candidate accepts the full-time position.

In the event Client hires a candidate presented by TalentCare within one year of initial engagement with TalentCare, the Engagement Fee, Placement Fee and Retention Fee (as applicable to the hired role) will be immediately due and payable by Client

Before being granted access to the service, you must pay the Engagement Fee by credit card. Talent Care will use, and you hereby consent to TalentCare's use of, the credit card you used to pay the Engagement Fee to pay the Placement Fee and the Retention Fee. Except as expressly provided herein, all amounts paid hereunder are final and non-refundable. TalentCare's fees do not include any taxes, levies, duties or similar governmental assessments of any nature, including but not limited to value-added, sales and use, or withholding taxes, assessable by any local, state, provincial, federal or foreign jurisdiction (collectively, "Taxes"). You are responsible for paying all Taxes associated with its purchases hereunder.

4. TalentCare's Guarantee

If a candidate provided by TalentCare terminates employment for any reason within 180 days after that candidate's start date, TalentCare will provide search services for a replacement candidate having the same title and specialty as that candidate without charging you an additional fee. If a replacement candidate cannot be found within 90 days after that candidate's termination date, you may elect to have TalentCare cease search activities and receive a refund of the Placement Fee and, if applicable, Retention Fee to you. This guarantee is contingent on the Engagement Fee, Placement Fee and, if applicable, Retention Fee being paid in full. This guarantee is a one-time offer only and replacement candidates are not subject to this guarantee.

5. Your Obligations

You shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You are also solely and exclusively responsible for providing and maintaining all computer hardware, telephone and other equipment necessary to access and use the licensed Service and the internet service required to access the Service over the Internet. TalentCare shall have no responsibility for the procurement, operation or compatibility of your hardware or capabilities of your internet service provider.

6. Account Access

Where use of the Service is contingent on accessing an "account" and/or inserting a "user-identification" and/or "password", you agree that you will be solely responsible for the user-ids and passwords that are provided to you (as such passwords may be changed from time to time in accordance with features of the Service) to log-in to the password protected Service. If non-authorized individuals have access to your systems or to your users' user-id and password, they may be able to use the Service. You and your users shall keep any correspondence you receive relating to or through the use of the Service (including, but not limited to, your user-id, passwords, and other registration or sign-in information) confidential and in a safe place and not disclose it to any third party. You will be responsible and liable for all communications and actions that take place through the use of your user-ids, including without limitation, any actions that occur without your authorization. Accordingly, it is your responsibility to take appropriate actions immediately if any password has been stolen, leaked, compromised or otherwise used without proper consent. You shall: (i) notify TalentCare immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to TalentCare immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you; (iii) notify TalentCare when you no longer require access to the Service; and (v) keep all of your profile information current.

7. Account Information and Data.

In connection with your use of the Service, it may be necessary for TalentCare to obtain, receive or collect data or information, including system-specific data or information, from you as part of the Service. In such cases, you hereby grant TalentCare a non-exclusive, worldwide, royalty-free, perpetual, non-revocable license under your copyrights and other intellectual property rights, if any, in all material and content provided to TalentCare to compile, use, distribute, display, store, process, reproduce, and create derivative works from such material and content, including without limitation comparative data sets, statistical analyses, reports and related services utilizing aggregated data derived from data obtained from you, other TalentCare customers and other sources, in any and all media and display in any manner and on any TalentCare property to the extent necessary to provide the Service to you and as a service to its customers and future customers and in the development of products and services (the "Data"). You also grant TalentCare the right to copy and maintain such material and content on TalentCare's servers (or the servers of its suppliers) during the term of this Agreement.

8. Privacy

We may collect certain information during your use of the Service, such as your IP address, browser type, referring/exit pages, and operating system. In addition, we may utilize certain third party services, such as Google Analytics, for analytics and reporting purposes. Also, we and our service providers may use cookies, web beacons, and other technologies to receive and store certain types of information whenever you interact with the Service. We will only use this information in an aggregate form which does not identify you personally. However, we may use this information for our internal purposes, to improve our web site and marketing efforts and otherwise assess the needs of our business, and to conduct research and analysis. In addition, we may disclose the information we've collected:

(i) as required by law such as to comply with a subpoena or similar legal process; (ii) when we believe in good faith that disclosure is necessary to protect our rights, protect your safety or the safety of others, investigate fraud, or respond to a government request; or (iii) if our company is involved in a merger, acquisition, or sale of all or a portion of its assets. If you have questions or concerns regarding our use of this information please contact us through the email address provided below.

