

DIRECT HIRE END USER LICENSE AGREEMENT

This End User License Agreement ("Agreement") is a legal agreement between You, ("the User") and MCI Consultants (Pty) Ltd, ("MCI"), governing the use of the Direct Hire e-Recruitment Platform ("the Platform"). By accessing or using the Platform, you agree to be bound by this Agreement, as well as [MCI's Data Privacy and Protection Agreement](#) and [MCI's Data Processing Agreement](#).

1. DEFINITIONS

- 1.1. MCI Consultants (Pty) Ltd, is the developer of the Direct Hire Platform and will be referred to as MCI.
- 1.2. "The User" "means the organization that has entered into this Agreement with MCI, and includes its authorised individuals, including but not limited to employees, agents, contractors, or any other personnel who are granted access to the Platform.
- 1.3. "The User" can also referred to as "the Client". For the purposes of the Data Privacy and Protection Agreement and the Data Processing Agreement linked to this Agreement, the User (both the organisation and its authorised individuals) are referred to as "the Client" and shall be bound by the obligations applicable to the Client under these Agreements.
- 1.4. "Authorised Reseller" means the party through which the Direct Hire Platform has been purchased, if not from MCI.
- 1.5. "Parties" means the User and MCI, and Party means any one of them as the context requires.
- 1.7. The Direct Hire e-Recruitment Platform will be referred to as the Platform.
- 1.8. A Change Request means any additional work requested by the User as may be agreed upon and signed by the duly authorised representatives of the Parties from time to time, in the form of a signed Proposal/Quotation and attached to, or making reference to, this Agreement, and which sets out the Services to be provided by MCI to the User as stipulated therein, (in addition to this Agreement) and such other relevant information.

2. LICENSE

- 2.1. Subject to the timely payment of the fees by the User to MCI or its Authorised Reseller in accordance with the Proposal/Quotation and the other terms and conditions of this Agreement, MCI hereby grants to the User a limited, non-exclusive, non-transferable, revocable license to access, and to permit its Users to use the Platform and the Documentation during the Term solely for lawful recruitment purposes.
- 2.2. In relation to its Users, the User undertakes that:
 - (a) from time-to-time MCI may audit the Platform to establish the number of its Users.
 - (b) if, as a result of an audit or otherwise it is revealed that the User has underpaid Fees for the Platform usage, the User shall pay to MCI or its Authorised Reseller an amount equal to such underpayment as calculated in accordance with the Fees.

3. USER RESPONSIBILITIES

- 3.1. The User is responsible for ensuring that all authorised individuals who are granted access to the Platform, comply with the terms of this Agreement.
- 3.2. For the initial setup of the Platform, the User will provide the following information to MCI including, but not limited to the following:
 - Brand identity information including logos and font types
 - Job Portal account details
 - Social Media Manager contact
 - Admin user, HR user and Line Manager usernames and e-mail addresses.
 - A list of users that will be attending the initial training.
 - A simple breakdown of the current recruitment process / workflow
 - List of branches, departments / cost centres
 - A breakdown of the vacancy authorisation process
 - A list of recruitment agency contacts currently earmarked as preferred suppliers.

- A list of pay grades.
- 3.2. **The User** will not modify, enhance, upgrade, alter, remove or tamper with the **Platform**.
- 3.3. **The User** shall be responsible for taking out insurance for any **Cyberattacks** on its environments and will ensure that the **Platform** is included in its insurance policy. **MCI** will not be liable for any damages to **the User** in the event of a Cyberattack.
- 3.4. **The User** is not entitled to cede its rights or to assign its obligations under the **Agreement** to any third party.

4. SERVICES

- 4.1. **MCI** will perform the following **Setup and Implementation Services** under this Agreement:
- Configuration of **the Platform** based on **the User's** requirements and data
 - Integration with **the User's** internal and external websites
 - Integration with **the User's** third-party vendors (if required)
 - Testing
 - Training
 - Final hand over to support and go live.
- 4.2. After the initial Implementation phase, **MCI** undertakes to attend to all calls logged via email with the **Direct Hire Help Desk** at support@mcidirecthire.com.

