

Terms and Conditions

1. TCD Software as a Service Terms and Conditions (the "**Terms and Conditions**") cover the relationship between The Cambridge Don ("**TCD**") and users (hereinafter referred to as the "**Client**") of its flagship product Talent Chaser which is marketed on a Software-as-a-Service basis. Client's use of Talent Chaser shall be deemed Client's agreement to these Terms and Conditions.

2. **Definitions.** For purposes of these Terms and Conditions, the terms below shall have the meanings defined below. Additional terms are defined in the preamble above and throughout these Terms and Conditions.

2.1. "**Client Content**" means any creative, data, information, trademarks, logos, files, images, text or other content that may be input into Talent Chaser by Client.

2.2. "**SaaS Term**" means the period during which the Services and access to the Software will be provided by TCD to Client, including the Initial Term and any Renewal Terms (as each is defined in Section 6 hereunder).

2.3. "**Services**" means the multiple landing pages serving platform and other services provided by TCD via the Software pursuant to these Terms and Conditions.

2.4. "**Software**" means Talent Chaser.

3. **Web-Based License.**

3.1. TCD grants to Client, and Client accepts, a limited, nontransferable, nonexclusive and revocable license and right to access the Software via the internet and use the Software only as authorized in these Terms and Conditions, for its own purpose and operations, during the SaaS Term. Client acknowledges that its access and use of the Software will be web-based only. The Software will not be provided to Client in CD-ROM form (or any other form of media) and will not be installed on any servers or other computer equipment owned or otherwise controlled by Client. Instead, the Software will be hosted by TCD and accessed and used by Client through the use of the Internet and Client's computers.

3.2. The Software serves solely as an auxiliary tool for the management of Client's Human Resources and data Content, as an attempt to optimize employee performance and talent retention. TCD exercises no control and does not guarantee any consequence, result or achievement deriving from usage of the Services, Software, and/or any feature thereof, and any and all data, tool and/or information provided through or embedded in the Services and/or the Software shall be construed solely as a non-binding recommendation made for the benefit of the Client. The final decision whether or not to use such recommendation shall be made by the Client. Client is aware that some of the Software modules are based on statistical analysis. Therefore, the Software and the use of the Services cannot guarantee any definitive results or consequences, but solely provide non-binding recommendations to Client.

4. **Access to Services.**

4.1. Subject to these Terms and Conditions, TCD will offer the Services by making the Software available for Client's use during the SaaS Term through the Internet. TCD will provide Client with logon user name and password combinations that will give Client's employees access to the latest supported version of the Software via the Internet. TCD makes no representation as to the security of these codes and takes no responsibility for the security of any data entered into Talent Chaser by users gaining access via those codes. While Talent Chaser is generally compatible with the latest IE and Firefox web browsers, TCD makes no warranty in this regard.

4.2. TCD may change, suspend, or discontinue the Services at any time, including the availability of the Software, or any feature or content thereof, without notice or liability. TCD reserves the right, at its sole discretion, to refuse to allow Client to access the Services at any time.

5. Fees and Payment.

- 5.1. Client will pay all charges ("**Fees**") incurred in connection with the Services as specified by TCD in writing from time to time, in immediately available funds or as otherwise approved by TCD, within the time period specified elsewhere in these Terms and Conditions. TCD reserves the right to change or retract any credit line at any time in its sole discretion. TCD and Client shall mutually agree on the method of payment and record the agreed method in writing.
- 5.2. If payment is not made when due, TCD may charge interest at (a) the rate of 1.5% per month.
- 5.3. Charges shall be calculated solely based on records maintained by TCD. No Refunds will be payable unless entirely at the discretion of TCD.

6. Term and Termination.

- 6.1. Initial Term; Renewal Terms. The SaaS Term will commence on the Date any Client employee first gains access to Talent Chaser and shall continue in effect until the end of the calendar month in which this takes place unless sooner terminated by TCD as provided in these Terms and Conditions. Upon expiration of the Initial Term, the SaaS Term shall automatically renew for successive renewal terms of one (1) month each (each a "**Renewal Term**") unless sooner terminated as provided in these Terms and Conditions, or unless either party gives written notice of termination to the other party at least seven (7) days prior to the end of the Initial Term or any Renewal Term.
- 6.2. Termination for Breach. Notwithstanding Section 6.1, TCD may terminate the SaaS Term as a result of a breach of these Terms and Conditions by the Client, if (a) TCD provides written notification to the Client of the breach, and (b) such material breach is not resolved within seven (7) days of notification. In the event of termination of these Terms and Conditions from any reason, Client shall not have any claim, demand or suit with respect against TCD.
- 6.3. Effect of Termination. In the event the SaaS Term is terminated by Client for convenience or by TCD as a result of a breach by Client prior to the completion of the Initial Term or any Renewal Term, Client shall pay TCD the remaining balance of Fees owed for the entire Initial Term or, if then in effect, the entire applicable Renewal Term.
- 6.4. Both parties acknowledge that this payment represents a reasonable estimate of TCD's damages in the event of an early termination. In the event of termination of the SaaS Term for any reason, Client's access and use of the Software shall cease immediately, and the provisions of Sections 11, 13, 14, 15, 16 and 17 shall survive.

