
TALENTGUARD STANDARD TERMS AND CONDITIONS AGREEMENT

This document outlines the standard contractual terms and conditions (“Terms”) that apply to the provision of any products or services by TalentGuard, Inc. (“TalentGuard”) to the entity identified on the Sales Order Form (“Customer”). These terms are incorporated into the Order Form and together, the Sales Order Form and these Terms are the “Agreement.” A “Sales Order Form” means any order for the provision of products or services.

§1. DEFINITIONS

- 1.1. **Services** means the proprietary software as a service provided by TalentGuard and made available through a URL in a hosted environment and other services provided by TalentGuard or its partners as further described in the Order Form. The Services include:
- TalentGuard Performance
 - TalentGuard Development
 - TalentGuard Compensation
 - TalentGuard Career Path
 - TalentGuard Succession
 - TalentGuard 360 Feedback
 - TalentGuard Competency Manager
 - TalentGuard Certification
 - TalentGuard Applicant Tracking by Lever or ICIMS
 - TalentGuard Learning Management by TalentGuard Bridge
 - Talent Frameworks Data by TalentGuard or third-parties such as International Business Machines (IBM) or HRSG (Human Resource Systems Group)
- 1.2. **“Content”** shall mean any content the Company or its Partners supply for use. In addition to TalentGuard SaaS, this can include but is not limited to competencies, job roles, training materials, URL’s, hyperlinks and logos.
- 1.3. **“Confidential Information”** shall mean certain non-public information of the Disclosing Party or of third parties that is designated as confidential or proprietary and that derives independent value from not being generally known to the public, including, but limited to, trade secrets, web site usage statistics, marketing and business plans, individual employee/employment information and technical information.
- 1.4. **“Customer”** shall mean company entering into this agreement.
- 1.5. **“Documentation”** shall mean program documentation, user manuals, handbooks and other materials describing the use, design, installation, operation and maintenance of the TalentGuard SaaS.
- 1.6. **“SLA”** shall mean Service Level Agreement.
- 1.7. **“Trademarks”** shall mean the trademarks, service marks, trade names and logotypes authorized from time to time by TALENTGUARD.
- 1.8. **“Employee”** is a unit of measure by which the TalentGuard SaaS can be obtained. An Employee is a unique person employed in or otherwise paid by or acting on behalf of the Customer’s Enterprise, whether or not given access to the TalentGuard SaaS. Sufficient entitlement must be obtained to cover the number of Employees during the measurement period specified in the Sales Order.

§2. PROVISION OF SERVICES

- 2.1 **Software Licenses.** Company grants Customer a revocable, non-exclusive, non-transferable right to access and use the TalentGuard services subject to compliance with these Terms. The TalentGuard services deliver the functionality over the Internet to support human resources processes.
- 2.2 **Data Licenses for the Talent Frameworks Data.** Company grants Customer a non-expiring, non-exclusive, non-transferable license to use the data in the purchased Talent Frameworks spreadsheet solely for Customer’s own benefit internally on a companywide basis up to the quantity specified in the Sales Order provided Customer remains in compliance with its obligations under this Agreement. Company makes no warranty that the data in the Talent Frameworks spreadsheet or the spreadsheet itself will be compatible with any third-party talent manager system, and shall have no duty to manipulate the spreadsheet or cause it to be compatible with any third-party talent manager system. The Customer agrees that TalentGuard’s partners are entitled to enforce the provisions listed in this Section 2.2.
- 2.3 **User Licenses.** Company agrees that Customer may use the TalentGuard services for its own use and for the benefit of its employees. User Licenses may only be used by one person – a single license shared by multiple people is not permitted.

TalentGuard reserves the right to revoke or suspend any user without refund if it has reason to believe that a violation of these Terms has occurred.

2.4 Modifications to the Services. TalentGuard may update the Services from time to time. If TalentGuard changes the Services in a manner that materially reduces their functionality, TalentGuard will make reasonable efforts to inform Customer.

§3. CUSTOMER RESPONSIBILITIES.

3.1 Customer: (a) is solely responsible for Customer Content and all activities arising from its Users, and (b) must keep its passwords secure and confidential, and notify TalentGuard promptly of any known or suspected unauthorized access to the Service.

§4. TALENTGUARD RESPONSIBILITIES.

