

# BROADBEAN TECHNOLOGY LIMITED

STANDARD TERMS AND CONDITIONS FOR DIRECT EMPLOYERS (the "Conditions") - 8<sup>th</sup> April 2016

## 1. CONTRACT BETWEEN BROADBEAN AND CUSTOMER

- 1.1 No contract shall subsist between Broadbean and the Customer until an acknowledgment of the Order Form is issued by Broadbean in writing or (if earlier) the Customer first uses the Services.
- 1.2 The contract between Broadbean and the Customer (the "Contract") shall comprise the Order Form and these Conditions to the exclusion of all other terms and conditions (including any terms or conditions which the Customer purports to apply under any purchase order, confirmation of order or other document).

## 2. TERM

The term of the Contract shall be the period stated on the Order Form (the "Term").

## 3. OBLIGATIONS OF BROADBEAN & THE CUSTOMER

- 3.1 Broadbean shall use all reasonable skill and care and comply with all applicable laws in the United Kingdom in its provision of the Services as described within Schedule 1 but makes no representation or warranty that the Service is free from error at all times, or the continued availability of any job board, social networking website or other distribution/search channel operated by a third party.
- 3.2 Broadbean may temporarily suspend and/or alter the operation of the Services for legal or technical reasons. Broadbean shall use all reasonable endeavours to notify the Customer as far in advance as possible of any temporary suspension or significant alteration but the Customer acknowledges that prior notice may not always be possible. In this circumstance, Broadbean shall notify the Customer as soon as is reasonably practicable.
- 3.3 Broadbean agrees that the Services shall be provided at least to the service levels set out in Schedule 3 – Service Level Agreement.
- 3.4 Broadbean warrants that the Services will conform substantially as described in Schedule 1.
- 3.5 The Customer shall not disclose its login password for the Services to any third party.
- 3.6 The Customer shall ensure that only its authorised personnel access the Services and that each of its authorised personnel uses a unique login password to access the Services.
- 3.7 The Customer agrees that job adverts posted via the Services must reference the Customer and its brands only.
- 3.8 The Customer is responsible for ensuring that its use of the Services and the content of all job adverts posted via the Services comply with all applicable laws, regulations and codes of practice and will not be defamatory or infringe the copyright, trade mark or other rights of any third party.
- 3.9 The Customer is responsible for complying with the terms and conditions and the payment of all charges of any job board, social networking website or other distribution/search channel operated by a third party where its job adverts are to be posted or which it shall Search using the Services.
- 3.10 The Customer shall not resell the Services or license the use of the Services to any third party, however this does not preclude use of the Services under this Agreement by any part of the Customer's Group.
- 3.11 The Customer shall not publish, disclose, reproduce or create derivative works from any information obtained pursuant to the Customer's use of the Services unless expressly agreed in writing by Broadbean.
- 3.12 The Customer shall not copy, make modifications to, reverse engineer or decompile the software supporting the Services, except to the extent permitted by law.
- 3.13 The Customer acknowledges that Broadbean's Big Data Analytics Suite ("BDAS") is dependent on Customer providing internal data as well as data from Customer's third party suppliers (e.g. Career Site, ATS, etc.) and that Customer is responsible for the provision of such data in the format reasonably required by Broadbean. If after signing the Order Form the Customer cannot or will not provide Broadbean with such data, Broadbean will still make BDAS available to Customer and the full fees will still be applicable, but BDAS will have gaps in the reports corresponding to the data not provided by Customer. Broadbean may update the content, labeling and design of the BDAS reports and Customer shall only have access to the latest version of each report.
- 3.14 The Customer will nominate a single delivery manager (the "Company DM") authorized to agree decisions on account set-up, configuration, workflow and training. The Customer will provide any decisions and any associated information reasonably required by Broadbean to set-up and configure the account.