5. CHANGE REQUESTS

- 5.1. Should **the User** request additional **Configuration Services** that exceeds or deviates from the project scope defined in the initial Proposal/Quotation, such an undertaking will be at the sole discretion of **MCI** and be subject to **MCI's** hourly rates.
- 5.2. **The User** may change the Services to be performed by **MCI** at any time through a **Change Request**.
- 5.3. If **the User** requires **MCI** to update a **Change Request**, or to investigate a proposed **Change**, or a **Change** is necessary to a **Change Request**, in order to enable **Either Party** to comply with any law, then **MCI** will prepare a **Change Request** in the form of a Proposal/Quotation.
- 5.4. **The User** will consider in good faith the proposed Proposal/Quotation and revert to **MCI** by either accepting or rejecting it or requesting further amendments.
- 5.5. **MCI** will not commence work or demand payment for any additional **Services** to any **Change Request** unless **the User** has agreed to and signed **MCI's** Proposal/Quotation or any portion thereof.

6. MCI RESPONSIBILITIES

- 6.1. **MCI** will use adequate numbers of appropriately skilled, qualified and experienced personnel.
- 6.2. **MCI** will ensure that its personnel have the requisite skills, expertise and knowledge to provide **the Services** and that the personnel render **the Services** in a professional manner.
- 6.3. **MCI** undertakes to manage and ensure continuity of system knowledge of its personnel.
- 6.4. **MCI** undertakes to carry out Configuration of the **Platform** as detailed in the signed **Proposal/Quotation** and any **Change Request**.
- 6.5. **MCI** undertakes to attend to all calls logged with the **Direct Hire Help Desk**.
- 6.6. **MCI** will ensure that **the User** is provided with the latest version of **the Platform**, and that **the Platform** is regularly updated and modified to ensure the same.
- 6.7. Should **the User** request additional configuration and/or development of **the Platform** that exceeds or deviates from the project scope defined in the **Proposal/Quotation** or any **Change Request**, such an undertaking will be at the sole discretion of **MCI** and be subject to **MCI's** hourly rates.
- 6.8. Should **the User** terminate the **Agreement** in accordance with the **Term and Termination** clause in the Proposal/Quotation, and provided all outstanding amounts due to **MCI** have been settled in full, **MCI** undertakes to furnish **the User** with an extract of their data, at **the User's** cost.

7. FAIR USAGE POLICY FOR SOFTWARE AS A SERVICE

- 7.1. **MCI's Platform** operates within a multi-tenancy architecture, which means that **the Platform** is utilised concurrently by **several Users**.
- 7.2. If a single **User** places very high demands on the **Platform**, then it is possible that this will affect the experience for other **Users**. To prevent this and as part of our commitment in providing a high-quality, fast and reliable service, **MCI** utilises as a **Fair Use Policy ("FUP")** for the **Platform**.
- 7.3. Our **FUP** ensures that our **Direct Hire Platform** is utilised fairly by **all Users**.
- 7.4. Our **FUP** is defined in terms of the number of transactions occurring **per User** per the monthly fee.
- 7.5. Only **Users** that consistently generate exceptionally high server processing/bandwidth and/or storage loads and volumes over a sustained period will be affected by our **FUP**.
- 7.6. If **the User** repeatedly exceeds our **FUP**, **MCI** reserves the right to restrict the **Platform**, or levy additional charges for excessive usage.