7. Clients Contents

- 7.1. Client hereby grants to TCD a nonexclusive, worldwide, royalty free, transferable license to use all Client Content input into Talent Chaser by Client and its authorized users.
- 7.2. Client Content input into Talent Chaser shall be under the sole responsibility of the Client and anyone on its behalf, and TCD shall not have any responsibility and/or liability with respect to Client Content, including to any obscene, threatening, defamatory, fraudulent, infringing, harassing, or otherwise offensive material or content included in Client Content.
- 7.3. TCD will not systematically monitor Client Content, but TCD reserves the right to review Client Content from time to time in its discretion. TCD reserves the right to: (a) disable access to or redirection to any Client Content which it determines in its sole discretion (such discretion to be exercised in good faith) to be illegal, obscene, threatening, defamatory, fraudulent, infringing, harassing, or otherwise offensive, and (b) disable access to or redirection to any other Client Content under justified exigent circumstances, as such circumstances are determined in good faith by TCD. TCD agrees to notify Client in cases where it disables access to or deletes any other Client Content.

8. Limitations.

- 8.1. Client acknowledges that its license to use Talent Chaser is limited to itself and its employees. Client shall not, and shall not allow any third party to: (i) allow any non-employee to have access to Talent Chaser; (ii) input Client Content which contravenes applicable laws and regulations in any country in which Client uses Talent Chaser; (iii) engage in any other illegal or fraudulent business practice under the laws of any state or country where access to Talent Chaser is made available.
- 8.2. Client must ensure that Client Content input into Talent Chaser shall not include practices including but not limited to, web beacon or other tracking mechanisms. Client will not alter, and will prohibit its users from altering any tags that TCD could use for delivering its Services.

9. Support.

TCD will provide online, telephone and e-mail support to Client during the SaaS Term according to TCD's SaaS customary practice, based on its sole consideration. Any action or conduct of the Client, based on the support services shall be performed under Client sole responsibility.

10. Client Responsibilities.

- 10.1. Client shall be responsible for its own use of the Services and/or Software (and for anyone on its behalf use thereof) and for any business, commercial and legal consequence, result or decision it shall take, based upon the Services.
- 10.2. Client shall be responsible for ensuring that any Client Content is accurate, not corrupt in any way, and does not contain any viruses.
- 10.3. Client will retain responsibility for administering security within the TCD applications and Services. Client is responsible for providing users' network access to the Software. Client is also responsible for ensuring that its users comply with these Terms and Conditions with respect to use of the Software and Services.
- 10.4. TCD shall not be responsible for the reliability or continued availability of the communications lines, or the corresponding security configurations, used by Client in accessing the Internet to access the Software. Client shall provide accurate input information in the manner reasonably prescribed by TCD in connection with the Software and Services provided under these Terms and Conditions.
- 10.5. Client shall advise TCD of any changes to Client's operations, banking relationships, or other information that would require a change in the support, operation, or configuration of the hosted Software, or the Services.

11. Intellectual Property Rights.

- 11.1. Client agrees that the Software, User Documentation and Services are proprietary products and services and that all right, title and interest in and to the Software, User Documentation and Services, including all associated intellectual property rights, are and shall at all times remain with TCD and its third party licensors.
- 11.2. The Software and Services contain trade secret and proprietary information owned by TCD or its third party licensors and is protected, inter alia, by pending patents applications and by copyright laws and international trade provisions. Client must treat the Software like any other copyrighted material and Client may not copy or distribute the Software electronically or otherwise, for any purpose.

11.3. Any expression or result of TCD's Services, such as findings, analyses, conclusions, opinions, recommendations, ideas, techniques, know-how, designs, programs, tools, applications, interfaces, enhancements, software (object code only), and other technical information (collectively "**Work Product**") created by TCD in the course of performing the Services hereunder are the property of TCD and:

11.3.1. are licensed to Client, without further license fees, pursuant to the license in these Terms and Conditions and

11.3.2. may not be transferred to a third party system or manual mechanism in a way that removes, or has the possibility to remove either by omission or error, its full meaning.

12. Other Restrictions.

12.1. Use of the Software and Services is restricted to use by the specific licensing entity only, and only for Client's internal business purposes. Client may not use the Software for the benefit of any third parties or provide service bureau or other access or use of the Software to third parties.