#### **4. FEES & POSTING CREDITS**

- 4.1 Fees are as stated on the Order Form and are exclusive of VAT which shall be paid by the Customer in addition at the rate and in the manner prescribed by English law.
- 4.2 The Customer shall pay all invoices within 30 days of receipt unless otherwise stated on the order form.
- 4.3 If the Customer fails to pay any undisputed amount due to Broadbean by the due date for payment then:
  - 4.3.1 Broadbean reserves the right to charge interest at the rate of 2% above Barclays Bank plc's base lending rate in force from time to time ; and
  - 4.3.2 Without prejudice to any other right or remedy available to Broadbean, Broadbean shall be entitled to suspend the Customer's access to the Services until payment in full has been made.
- 4.4 A single job posting is deemed to be any advert broadcast from the Broadbean system, whether to a single or to multiple channels.
- 4.5 Your account is capped such that once your initial purchase of credits has been fully utilised you will need to purchase additional posting credits to continue to make use of the Services. Such credits can be purchased at any point during the contract period. Pricing for additional posts is based on the price per post applicable to your initial purchase of posting credits.
- 4.6 Broadbean will allow the Customer to roll forward any unused posting credits existing at the end of any contract year up to a maximum of 25% of the posting credits purchased at the start of any year.
- 4.7 The Customer agrees that any posts made but not charged to the Customer by the end of the contract period will be charged by way of a supplementary invoice raised in the month following the month in which the contract period ends. Broadbean and the Customer may mutually agree to add the costs of the additional posts into the subsequent year's renewal.

#### **5. INTELLECTUAL PROPERTY RIGHTS**

- 5.1 The Customer acknowledges that Broadbean is the owner or licensee of all intellectual property rights in the Services and that the Customer has no rights in, or to, such intellectual property other than the right to use the Services in accordance with these Conditions.
- 5.2 The Customer agrees that Broadbean may use anonymised, non-personally identifiable, aggregated data in marketing materials, reports and other commercial products.
- 5.3 Broadbean shall indemnify the Customer ("the Indemnified Party") against all damages, costs, charges, losses, liabilities and expenses incurred by the Indemnified Party arising from or incurred by reason of any third party claim or suit alleging that the use the Services infringes any Intellectual Property Right belonging to a third party anywhere in the world. The Indemnified Party shall:
  - 5.3.1 promptly notify Broadbean in writing of any such claim or suit;
  - 5.3.2 make no admissions or settlements without Broadbean's prior written consent;
  - 5.3.3 at Broadbean's request and expense, allow Broadbean complete control over any negotiations or litigation and/or the defense or settlement of such claim or suit (provided that Broadbean seeks input from and takes into account of the Indemnified Party's interests in the handling of the negotiations or litigation); and
  - 5.3.4 give Broadbean all information and assistance as Broadbean may reasonably require.
- 5.4 Broadbean shall not use the Indemnified Party's name in any action or claim without that party's prior written consent.
- 5.5 Broadbean shall have no obligations under Clause 5.3 to the extent that any alleged infringement arises from:
  - 5.5.1 modifications made by the Customer to the Broadbean System not permitted to be made under this Agreement or made without Broadbean's consent
  - 5.5.2 use of the Broadbean System in any manner in breach of this Agreement.
- 5.6 Without limitation to Clause 5.3 in the event that the use the Services by the Indemnified Party infringes or, in Broadbean's opinion, is likely to be held to infringe any Intellectual Property Right belonging to a third party, Broadbean may at its option and expense promptly and within a maximum of 3 months:

- 5.6.1 procure for the Indemnified Party the right to continue using the Services free from any liability for such infringement; or
  - 5.6.2 modify or replace the Services so as to avoid the infringement but providing the Indemnified Party with substantially the same functionality and performance; or
  - 5.6.3 in the event that the remedies in 5.6.1 and 5.6.2 are not commercially possible, the contract will be terminated and the Indemnified Party will be entitled to a pro-rata refund of all Fees paid under this contract calculated by reference to the date the infringement was identified to the date of termination.
- 5.7 The Customer shall give notice to Broadbean if the Customer becomes aware of any unauthorised use or exploitation of the whole or any part of the Services.