9. Intellectual Property Ownership

All right, title and interest in the Service and the Site, including technology and trade secrets embodied therein and any Content or developments created or provided in connection with or related to the Service and the Site, including all copyrights, patents, trade secrets, trade dress and other proprietary rights, and any derivative works thereof, shall belong solely and exclusively to TalentCare or its licensors, and you shall have no rights whatsoever in any of the foregoing. You acknowledge that the Service constitutes a valuable trade secret and/or is the confidential information of TalentCare or its licensors. Nothing in this Agreement or otherwise will be deemed to grant to you an ownership interest in the Service, in whole or in part. All Content and materials included as part of the Service, such as text, graphics, logos, button icons, images, audio clips, information, data, forms, photographs, graphs, videos, typefaces, graphics, music, sounds, and other material, and software (the "Works") are the property of TalentCare or its content suppliers and is protected by copyrights, trademarks, trade secrets, or other proprietary rights and these rights are valid and protected in all forms, media and technologies existing now or hereinafter developed. All Works are copyrighted as individual works and as a collective work under the U.S. copyright laws (17 U.S.C. Section 101, et. seq.) and international treaty provisions, and TalentCare owns a copyright in the selection, coordination, arrangement and enhancement thereof. You may not modify, remove, delete, augment, add to, publish, transmit, adapt, translate, participate in the transfer or sale of, create derivative works from, or in any way exploit any of the Works, in whole or in part. Any use other than as contemplated herein, including the reproduction, modification, distribution, transmission, adaptations, translation, republication, display, or performance, of the Works, except as specifically permitted herein, is strictly prohibited. You understand and acknowledge that unauthorized disclosure, use or copying of the proprietary products and services provided pursuant to this Agreement may cause TalentCare and its licensors irreparable injury, which may not be remedied at law, and you agree that TalentCare and its licensors' remedies for breach of this Agreement may be in equity by way of injunctive or other equitable relief.

10. Term; Termination; Suspension of Service

The term of this Agreement commences on your first use of the Service and continues through any subsequent use of the Service thereafter. Any unauthorized use of the Service will be deemed a material breach of this Agreement. TalentCare, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement or TalentCare's then-current payment or refund policies.

11. Indemnification

You shall defend, indemnify and hold TalentCare harmless from and against any and all losses, damages, liabilities, costs, judgments, charges and expenses, including reasonable attorneys' fees, arising out of or relating to any act or omission by you with respect to (i) your use of the Service or (ii) your breach or violations of this Agreement.

12. Compliance with Applicable Laws

You understand and acknowledge that TalentCare does not participate in the interview, selection, or hiring of candidates, which is your sole responsibility, notwithstanding use of the Service as a part of and in connection with such activities. Accordingly, it is your sole responsibility to comply with all applicable laws regarding its use of the Service and with respect to any information or materials provided to any candidates and data or information received from any candidate, including without limitation all applicable record keeping and data protection regulations in connection with the collection, processing, disclosure, subject access requests, retention, and transfer of personally identifiable data under the laws of the country and any other local jurisdiction in which you are operating or collecting and transferring personal data. TalentCare shall have no liability related to any information or data provided to or received from any candidate, or for record keeping requirements and data protection obligations applicable to you unless expressly assumed by TalentCare pursuant to this Agreement.

13. Treatment of PHI and SPI

In connection with your use of the Service, you agree not to ask candidates for, and to instruct candidates not to provide, any Protected Health Information ("PHI") as that term is defined in the Health Insurance Portability and Accountability Act of 1996 ("HIPAA") or Sensitive Personal Information ("SPI") consisting of date of birth, social security number, driver's license or other state-issued identification number, or financial account information. Should you become aware that any PHI or SPI is provided through the Service by a candidate, you agree to promptly notify TalentCare and request redaction of such information from TalentCare's system. If and to the extent you are deemed to be a Covered Entity and TalentCare is deemed to be a Business Associate under HIPAA, you agree to enter into a Business Associate Agreement on terms mutually agreeable to TalentCare.