12.2. Client may not, directly or indirectly, sublicense, assign, transfer, sell, rent, lend, lease or otherwise provide the Software or the Services (including without limitation any capacity) or any portion thereof, to any third party and any attempt to do so is null and void.

12.3. Client may not reverse engineer, disassemble, decompile or make any attempt to ascertain, derive or obtain the source code for the Software.

12.4. Software shall not be used for any commercial purpose beyond the functionality driven by the Software. Client will not use the Software or Services to take any actions that: (i) infringe on any third party's copyright, patent, trademark, trade secret or other proprietary rights or rights of publicity or privacy; (ii) violate any applicable law, statute, ordinance or regulation (including those regarding export control); (iii) are defamatory, trade libelous, threatening, harassing, or obscene; or (iv) constitute unauthorized entry to any machine accessible via the network.

13. TCD Limited Warranty.

13.1. Any written or oral information or representations provided by TCD agents, employees, resellers, consultants or service providers with respect to the use or operation of the Software will in no way effect the scope of TCD's warranty. TCD exercises no control whatsoever over the content of the information passing through their systems. TCD will not be liable for: (i) any decision made by Client whether or not to use the non-binding recommendation made as part of the Services, for its benefit, and for any consequence thereof; (ii) any consequence of providing any information within the Services, including information with inaccurate or inappropriate content; (iii) any bugs, computer viruses, malfunctions or disruptions in the Software; or (iv) any alteration, theft, or destruction of any data, files, programs, procedures, or information through accident, fraudulent means or devices, or any other method.

13.2. TCD DOES NOT AND CANNOT WARRANT THE PERFORMANCE OR RESULTS OBTAINED BY CLIENT IN USING THE SOFTWARE AND/OR ANY FEATURE EMBEDDED THEREIN, OR THAT THE SOFTWARE WILL MEET CLIENT'S REQUIREMENTS OR THAT THE OPERATION OF THE SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE OR BUGS FREE. EXCEPT FOR THE WARRANTIES SET FORTH ABOVE, TCD EXPRESSLY DISCLAIMS ALL OTHER REPRESENTATIONS OR WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY (BY ANY TERRITORY OR JURISDICTION) TO THE EXTENT PERMITTED BY LAW, AND FURTHER TCD EXPRESSLY EXCLUDES ANY WARRANTY OF NON-INFRINGEMENT, TITLE, FITNESS FOR A PARTICULAR PURPOSE, OR MERCHANTABILITY TO THE EXTENT PERMITTED BY LAW.

14. Confidential Information.

- 14.1. Definition. The term "**TCD Confidential Information**" shall mean: (i) any and all information which is disclosed by TCD to the Client verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of the Services and any proposals or other documents that preceded these Terms and Conditions. Confidential Information may include, but not be limited to, personal information, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning any of TCD's past, current, or possible future programs, and any confidential information concerning TCD's business or organization, as TCD has conducted it or as TCD may conduct it in the future. In addition, Confidential Information may include information concerning any of TCD's past, current, or possible future products or methods, including information about TCD's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).
- 14.2 Definition. The term "**Client Confidential Information**" shall mean: (i) any and all information which is disclosed by Client to TCD either by input into Talent Chaser or verbally, electronically, visually, or in a written or other tangible form which is either identified or should be reasonably understood to be confidential or proprietary; and (ii) the terms, including without limitation, the pricing, of the Services and any proposals or other documents that preceded these Terms and Conditions. Confidential Information may include, but not be limited to, personal information, trade secrets, computer programs, software, documentation, formulas, data, inventions, techniques, marketing plans, strategies, forecasts, client lists, employee information, financial information, confidential information concerning any of Client's past, current, or possible future programs, and any confidential information concerning Client's business or organization, as Client has conducted it or as Client may conduct it in the future. In addition, Confidential Information may include information concerning any of Client's past, current, or possible future products or methods, including information about Client's research, development, engineering, purchasing, manufacturing, accounting, marketing, selling, leasing, and/or software (including third party software).
- 14.3. Treatment of TCD's Confidential Information. TCD's Confidential Information shall be treated as strictly confidential by Client and shall not be disclosed by Client to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". Client shall protect the deliverables resulting from Services with the same degree of care. These Terms and Conditions impose no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Client without an obligation to maintain its confidentiality prior to receipt from TCD; (b) is or becomes generally known to the public without violation of these Terms and Conditions; (c) is obtained by Client in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Client without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the TCD and provided further that diligent efforts are undertaken to limit disclosure.
- 14.4. Treatment of Client's Confidential Information. Except for information entered by Client into Talent Chaser or information created by TCD through the Analysis of such data, Client's Confidential Information shall be treated as strictly confidential by Client and shall not be disclosed by Client to any third party except to those third parties operating under non-disclosure provisions no less restrictive than in this Section and who have a justified business "need to know". Client shall protect the deliverables resulting from Services with the same