## 6 DATA PROTECTION

- 6.1 In the performance of its obligations under this Contract, Broadbean shall at all times:
- 6.1.1 comply with its obligations under the Data Protection Act 1998, Directive 95/46 EC and any other associated legislation or regulations (the “**Data Protection Requirements**”); and
  - 6.1.2 shall not perform its obligations under this Contract in such a way as to cause the Customer to breach any of its obligations under the Data Protection Requirements.
  - 6.1.3 indemnify the Customer against all Losses which the Customer may incur or suffer in connection with a breach of Broadbean's obligations under this clause.
- 6.2 Broadbean shall ensure that, where required, it will notify the Information Commissioner's Office of their Processing activities and shall maintain any registration which may be required from time to time under the Data Protection Requirements.
- 6.3 With respect to the Parties' rights and obligations under this Contract, the Parties agree that the Customer is the Data Controller and that Broadbean is the Data Processor. Where Broadbean (or any sub-contractor) Processes Personal Data on behalf of the Customer, Broadbean shall (and shall procure that any sub-contractor shall):
- 6.3.1 process the Personal Data only in accordance with instructions from the Customer, which may be specific instructions or instructions of a general nature as set out in this Contract or as otherwise notified by the Customer in writing to Broadbean during the Term; for the avoidance of doubt The Customer cannot give an instruction under this clause that would require Broadbean to develop and implement new products or features within existing products.
  - 6.3.2 process the Personal Data only to the extent, and in such manner, as is necessary for the provision of the Services or as is required by Applicable Law or any regulatory body;
  - 6.3.3 implement appropriate technical and organisational measures to protect the Personal Data against unauthorised or unlawful Processing and against accidental loss, destruction, damage, alteration or disclosure. These measures shall be appropriate to the harm which might result from any unauthorised or unlawful Processing, accidental loss, destruction or damage to the Personal Data and having regard to the nature of the Personal Data which is to be protected;
  - 6.3.4 not cause or permit the Personal Data to be transferred outside the European Economic Area without the prior written consent of the Customer;
- 6.4 The provisions of this Schedule shall survive the termination or expiry of this Contract.

## 7 CONFIDENTIALITY

- 7.1 Broadbean and the Customer agree to keep the terms of the Contract and all information that is obtained about the business, finances, technology and affairs of the other strictly confidential.
- 7.2 Each party shall, on request, return to the other all Confidential Information of the other party (whether held by it or its officers, employees, agents or contractors) which is in a physical form (including all copies) and shall, on request, destroy any other records (including without limitation, those in machine-readable form) containing Confidential Information.
- 7.3 The provisions of this Clause 7 shall not apply to information which:

- 7.3.1 is or comes into the public domain through no fault of the recipient, its officers, employees, agents or contractors;
  - 7.3.2 is lawfully received from a third party free of any obligations of confidence at the time of its disclosure;
  - 7.3.3 is independently developed by the recipient, its officers, employees, agents or contractors; or
  - 7.3.4 is required by law, by court or governmental order to be disclosed; or
  - 7.3.5 is communicated to a third party with the express written consent of the disclosing party.
- 7.4 Both parties, without prejudice to any other rights or remedies which the other party may have, acknowledge and agree that damages may not be an adequate remedy for any breach by the other of the provisions of this Clause 7 and that each shall be entitled to the remedies of injunction, specific performance and other equitable relief for any threatened or actual breach of any such provision by the other party and no proof of damages shall be necessary for the enforcement by any party of its rights under this Clause 7.
- 7.5 Each party shall indemnify the other in respect of all actions, claims and losses which the other party may incur arising out of a breach of any of the terms contained in this clause 7.
- 7.6 The obligations under this Clause 7 shall survive for a period of 3 years from the date of variation, expiry or termination of this Agreement.

