

Terms and Conditions Governing Use of Taleo Proprietary Software

- 1 **Term of Agreement and Renewal.** The initial term of this Agreement shall be nine (9) months ("Initial Term"). The Agreement may be renewed upon the mutual written agreement of the parties..
- 2 **Termination and Expiration.** Either party shall be permitted to terminate upon 30 days prior written notice to the other at any time in the event that the other party materially breaches this Agreement and if such breach is not cured (or, if the breach is not capable of being cured, discontinued with appropriate changes to ensure that it is not repeated) within thirty (30) days after the other party receives notice. Upon the expiration or termination of the Agreement, Customer shall cease all use of the Software with the exception of data retrieval as described below and Taleo shall have the option to disable all other portions of the Software for which Customer's usage rights have been terminated or which have expired. Customer will have the option to receive a copy of the Customer data hosted by Taleo at the time of termination or expiration of the Agreement. Taleo is not obligated to store and shall be entitled to delete any Customer data in Taleo's possession that is not retrieved by Customer within thirty (30) days of expiration or termination of this Agreement.
 - 2.1 Upon not less than sixty (60) days prior written notice to Taleo, Customer shall have the right to terminate this Agreement and any order forms referencing this Agreement without cause and for Customer's convenience. Fees that have become due as of the termination effective date shall remain due and no fees shall be refunded upon termination.
- 3 **Software Usage Rights.** Until the expiration or termination of the Agreement and for the term set forth in an Order Form, Taleo grants to Customer a limited, non-transferable, non-exclusive right to access and use its proprietary, Taleo hosted Software products and related Documentation via a web browser for Customer's internal business use. The Software shall be made available to Customer as a service. Taleo will host and retain physical control over the Software and make such computer programs and code available only through the Internet for access, use and operation by Customer through a Web-browser (e.g., Internet Explorer). No provision under this Agreement shall obligate Taleo to deliver or otherwise make available any copies of computer programs or code from the Software to Customer, whether in object code or source code form. Except to the extent applicable law precludes such activities from being prohibited by contract, Customer agrees that it shall not rent, lease, distribute, or resell the Software, or use the Software as the basis for developing a competitive solution (or contract with a third party to do so). Customer may not remove or alter any of the logos, trademark, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Software. Upon the expiration or termination of the Agreement or expiration of an Order Form, Customer shall cease all use of the Software with the exception of data retrieval as described below and Taleo shall have the option to disable all other portions of the Software for which Customer's usage rights have been terminated or which have expired. Customer will have the option to receive a copy of the Customer data hosted by Taleo at the time of termination or expiration of the Agreement. Taleo is not obligated to store and shall be entitled to delete any Customer data in Taleo's possession (including employee data stored on Taleo's servers) that is not retrieved by Customer within thirty (30) days of expiration or termination of this Agreement.
- 4 **Maximum Employee Count.** The Software may not be used by or for the benefit of Customer employee counts in excess of the Maximum Employee Count set forth on the this Order Form unless mutually agreed by the parties in writing.
- 5 **Use of the Software by Third Parties on Customer's Behalf.** Customer may make the Software available for use by third-party contractors used by Customer solely to assist in Customer's staffing efforts ("Third-Party Contractor") within the limits of the usage rights and restrictions set forth in this Agreement and any Order Form. Customer is responsible for the use of the Software by such Third-Party Contractors, including compliance with each term of this Agreement to the same extent as if the Third-Party Contractor were an employee of Customer. Customer agrees that any password provided to a Third-Party Contractor will be disabled immediately upon conclusion of such Third-Party Contractor's work for Customer. Customer will not allow employees of the following companies (or a successor in interest to the following companies) to access or use Customer's instance of the Software: ADP (formerly Virtual Edge), Authoria, Cezanne, Cornerstone OnDemand, Deploy, Halogen Software, HireDesk, HRSmart, JobPartners, JobPlanet, Kenexa, Kronos (formerly Unicru), Monster, Mr. Ted, Oracle, Pageup, Peopleclick, Pilat, RecruitASP, RSI (Ceridian), Salary.com, SAP, Softscape, Stepstone, Success Factors, Technomedia, TEDSTrovix, , Workday, Workstream, Yahoo! Resumix. Taleo may amend the preceding list upon notice to Customer.
- 6 **Ethical Hacks and Robots.** Customer shall not and shall not allow any employee or consultant working on Customer's behalf to (i) perform any technical security integrity review, penetration test, load test, denial-of-

service simulation or vulnerability scan ("Ethical Hack") without Taleo's prior written consent, (ii) attempt to access the data of another Taleo Customer; or (iii) use any software tool designed to automatically emulate the actions of a human user (such tools are commonly referred to as "Robots") in conjunction with the Taleo Software (whether a production or non-production instance of the Software).