degree of care. These Terms and Conditions impose no obligation upon the parties with respect to Confidential Information which either party can establish by legally sufficient evidence: (a) was in the possession of, or was rightfully known by the Client without an obligation to maintain its confidentiality prior to receipt from TCD; (b) is or becomes generally known to the public without violation of these Terms and Conditions; (c) is obtained by Client in good faith from a third party having the right to disclose it without an obligation of confidentiality; (d) is independently developed by Client without the participation of individuals who have had access to the Confidential Information; or (e) is required to be disclosed by court order or applicable law, provided notice is promptly given to the TCD and provided further that diligent efforts are undertaken to limit disclosure. Information entered by Client into Talent Chaser or information created by TCD through the Analysis of such data becomes the property of TCD and may be used for any purpose TCD, in its entire discretion may see fit. TCD does not guarantee that Information provided to it will be stored indefinitely and TCD reserves the right to purge such information from its database after one (1) year.

14.5. Survival. The terms of this Section 14 shall survive termination of the SaaS Term.

15. Indemnity.

15.1. Client shall indemnify, defend and hold harmless TCD against any claims including costs and reasonable attorney's fees that: (i) were submitted by any third party, in which TCD is named as a result of the negligent or intentional acts or failure to act by the Client, its employees or agents, while performing its obligations under these Terms and Conditions; (ii) that any Client Content infringes or violates any rights of third parties, including without limitation, rights of publicity, rights of privacy, intellectual property, trade secrets or licenses; or (iii) arising from or relating to Client's or its users' failure to comply with these Terms and Conditions. Client indemnification obligation is contingent upon the TCD providing the Client with prompt written notice of such claim, information, and all reasonable assistance in the defense of such action.

15.2. Survival. The terms of this Section 15 shall survive termination of the SaaS Term.

16. Limitation of Liability. TCD'S MAXIMUM LIABILITY FOR ANY ACTION ARISING UNDER THESE TERMS AND CONDITIONS, REGARDLESS OF THE FORM OF ACTION AND WHETHER IN TORT, CONTRACT OR OTHER FORM OF LIABILITY, SHALL IN NO EVENT EXCEED THE FEES PAID BY Client DURING THE ONE-MONTH PERIOD PRECEDING NOTICE TO TCD OF CLIENT'S LOSS. IN NO EVENT SHALL TCD BE LIABLE FOR INDIRECT, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES OF ANY KIND, INCLUDING WITHOUT LIMITATION, LOST DATA, LOST PROFITS, OPPORTUNITIES OR CONTRIBUTIONS, LOSS OF USE, GOOD WILL, BUSINESS INTERRUPTION, COST OF COVER, OR OTHER PECUNIARY OR NON-PECUNIARY LOSS, HOWEVER ARISING, EVEN IF TCD HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. TCD SHALL HAVE NO LIABILITY OR RESPONSIBILITY IN THE EVENT OF ANY LOSS OR INTERRUPTION IN SOFTWARE ACCESS DUE TO CAUSES BEYOND ITS REASONABLE CONTROL OR FORESEEABILITY, SUCH AS LOSS, INTERRUPTION OR FAILURE OF TELECOMMUNICATIONS OR DIGITAL TRANSMISSIONS AND LINKS, INTERNET SLOWDOWN OR FAILURES. THE PARTIES AGREE TO THE ALLOCATION OF RISK SET FORTH HEREIN. BECAUSE SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES, THE ABOVE LIMITATION MAY NOT APPLY TO Client.

17. Governing Law; Arbitration.

This Agreement shall be construed and enforced in accordance with laws of the United States of America. Any disputes arising under or in connection with these Terms and Conditions shall be exclusively presented in and determined by the courts of the United States of America (to the exclusion of others) and shall be subject to United States of America Law (to the exclusion of others).

18. Assignment.

These Term and Conditions and the rights hereunder are not transferable or assignable by the Client without the prior written consent of TCD, except to a person or entity who acquires all or substantially all of the assets or business of the Party, whether by sale, merger or otherwise.

19. Miscellaneous.

Except as otherwise specifically stated herein, remedies shall be cumulative and there shall be no obligation to exercise a particular remedy. If any provision of these Terms and Conditions are held to be unenforceable, the other provisions shall nevertheless remain in full force and effect. The failure by either party to enforce any rights granted hereunder or to take action against the other party in the event of any breach of these Terms and Conditions will not be deemed a waiver by that party as to the subsequent enforcement of rights or subsequent actions in the event of future breaches. These Terms and Conditions and the Front Page together set forth the entire agreement between the parties with respect to the subject matter hereof and all other agreements, representations, communications and understandings, both oral and written, are superseded hereby.