## 8 **LIMITATION OF LIABILITY**

- 8.1 This clause sets out the entire financial liability of Broadbean to the Customer in respect of:
- 8.1.1 any breach of the Contract;
  - 8.1.2 any use made by the Customer of the Services; and
  - 8.1.3 any representation, statement or tortuous act or omission (including negligence) arising under or in connection with the Contract.
- 8.2 All warranties, conditions and other terms implied by statute or common law in relation to the Services are, to the fullest extent permitted by law, excluded from the Contract.
- 8.3 Nothing in the Contract shall exclude or limit liability for death or personal injury resulting from the negligence breach of statutory duty or interference with legal right of Broadbean or for fraud or for any other liability that cannot be excluded or limited by law.
- 8.4 Neither party to this Contract shall be liable to the other under or in connection with the Contract for any loss of indirect, special or consequential loss or damage, loss of business or goodwill, profit or revenue and allow for specific claims (for instance in relation to provision of the Services).
- 8.5 Subject to clause 8.3 and 6.1.3 the total liability of Broadbean to the Customer in respect of any loss or damage under or in connection with the Contract shall not exceed the aggregate amount of Fees paid, excluding any media purchases by the Customer, in the twelve months immediately preceding the incurring of such loss or damage.

## 9 **ANTI-BRIBERY**

- 9.1 Broadbean shall not and shall procure that Broadbean Personnel shall not solicit or accept any gratuities, or offer, give or agree to give to any employee, contractor, agent or representative of the Customer any gift or consideration of any kind which could act as an inducement or reward for doing (or refraining from doing) any act in relation to this Contract.
- 9.2 Broadbean shall take all reasonable steps (in accordance with Good Industry Practice) to prevent fraud or bribery by Broadbean Personnel in the performance of the Services.
- 9.3 Broadbean shall:
- 9.3.1 comply with all United Kingdom applicable laws, statutes and regulations relating to anti-bribery and anti-corruption, including the Bribery Act 2010 (the "**Relevant Requirements**"); and
  - 9.3.2 have and maintain in place (and shall ensure that its employees adhere to) throughout the term of this Contract its own policies and procedures (including adequate procedures under the Bribery Act 2010).

## **10 MEDIA BUYING SERVICES**

- 10.1 These terms and conditions also cover the provision by Broadbean of Job Board Media buying services to the Customer. Upon receipt of a request to purchase media Broadbean will contact the relevant job boards (or other providers) and obtain prices for the requested media. Broadbean will send to the customer a confirmation email setting out the media that the Customer has requested and the associated costs. The Customer must respond to the email with their confirmation (as per schedule 2) before Broadbean will complete the transaction. This confirmation binds the customer irrevocably to pay Broadbean the amount set out in the email.
- 10.2 The Customer shall ensure that only its authorised personnel submit media buy orders and acceptances to Broadbean.
- 10.3 The Customer is responsible for complying with the terms and conditions of any websites from which it requests Broadbean to purchase media on its behalf.
- 10.4 The Customer shall not resell the media purchased on its behalf by Broadbean to any third party.
- 10.5 All invoices issued by Broadbean to The Customer for media will show the cost of the media purchased by Broadbean on behalf of The Customer plus the addition of an agreed administration charge. VAT will be applied where applicable at the rate and in the manner prescribed by law.
- 10.6 Broadbean makes no guarantee that it can obtain rates any cheaper than those generally available to The Customer.
- 10.7 In the event that any Job Board or other channel from which Broadbean procures Media on behalf of the Customer is unable to fulfil that order Broadbean will use its best endeavours to secure a refund or other resolution for the Customer but the Customer accepts that it has no right of recovery against Broadbean where any Job Board or other channel fails.