- 7 **Hosting Services.** Taleo shall host and maintain the Software and all Customer and employee data uploaded to or entered into the Software in accordance with Taleo's then-current policies and practices ("Hosting Services") as set forth at <http://www.taleo.com/supportterms> (or such other website as directed by Taleo) during the Term. Taleo reserves the right to make changes to its policies, procedures and practices and to make changes to its hosting and technical infrastructure, provided such changes do not materially degrade the overall level of Hosting Services provided to Taleo Customer. Software and services provided pursuant to this Agreement are not eligible for service level credit or penalties for failure to achieve targeted performance levels.
- 8 **Customer Support.** Taleo's Customer support policies, procedures and practices are as set forth at <http://www.taleo.com/supportterms> (or such other website as directed by Taleo). Taleo's policies, procedures and practices regarding data back-up and disaster recovery are as set forth at <http://www.taleo.com/supportterms> (or such other website as directed by Taleo). Taleo reserves the right to make changes to these policies, procedures and practices, provided such changes do not materially degrade the overall level of support provided by Taleo to Customer.
- 9 **Consulting Services.** Customer has agreed to purchase from Taleo consulting services associated with the implementation and optimization of the Software ("Consulting Services") as set forth in an Order Form. Customer may agree to purchase additional Consulting Services via a mutually executed statement of work (each an "SOW"). Each SOW during the Term is governed by the terms of this Agreement and in the event of any conflict, discrepancy or inconsistency between an SOW and the terms of the Agreement, the Agreement shall govern except as to scope of work, consulting fees, currency, travel expenses and payment terms, for which the SOW will govern.
 - 9.1 **Taleo Commercial Products.** An SOW may require Taleo to configure functionality currently available in Taleo's pre-existing, commercial software products to the extent possible in the current version of such products. Notwithstanding any other term of such SOW, no term or provision of such SOW will be deemed or interpreted as an obligation or commitment by Taleo to complete custom development or code level modifications with respect to any of Taleo's pre-existing, commercial software products. Taleo shall retain all ownership rights in Taleo's commercial software products as more specifically set forth in the Agreement. All rights with respect to access to and usage of any of Taleo's pre-existing, commercial software products are governed by the Agreement and not such SOW.
 - 9.2 **Change Orders.** Additionally, any Consulting Services or Education Services work requested and/or performed outside of the scope described in such SOW will require a mutually executed SOW change order or amended SOW, detailing the changes to the source SOW, whether such changes are revisions, additions or deletions, and any effect on costs ("Change Order"). The Change Order will be mutually agreed. In the event a Change Order is pending signature by Customer, Taleo will not complete work that is subject to the pending change until the Change Order is executed. Change Orders will be identified by and will otherwise incorporate the terms and conditions of the original SOW or will supersede and replace the original SOW.
- 10 **Confidential Information.** Customer and Taleo each acknowledges that by reason of its relationship hereunder it will have access to certain information and materials concerning the other party's technology business, plans, and customers that are confidential and of substantial value to such party, which value would be impaired if such information were disclosed to third parties ("Confidential Information"). Confidential Information of Taleo shall include, without limitation, information specifically designated as confidential, the features and functions of the Software that are not available to the general public via the public internet (including screen shots of the same), future product plans, any documentation or specifications provided to Customer, the commercial terms (including pricing) of this Agreement but not the mere existence of this Agreement, any Order Forms, SOWs, performance and security test results (whether conducted by Taleo or Customer), and any other proprietary, financial or business information supplied to Customer by Taleo. Confidential Information of Customer shall include, without limitation, information specifically designated as confidential, information uploaded to the Software by an employee and Customer business information uploaded to the Software. Each party agrees that it will not and will ensure that its employees, agents and contractors will not make use of (except in furtherance of the Agreement), disseminate, or in any way disclose any Confidential Information of the other party to any person, firm or business, except for any purpose the disclosing party may hereafter authorize in writing. Each party agrees that it will treat all Confidential Information with the same degree of care as it accords to its own

Confidential Information, and each party represents that it exercises reasonable care to protect its own Confidential Information. Upon request by Customer or Taleo, the other party shall advise whether or not it considers any particular information or materials to be confidential. Notwithstanding the foregoing, "Confidential Information" shall not include: (i) information previously known to the receiving party without reference to Confidential Information, (ii) information which is or becomes publicly known through no act or omission of the receiving party, (iii) information which has been independently developed by the receiving party without reference to the disclosing party's Confidential Information, (iv) information received from a third party under no confidentiality obligation with respect to the Confidential Information, (v) information required to be disclosed pursuant to administrative or court order, government or regulatory requirement or arbitration or litigation arising out of this Agreement.