14. EEOC Compliance

You affirm and agree that you are an equal employment opportunity employer and are in full compliance with any and all applicable anti-discrimination laws, rules and regulations, including without limitation, all applicable federal and/or state equal employment opportunity statutes, rules, and regulations, including, without limitation, Title VII of the Civil Rights Act of 1964, the Equal Employment Opportunity Act of 1972, the Age Discrimination in Employment Act of 1967, the Equal Pay Act of 1963, the National Labor Relations Act, the Fair Labor Standards Act, the Rehabilitation Act of 1973, and the Occupational Safety and Health Act of 1970, all as may be from time to time modified or amended. In addition, as the party making decisions regarding hiring potential candidates, it is your sole responsibility to comply with all of such laws, rules and regulations. You agree not to harass, discriminate against or retaliate against any employee because of his or her race, national origin, age, sex, religion, disability, marital status or other category protected by law; nor shall you cause or request TalentCare to engage in such discrimination, harassment or retaliation. In the event of any complaint against TalentCare of unlawful discrimination, harassment or retaliation by any of your candidates, you agree to cooperate with TalentCare in the prompt investigation and resolution of such complaint.

15. Candidate Screening

You acknowledge that TalentCare has not required candidates to submit to and has not conducted, reference checks, fingerprinting or other criminal background investigation and that nothing in this Agreement shall be construed as an obligation or duty to perform such an investigation. In addition, TalentCare has not verified any candidate's license status, verified the validity of any candidate's credentials, or taken any other action with respect to any candidate unless expressly set forth in this Agreement or otherwise agreed to in writing between the parties.

16. Disclaimer of Warranties

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, (A) THE SERVICE IS PROVIDED "AS-IS" AND "WITH ALL FAULTS", AND, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, TALENTCARE, INCLUDING ITS AFFILIATES, SUBSIDIARIES, LICENSORS, SUBCONTRACTORS, DISTRIBUTORS, SERVICES PARTNERS, AGENTS AND MARKETING PARTNERS) AND EACH OF THEIR RESPECTIVE EMPLOYEES, DIRECTORS AND OFFICERS (INDIVIDUALLY, A "TALENTCARE PARTY" AND COLLECTIVELY, THE "TALENTCARE PARTIES") DISCLAIM ALL REPRESENTATIONS, WARRANTIES AND CONDITIONS OF ANY KIND, EXPRESS OR IMPLIED, REGARDING THE SERVICE, OR OTHERWISE RELATING TO THIS AGREEMENT, INCLUDING WARRANTIES AND CONDITIONS OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, MERCHANTABLE QUALITY, NON-INFRINGEMENT AND ACCURACY AND NON-INTERFERENCE; (B) NEITHER TALENTCARE NOR ANY TALENTCARE PARTY WARRANTS THAT (i) THE SERVICE IS OR WILL BE SECURE, ACCURATE, COMPLETE, UNINTERRUPTED, WITHOUT ERROR, OR FREE OF VIRUSES, WORMS, OTHER HARMFUL COMPONENTS, OR OTHER PROGRAM LIMITATIONS, (ii) THE SERVICE WILL MEET YOUR REQUIREMENTS, (iii) THE RESULTS THAT MAY BE OBTAINED FROM THE USE OF THE SERVICE WILL BE ACCURATE OR RELIABLE, (iv) ANY ERRORS IN THE SERVICE WILL BE CORRECTED; (C) YOU ASSUME THE ENTIRE COST OF ALL NECESSARY SERVICING, REPAIR, OR CORRECTION OF PROBLEMS CAUSED BY VIRUSES OR OTHER HARMFUL COMPONENTS, UNLESS SUCH ERRORS OR VIRUSES ARE THE DIRECT RESULT OF TALENTCARE'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT; (D) TALENTCARE AND THE TALENTCARE PARTIES, JOINTLY AND SEVERALLY, DISCLAIM AND MAKE NO WARRANTIES OR REPRESENTATIONS AS TO THE ACCURACY, QUALITY, RELIABILITY, SUITABILITY, COMPLETENESS, TRUTHFULNESS, USEFULNESS, OR EFFECTIVENESS OF THE FORMS, DATA, REPORTS, RESULTS OR OTHER INFORMATION OBTAINED, GENERATED OR OTHERWISE RECEIVED BY YOU FROM ACCESSING AND/OR USING THE SERVICE OR OTHERWISE RELATING TO THIS AGREEMENT, AND (E) USE OF THE SERVICE IS ENTIRELY AT YOUR OWN RISK AND NEITHER TALENTCARE NOR ANY OF THE TALENTCARE PARTIES SHALL HAVE ANY LIABILITY OR RESPONSIBILITY THEREFOR.