## **11 TERMINATION**

- 11.1 Either party may terminate the Contract:
- 11.1.1 immediately upon written notice to the other party if the other party commits any material or persistent breach of any of the provisions of the Contract and, in the case of a breach which is capable of remedy, fails to remedy the same within 14 days after receipt of a written notice giving particulars of the breach and requiring it to be remedied; or
- 11.1.2 immediately upon written notice to the other party if the other party shall cease to carry on its business or shall have a liquidator, receiver or administrative receiver appointed to it or over any part of its undertaking or assets or shall pass a resolution for its winding up (otherwise than for the purpose of a bona fide scheme of solvent amalgamation or reconstruction where the resulting entity shall assume all the liabilities of it) or a court of competent jurisdiction shall make an administration order or liquidation order or similar order, or shall enter into any voluntary arrangement with its creditors, or shall be unable to pay its debts as they fall due.
- 11.2 Upon termination of the Contract:
- 11.2.1 the Customer shall immediately cease using the Services and permanently delete all login passwords for the Services; and
- 11.2.2 The breaching Party shall immediately pay to the other Party any outstanding or prepaid sums due pursuant to the Contract.
- 11.3 Termination of the Contract shall not affect the accrued rights or liabilities of the Party under the Contract nor any provision of the Contract which is expressed or required to survive or operate in such event.
- 11.4 The Customer's access will be terminated at the end of the Term unless Broadbean is in receipt of a signed renewal contract. For the avoidance of doubt the renewal date is the End Date shown on the order form.
- 11.5 Broadbean has sole discretion to allow The Customer continued access to the Services in the event of there being any delay in a renewal. The Customer acknowledges that it is liable under the terms of this contract for all use it makes of the Services during the period from the date following the End Date shown on the order form and the date when a renewal is signed by The Customer. Broadbean confirms that all such charges cannot be levied at rates higher than those in the most recently ended contract.

## **12 FORCE MAJEURE**

Neither party shall be liable for any delay or non-performance under the Contract caused by any event beyond its reasonable control (a "Force Majeure Event") provided that the party affected gives prompt notice in writing to the other party of such Force Majeure Event and uses all reasonable endeavours to continue to perform its obligations under the Contract. If the Force Majeure Event continues for more than one month, the party not subject to the Force Majeure Event may terminate the Contract by notice in writing to the other party.

13        **NOTICES**

13.1        Any notice pursuant to this contract shall be deemed to have been served:

13.1.1      if hand delivered at the time of delivery (with hard copy to be forwarded by first class mail or if overseas by airmail);

13.1.2      if by first class recorded delivery within the United Kingdom, sent to the address of the party set out in the Order Form, two days after posting;

13.1.3      if by registered airmail from outside of the United Kingdom, sent to the address of the party set out in the Order Form, seven days after posting;

13.1.4      if sent by email to the Managing Director and Chief Operating Officer of Broadbean Technology Ltd from time to time – at the time of receipt

14        **GENERAL**

14.1        The Contract contains the entire agreement between the Parties relating to the subject matter covered and supersedes any previous agreements, arrangements, written or oral, between the Parties in relation to such matters. No amendment, variation or modification of the Contract shall be deemed valid unless it is in writing and signed by the Parties.

14.2        Neither party shall assign, transfer or deal in any other manner with all or any of its rights or obligations under the Contract.

14.3        A person who is not a party to the Contract has no right under the Contracts (Rights of Third Party) Act 1999 to enforce any terms of the Contract.

14.4        Nothing in the Contract shall be construed as creating a partnership, joint venture or agency of any kind between the Parties.

14.5        No failure or delay by either party in exercising any of that party's rights or remedies under the Contract shall operate as a waiver of those rights or remedies. No right or remedy of either party under the Contract shall be deemed to be waived unless the waiver is in writing and signed by both Party. No waiver of any breach of the Contract is a waiver of any subsequent or other breach.

14.6        If any provision of the Contract shall be held to be illegal, void, invalid or unenforceable the legality, validity and enforceability of the remainder of the Contract shall not be affected.

14.7        In the event of a conflict between the Order Form and the Conditions, the Parties agree that the Order Form shall prevail.

14.8        The Contract shall be governed by the laws of England and the Parties submit to the exclusive jurisdiction of the courts of England to settle any dispute concerning the Contract.