- 11 **Intellectual Property.** Customer shall retain all right, title and interest to all data uploaded to the Software by Customer employees. Taleo shall retain all right, title and interest in and to the Software, the Documentation for the Software, all modifications and/or enhancements to its Software (regardless of the source of inspiration for any such enhancement or modification and regardless of whether Customer has provided input regarding such modifications and/or enhancements), and all proprietary training or education content provided to Customer by Taleo. With respect to custom developed documents, designs, computer programs, computer documentation and other tangible materials authored or prepared by Taleo for Customer ("Deliverables") as required by an SOW, Customer shall have a non-exclusive, nontransferable, internal use, object code license to use such Deliverables for Customer's internal business purposes during the Term Customer acknowledges that Taleo will retain all right, title and interest to transactional and performance data related to use of the Software which Taleo may collect and use for its business purposes provided that such use does not reveal the identity of Customer or any personally identifiable employee information that belongs to Customer.
- 12 **Taxes.** All payments, fees and other charges payable by Customer to Taleo under this Agreement are exclusive of all federal, state, local and foreign taxes, levies and assessments. Customer agrees to bear and be responsible for the payment of all such taxes, levies and assessments imposed on Customer or Taleo arising out of this Agreement, excluding any tax based on Taleo's net income. If Customer is required by any applicable law to deduct or withhold amounts otherwise payable to Taleo hereunder, Customer will pay the required amount to the relevant governmental authority and pay to Taleo, in addition to the payment to which Taleo is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Taleo free and clear of all taxes equals the full amount Taleo would have received had no such deduction or withholding been required
- 13 **Taleo Warranties.** Taleo represents, warrants, and covenants that the Software will perform substantially in accordance with the Documentation.
- 14 **Software Infringement Indemnity.** Taleo shall, at its expense, defend or at its option, settle any claim, action or allegation brought against Customer that the Software infringes any valid copyright, patent, trade secret, or any other proprietary right of any third party and shall pay any final judgments awarded or settlements entered into; provided that Customer gives prompt written notice to Taleo of any such claim, action or allegation of infringement and gives Taleo the authority to proceed as contemplated herein. Taleo will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and Customer may not settle or compromise such claim, action or allegation, except with prior written consent of Taleo. Customer shall give such assistance and information as Taleo may reasonably require, to settle or oppose, such claims. In the event any infringement claim, action or allegation is brought or threatened, Taleo may, at its sole option and expense: (a) procure for Customer the right to continue use of the Software or infringing part thereof; (b) modify or amend the Software or infringing part thereof, or replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or, if neither of the foregoing is commercially practicable, (c) terminate this Agreement and refund to Customer the prorated amount of the fees prepaid by USCC that were to apply to the remainder of the unexpired Term, as calculated from the termination date through the remainder of the unexpired Term. The foregoing obligations will not apply to the extent the infringement arises as a result of (a) any use of the Software in a manner other than as specified in this Agreement; (b) any use of the Software in combination with other products, equipment, devices, software, systems or data not supplied by Taleo to the extent such claim is directed against such combination; or (c) any alteration, modification or customization of the Software made by any party other than Taleo or Taleo's authorized representative if such infringement would not have occurred without such modification or combination. This Section states the entire liability of Taleo with respect to infringement of any patent, copyright, trade secret or other intellectual property right and **is not** subject to the limitation of liability provisions set forth elsewhere in the agreement.

- 15 LIMITATION OF LIABILITY.** IN NO EVENT WILL EITHER PARTY BE LIABLE FOR ANY INDIRECT, CONSEQUENTIAL, SPECIAL, PUNITIVE, OR EXEMPLARY DAMAGES ARISING OUT OF THIS AGREEMENT. THIS PROVISION SHALL SURVIVE THE EXPIRATION OR TERMINATION OF THIS AGREEMENT. THE AGGREGATE LIABILITY OF EITHER PARTY TO THE OTHER WITH RESPECT TO THIS AGREEMENT SHALL BE LIMITED, TO THE EXTENT POSSIBLE UNDER APPLICABLE LAW, TO THE FEES COLLECTED BY TALEO FROM CUSTOMER PURSUANT TO THIS AGREEMENT IN THE TWELVE MONTHS PRECEDING THE IMPOSITION OF LIABILITY.
- 16 Governing Law.** THIS AGREEMENT IS MADE IN ACCORDANCE WITH AND SHALL BE GOVERNED AND CONSTRUED UNDER THE LAWS OF THE STATE OF CALIFORNIA, WITHOUT REFERENCE TO SUCH STATE'S CONFLICTS OF LAWS PRINCIPLES. IN NO EVENT SHALL THIS AGREEMENT BE GOVERNED BY THE UNITED NATIONS CONVENTION ON CONTRACTS FOR THE INTERNATIONAL SALE OF GOODS.
- 17 Compliance with Laws and Control Disclaimer.** Each party shall comply with all laws, rule or regulations applicable to such party's activities in relation to this Agreement, including export control laws of the United States which are applicable to the Software. Taleo shall not provide Customer with any legal advice regarding compliance with employment, data privacy or other relevant laws, rules or regulations in the jurisdictions in which Customer uses the Software ("Laws"). Customer hereby acknowledges its understanding that the Software may be used in ways that do and do not comply with Laws and it is Customer's sole responsibility to monitor its compliance and its employee's compliance with all relevant Laws. Customer acknowledges and agrees that Taleo exercises no control over the Customer specific staffing and performance management practices implemented using the Software or Customer's decision as to promotion or evaluation of any personnel ("Performance Decisions"). Taleo hereby disclaims all liability and damage arising from Performance Decisions and from harmful data or code uploaded to the Software by Customer, Customer's employees or contractors.