4.1 TalentGuard shall provide: (a) all updates and upgrades to the Service to Customer that TalentGuard provides to its customers generally for no additional charge; and (b) Support ("Support") pursuant to the terms of TalentGuard's customer support.

§5. SUBSCRIPTION

5.1 As consideration for the subscription to the Service, Customer shall pay all fees ("Fees") set forth in the Sales Order Form. All Fees will be due from Customer within fifteen (15) days of receipt of invoice, unless otherwise agreed to in the Sales Order Form. All Fees owed by Customer are exclusive of, and Customer shall pay, all sales, use, VAT, excise, withholding, and other taxes that may be levied in connection with this Agreement. Except as set forth in this Agreement, all fees are non-refundable.

§6. SERVICE LEVEL AGREEMENT

6.1 TalentGuard will use commercially reasonable efforts to make the Service available with an Annual Uptime Percentage of at least 99.9% ("Service Commitment"). In the event TalentGuard does not meet the Service Commitment, Customer will be eligible to receive a service credit as described below. The maximum amount of the credit is 1/12 of the annual subscription fee for a twelve (12) month period. The service credit is calculated by taking the number of hours the Service was unavailable below the Service Commitment, and multiplying it by 3% of 1/12 the annual subscription fee. If the Customer has been using the Service for less than 365 days, the preceding 365 days will be used, but any days prior to Customer's use of the Service will be deemed to have had 100% availability. Any unavailability occurring prior to a credit cannot be used for any future claims. The Service Commitment does not apply to any scheduled outages, standard maintenance windows, force majeure, and outages that result from any technology issue originating from Customer or a User. Customer's sole and exclusive remedy for breach of the warranty in this Section 6 will be for TalentGuard to provide a credit as provided in this Section 6; provided that Customer notifies TalentGuard in writing of such claim within the applicable month Customer becomes eligible or 30 days after.

§7. COMPLIANCE

7.1 Each party will comply with all applicable laws and regulations (including all applicable export control laws and restrictions) with respect to its activities under this Agreement. TalentGuard will implement reasonable, administrative, technical, and physical safeguards in an effort to secure its facilities and systems from unauthorized access and to secure the Customer Content.

§8. AGGREGATED DATA

8.1 As between the parties, TalentGuard owns the aggregated and statistical data derived from the operation of the Service, including, without limitation, the number of records in the Service, the number and types of transactions, configurations, and reports processed in the Service and the performance results for the Service (the "Aggregated Data"). Nothing herein shall be construed as prohibiting TalentGuard from utilizing the Aggregated Data, provided that TalentGuard's use of Aggregated Data will not reveal the identity, whether directly or indirectly, of any individual or specific data entered by any individual into the Service.

§9. LIMITATION OF LIABILITY

9.1 EXCEPT AS EXPRESSLY PROVIDED IN SECTIONS 6 & 7, TALENTGUARD DISCLAIMS ALL WARRANTIES, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, AND FITNESS FOR A PARTICULAR PURPOSE. TALENTGUARD DOES NOT WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR BE ERROR-FREE. EACH PARTY AND ITS SUPPLIERS SHALL NOT BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, EXEMPLARY, PUNITIVE, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE USE OR INABILITY TO USE THE SERVICES (INCLUDING, WITHOUT LIMITATION, COSTS OF DELAY, LOSS OF DATA, RECORDS OR INFORMATION, AND ANY FAILURE OF DELIVERY OF THE SERVICE), EVEN IF THE OTHER PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. EXCEPT FOR A PARTY'S INDEMNITY OBLIGATIONS IN SECTION 18, EACH PARTY'S CUMULATIVE MAXIMUM LIABILITY FOR DAMAGES

ARISING OUT OF OR RELATED TO THIS AGREEMENT (WHETHER IN CONTRACT, TORT OR OTHERWISE) SHALL NOT EXCEED THE AMOUNT PAID BY CUSTOMER WITHIN THE PRECEDING 12 MONTHS UNDER THIS AGREEMENT. CUSTOMER ACKNOWLEDGES THAT TALENTGUARD IS NOT RESPONSIBLE FOR THIRD-PARTY SERVICES MADE AVAILABLE THROUGH THE SERVICE.