17. Limitation of Liability

NOTWITHSTANDING ANYTHING TO THE CONTRARY IN THIS AGREEMENT, IN NO EVENT WHATSOEVER SHALL TALENTCARE BE LIABLE FOR ANY INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, INCLUDING BUT NOT LIMITED TO LOSS OF PROFITS, LOST TIME OR GOOD WILL, EVEN IF TALENTCARE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER IN CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY OR OTHERWISE. TALENTCARE SHALL NOT BE LIABLE FOR ANY CLAIMS AGAINST YOU BY THIRD PARTIES. IN NO EVENT SHALL THE MAXIMUM CUMULATIVE LIABILITY OF TALENTCARE IN CONNECTION WITH THE SERVICE AND/OR THIS AGREEMENT, REGARDLESS OF THE FORM OF ACTION, EXCEED THE AMOUNT OF THE PAYMENTS MADE TO TALENTCARE FOR THE SPECIFIC SERVICE(S) GIVING RISE TO SUCH CLAIM IN THE SIX (6) MONTHS PRIOR TO SUCH CLAIM. NO ACTION, REGARDLESS OF FORM, ARISING FROM OR PERTAINING TO THE SERVICE MAY BE BROUGHT BY YOU MORE THAN ONE (1) YEAR AFTER SUCH ACTION HAS ACCRUED. YOU ACKNOWLEDGE THAT THESE LIMITATIONS OF LIABILITY SHALL APPLY EVEN IF THE REMEDIES FAIL THEIR ESSENTIAL PURPOSE AND THAT, WITHOUT THESE LIMITATIONS, YOU WOULD HAVE PAID A

HIGHER FEE FOR THE SERVICE PROVIDED HEREUNDER. Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

18. Modification to Terms

TalentCare reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

19. Assignment; Change in Control

This Agreement may not be assigned by you without the prior written approval of TalentCare but may be assigned without your consent by TalentCare to any party acquiring all or any part of TalentCare's assets. Any actual or proposed change in control of you that results or would result in a Competitor of TalentCare directly or indirectly owning or controlling 50% or more of you shall entitle TalentCare to terminate this Agreement for cause immediately upon written notice.

20. Customer Communications; Disclosure

From time-to-time TalentCare may ask whether or not you wish to receive marketing and other non-critical Service-related communications. You may elect not to receive such communications at that time or opt-out of receiving such communications at any subsequent time by notifying TalentCare. Because the Service is a hosted, online application, TalentCare may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. TalentCare reserves the right to disclose that you are a user of the Service.

21. General

- a. This Agreement shall be governed by Texas law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction or the United Nations Convention on the International Sale of Goods, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service, with the exception of claims for injunctive relief, shall be subject to the exclusive jurisdiction of the state and federal courts located in Austin, Texas.
- b. Any cause of action you may have with respect to your use of the Service must be commenced within one (1) year after the claim or cause of action arises.
- c. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provisions shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provisions, with all other provisions remaining in full force and effect.
- d. It may be necessary for TalentCare to perform scheduled or unscheduled repairs, maintenance, or upgrades and such activities may temporarily degrade the quality of the Service or result in a partial or complete outage of the Service. TalentCare provides no assurance that you will receive advance notification of such activities or that the Service will be uninterrupted or error-free. Any degradation or interruption in the Service shall not give rise to a refund or credit of any fees paid by you.
- e. No joint venture, partnership, employment, or agency relationship exists between you and TalentCare as a result of this agreement or use of the Service. The failure of TalentCare to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by TalentCare in writing.
- f. Neither party shall be liable to the other party for any failure to perform any of its obligations (except payment obligations) under this Agreement during any period in which such performance is delayed by circumstances beyond its reasonable control including, but not limited to, fire, flood, war, embargo, strike, riot or the intervention of any governmental authority.
- g. If you have not entered into another agreement with TalentCare regarding the subject matter contained herein, then this Agreement comprises the entire agreement between you and TalentCare and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding such subject matter. However, if you and TalentCare have entered into another agreement regarding the subject matter set forth herein that is a written and signed agreement between you and TalentCare, then this Agreement should be read and interpreted in conjunction with such agreement and, in the event of a conflict

between this Agreement and a written, signed agreement between the parties, the written, signed agreement shall govern and control.

Questions or Additional Information:

If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to legal@TalentCare.us or call TalentCare at (888) 785-0502.