§10.CONFIDENTIALITY

10.1 Each party acknowledges that the other party may disclose its Confidential Information to the other in the performance of this Agreement. Accordingly, each party shall: (a) keep the Confidential Information disclosed by the other party confidential, (b) use Confidential Information only for purposes of fulfilling its obligations hereunder, and (c) disclose such Confidential Information only to the receiving party's employees who have a need to know and only for the purposes of fulfilling this Agreement. As used herein, "Confidential Information" means information in the possession or under the control of a party of a proprietary nature relating to the technical, marketing, product and/or business affairs or proprietary and trade secret information of that party in oral, graphic, written, electronic or machine readable form. Confidential Information shall not include information that: (a) the receiving party possesses prior to acquiring it from the other, (b) becomes available to the public or trade through no violation by the receiving party of this paragraph, (c) is given to the receiving party by a third party not under a confidentiality obligation to the disclosing party, (d) is developed by the receiving party independently of and without reliance on confidential or proprietary information provided by the disclosing party, or (e) the receiving party is advised by counsel is required to be disclosed by law.

§11.PROPERTY RIGHTS

11.1 As between Customer and TalentGuard, the TalentGuard Intellectual Property is, and shall at all times remain, the sole and exclusive property of TalentGuard. Customer shall have no right to use, copy, distribute or create derivative works of the TalentGuard Intellectual Property except as expressly provided herein. TalentGuard shall have the right, in its sole discretion, to modify the TalentGuard Intellectual Property. "TalentGuard Intellectual Property" means the Service, and all improvements, changes, enhancements and components thereof, and all other proprietary materials of TalentGuard and/or its licensors that are delivered, provided or used by TalentGuard in the course of performing the Services, as well as all other intellectual property owned by TalentGuard and all copyrights, patents, trademarks and trade names, trade secrets, specifications, methodologies, documentation, algorithms, criteria, designs, report formats and know-how, as well as and any underlying source code and object code related thereto.

§12.CUSTOMER OWNED CONTENT

12.1 As between TalentGuard and Customer, any and all information, data, results, plans, sketches, text, files, links, images, photos, videos, audio files, notes or other materials uploaded by a User through the Service remain the sole property of Customer ("Customer Content"). TalentGuard may use the Customer Content to provide and improve the Services in accordance with this Agreement or Customer instructions.

§13.FEEDBACK

13.1 TalentGuard may send surveys to Users (no more than once each year) to solicit feedback regarding performance of the Service and suggestions for improvements (such feedback will be stored in anonymous and aggregate form). Customer, and each User (to the extent Customer has such right), hereby grants TalentGuard an irrevocable, royalty-free perpetual license to use all feedback and suggestions regarding the Service.

§14.TERM AND TERMINATION

14.1 **Term.** The term ("Term") of this Agreement shall begin on date identified as the Effective Date on the Sales Order Form and shall continue for the time period set forth in the Sales Order Form and will automatically renew annually.

14.2 **Termination.** Either party may terminate this Agreement for the material breach of any provision by the other party if such material breach remains uncured for thirty (30) days after receipt of written notice of such breach from the non-breaching party. Such termination right shall be in addition to any other rights and remedies that may be available to the non-breaching party. In the event the Agreement is terminated, all Order Forms are simultaneously terminated. Upon expiration or termination of this Agreement: (a) Customer shall immediately cease using the Services; and (b) in connection with certain Services, for a period of 3 months following expiration or termination, Customer may export the Customer Content through the API or by using the export feature within the Service.

14.3 **Customer Data.** It is TalentGuard's policy to permanently delete all of our Customer's content 30 days after they have terminated. We cannot provide Data Export if it is requested after the 30 day window.

14.4 **Suspension of Service.** TalentGuard may immediately suspend the Service and remove applicable Customer Content if Customer and/or its Users have violated a law or the terms of this Agreement. TalentGuard may try to contact Customer in advance, but it is not required to do so.

§15.SUPPORT

15.1 **Company Documentation.** The Company will provide Customer with relevant updates to Company Documentation online as

and when available.

15.2 Telephone Support. The Company will provide assistance by responding to telephone queries or e-mail queries raised by Customer relating to the TalentGuard SaaS included in this agreement between the hours of 8:00am and 5:00pm CST, Monday through Friday (excluding Bank Holidays and other recognized holiday periods in the US). It will, under normal operating conditions, use its best endeavours (utilize any means necessary) to give a response on the intended course of action to a query within twenty-four (24) business hours of the query being received.

§16. REPRESENTATION AND WARRANTIES

16.1 General Warranties. TalentGuard warrants that: (a) the functionality or features of the Service and Support may change but will not materially degrade during the Term, and (b) the Services will conform to its then current documentation. As Customer's exclusive remedy and TalentGuard's sole liability for breach of the warranty set forth in this Section 7, (a) TalentGuard shall correct the non-conforming Service at no additional charge to Customer, or (b) in the event TalentGuard is unable to correct such deficiencies after good-faith efforts, TalentGuard shall refund Customer amounts paid that are attributable to the defective Service from the date TalentGuard received such notice. To receive warranty remedies, Customer must promptly report deficiencies in writing to TalentGuard, but no later than thirty (30) days of the first date the deficiency is identified by Customer.

16.2 Reservation of Rights. THIS AGREEMENT DOES NOT GRANT TALENTGAURD ANY RIGHTS TO CUSTOMER'S DATA OR THE INTELLECTUAL PROPERTY RIGHTS EMBODIED IN THAT DATA EXCEPT FOR THE LIMITED RIGHTS EXPRESSLY SET FORTH IN THIS AGREEMENT THAT ARE NEEDED TO RUN THE SERVICES.

16.3 This Agreement does not grant Customer (i) any rights to the Intellectual Property Rights in the Services or (ii) any rights to use the TalentGuard trademarks, logos, domain names, or other brand features. "Intellectual Property Rights" means current and future worldwide rights under patent, copyright, trade secret, trademark, moral rights, and other similar rights.

16.4 Limited Permission. Customer gives TalentGuard permission to view data and take actions within Customer's TalentGuard account in order to deliver the services in this Agreement, including support, maintenance, and onboarding. It also includes design choices made to technically administer the Services, for example, how the Service backs up data to keep it safe. Customer may request TalentGuard to perform actions within Customer's TalentGuard account, and in doing so hereby grants TalentGuard the limited permission to view, create, and modify TalentGuard data in Customer's TalentGuard account in order to fulfill the request, including but not limited to employee records, reports, and account configurations. While not limited to the following, additional examples of the permissions encompassed in this section are: viewing or taking action within an employee's TalentGuard account in order to reproduce an issue or bug, creating or uploading career paths in the career development process, importing performance scores, exporting data in order to produce a custom report, etc.

16.5 Customer List. With written permission from Customer, TalentGuard and may use Customer's name and logo on TalentGuard's website located at <http://www.talentguard.com> or the purpose of marketing the Service. Use of Customer's name and logo on TalentGuard's website will be revocable for any reason at any time by Customer.

16.6 Infringement. If a third party claims the Service infringes that party's patent, copyright or other proprietary right, TalentGuard will defend Customer against that claim at TalentGuard's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by TalentGuard, provided that Customer: (a) promptly notifies TalentGuard in writing of the claim; and (b) allows TalentGuard to control, and cooperates with TalentGuard in, the defense and any related settlement. If such a claim is made, TalentGuard may continue to enable Customer to use the Service or to modify it such that it becomes non-infringing. If TalentGuard determines that these alternatives are not reasonably available, TalentGuard may terminate the Service without any liability to Customer upon notice to Customer and with the return of any prepaid and unused fees. The infringement indemnity obligations in this Section 17 do not apply to the extent the infringement claim arises from (a) any technology not provided by TalentGuard or otherwise identified by TalentGuard in writing as interoperable, (b) use of the Service other than in accordance with this agreement and the applicable Services documentation, (c) the Customer Content, and/or (d) modification or alteration to the Services by anyone other than TalentGuard. If a third party claims that any part of the Customer Content infringes or violates a patent, trademark, trade secret, copyright or other intellectual property right, or there are third- party claims arising out of Customer's breach of this Agreement, Customer will defend TalentGuard against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that TalentGuard: (a) promptly notifies Customer in writing of the claim; and (b) allows Customer to control, and cooperates with Customer in, the defense and any related settlement.

16.7 Warranty Disclaimer. THE SERVICES ARE PROVIDED "AS IS." TO THE FULLEST EXTENT PERMITTED BY LAW,

EXCEPT AS EXPRESSLY STATED IN THIS AGREEMENT, NEITHER TALENTGUARD NOR CUSTOMER MAKES ANY WARRANTY OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR USE, OR NONINFRINGEMENT. TALENTGUARD MAKES NO REPRESENTATIONS ABOUT ANY CONTENT OR INFORMATION IN OR FROM AN END USER OR CUSTOMER SERVICES ACCOUNT. TalentGuard is not responsible for the accuracy, completeness, appropriateness, or legality of data, user posts, or any other information posted by a user.

§17.ACCESS AND DATA SECURITY

17.1 Access to Systems. Access, if any, to Customer's computer, telecommunication or other information systems ("Systems") is hereby granted, solely provide the Services described in this Agreement and is limited to those specific systems, time periods, and personnel as are reasonably needed to effect the purpose of this Agreement. Access is subject to business control and information protection policies, standards, and guidelines as may be provided by Customer. Use of any other Systems is expressly prohibited. Without limiting the foregoing, TalentGuard warrants that it has adequate security measures in place to comply with the above obligations and to ensure that access granted hereunder will not impair the integrity and availability of Customer's systems.

17.2 Data Protection and Security

- a) **Safeguards.** TalentGuard shall implement and maintain reasonable administrative, physical and technical safeguards that are designed to prevent any unauthorized use, access, processing, destruction, loss, alteration, or disclosure of any of Customer's data (including any applicant or employee data furnished by Customer) ("Customer Data") as may be held or accessed by TalentGuard. TalentGuard agrees that it will not sell, disclose, transfer, share or rent any Customer Data under any circumstances.
- b) **Notification of Security Breach.** TalentGuard shall notify Customer as soon as reasonably possible following discovery of any suspected breach or compromise of the security, confidentiality, or integrity of any Customer Data.

§18.GENERAL

- 18.1 Assignment.** Customer may not assign or transfer any part of this Agreement without the written consent of TalentGuard. TalentGuard may not assign this Agreement without providing notice to Customer, except TalentGuard may assign this Agreement to an affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets without providing notice. Any other attempt to transfer or assign is void.
- 18.2 Severability.** If any provision of this Agreement shall be adjudged by any court of competent jurisdiction to be unenforceable or invalid, that provision shall be limited to the minimum extent necessary so that this Agreement shall otherwise remain in effect.
- 18.3 Governing Law; Jurisdiction and Venue.** THE AGREEMENT AND SERVICES WILL BE GOVERNED BY TEXAS LAW EXCEPT FOR ITS CONFLICTS OF LAWS PRINCIPLES. ALL CLAIMS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE SERVICES MUST RESOLVED EXCLUSIVELY THROUGH THE BINDING ARBITRATION POLICY SET FORTH IN THE TALENTGUARD TERMS OF SERVICE.
- 18.4 Notices.** Any notice hereunder shall be in writing to the notice address set forth above and shall be deemed given: (i) upon receipt if by personal delivery; (ii) upon receipt if sent by certified or registered U.S. Mail (return receipt requested); or (iii) one (1) day after it is sent if by next day delivery by a major commercial delivery service. Notices sent via e-mail are deemed received at the time that the notices are sent. Notices shall be sent to the appropriate contacts listed in Exhibit B.
- 18.5 Amendments; Waivers.** No supplement, modification, or amendment of this Agreement shall be binding unless executed in writing by a duly authorized representative of each party to this Agreement. No waiver will be implied from conduct or failure to enforce or exercise rights under this Agreement, nor will any waiver be effective unless in a writing signed by a duly authorized representative on behalf of the party claimed to have waived.
- 18.6 Entire Agreement.** This Agreement (including the TalentGuard Terms of Service and Privacy Policy, all attachments, exhibits and referenced Sales Order Forms) is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements and communications relating to the subject matter of this Agreement. Should there exist a conflict between this Agreement, and Order Form, the TalentGuard Terms of Service and the TalentGuard Privacy Policy, the terms of the TalentGuard Terms of Service shall be controlling.

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18.7 Attorneys' Fees and Costs. The prevailing party in any action to enforce this Agreement will be entitled to recover its attorneys' fees and costs in connection with such action.

18.8 Force Majeure. Neither TalentGuard nor Customer will be liable for inadequate performance to the extent caused by a condition that was beyond the party's reasonable control (for example, natural disaster, act of war or terrorism, riot, labor condition, governmental action, and Internet disturbance).

18.9 Cumulative Remedies. Except as otherwise expressly provided in this Agreement, all remedies in this Agreement are cumulative and in addition to (not in lieu of) any other remedies available to a party at law or in equity.