8. CONFIDENTIALITY AND OWNERSHIP OF THE PLATFORM

- 8.1. **The User** hereby acknowledges that any, and all, of the trademarks, trade names, copyrights, patents, and other intellectual property rights used or embodied in or in connection with **the Platform** and other parts thereof, in which **MCI** has an interest, is and shall remain the sole property of **MCI**.
- 8.2. All material and proprietary information regarding **the Platform** will be treated as confidential and owned by **MCI**.
- 8.3. **The User** is specifically prohibited from disclosing any information regarding **the Platform** to parties that may be considered as competitors to **MCI**, or who may wish to develop any part of **the Platform**.
- 8.4. In particular, **the User** shall not permit third parties to have access to **the Platform** without the prior written consent of **MCI**, who may require that such third parties execute a written confidentiality agreement before being given access to **the Platform**.
- 8.5. **The User** will not be involved in any endeavour or relationship to attempt to replicate any part of **the Platform** functionality, or reengineer, disassemble or decompile **the Platform**.
- 8.6. Any modification and/or developments to **the Platform** requested by **the User** shall be the property of **MCI** unless agreed to in writing by both parties.
- 8.7. This clause is severable from this **Agreement** and will remain in effect after the termination of this **Agreement**.

9. MCI's INTELLECTUAL PROPERTY RIGHTS

- 9.1. All title, **Copyright** and other **Intellectual Property Rights** related to **the Platform** and its documentation shall remain vested in **MCI**.
- 9.2. The **Intellectual Property** provided by **MCI** will not infringe or misappropriate any **Intellectual Property Right**, confidential information, trade secret, privacy or other proprietary right of any third party or **the User**.
- 9.3. **The User's** use of **the Platform** does not infringe **MCI's Intellectual Property Rights**.
- 9.4. The **Copyright** and other **Intellectual Property Rights** of whatever nature in **the Platform** and the documentation, as well as all modifications, extensions, customizations, scripts or other derivative works of **the Platform** are, and shall remain, the sole property of **MCI**, and **the User** acquires no rights in or to **the Platform** or documentation other than those expressly granted by this **Agreement**.
- 9.5. **The User** shall use reasonable endeavours to prevent any violation of **MCI's** proprietary rights in **the Platform** and shall promptly report to **MCI** any such violation that comes to its attention.

10. THE USER's INTELLECTUAL PROPERTY RIGHTS

- 10.1. **MCI** hereby acknowledges that **the User** Data, excluding **the Platform**, including **the User's** logos, branding, notices, is the property of **the User**.
- 10.2. All Title, **Copyright** and other **Intellectual Property Rights** related to **the User's Intellectual Property** including artwork, logos, brand names, designs, and its documentation remain vested in **the User**, and **MCI** acquires no rights in **the User's Intellectual Property**.

16.3. **The User** hereby grants **MCI** a non-exclusive, non-transferrable, right to use **the User's Intellectual Property** only for the purpose of rendering the **Services**.

11.4. **The User** agrees to allow its name and logo to be used as a user of the **Platform** in promotional materials for the duration of the **Agreement**.

17. RESTRICTIONS

17.1. **The User** and **each of its Users** shall use **the Platform** solely for **the User's** internal recruitment purposes as contemplated by the **Agreement** and shall not:

- knowingly send or store infringing, obscene, threatening or otherwise unlawful or tortious material, including material harmful to children or violative of third-party privacy rights.
- knowingly send or store material containing software viruses, worms, Trojan horses, or other harmful computer code, files, scripts, agents, or programs.
- knowingly interfere with or disrupt the integrity or performance of **the Platform** or the data contained therein.
- use **the Platform** in contravention of any applicable laws or regulations. or
- attempt to gain unauthorized access to **the Platform** or its related systems or networks.

17.2. **MCI** reserves the right, without liability or prejudice to its other rights to **the User**, to disable **the User's** access to any material breaches of the provisions of this clause.

18. THIRD PARTY SOFTWARE AND DATA

18.1. **MCI** is not responsible for the continuing availability or operation of any software, applications or data, licensed, developed or provided by any party other than **MCI**, nor for **the Platform** when embedded in any system developed by any party other than **MCI**.

18.2. **MCI** cannot warrant the continuing availability or compatibility of any third-party integrations with **the Platform** and disclaims same.

19. UNAVAILABILITY OF SOFTWARE SERVICE (SAAS)

19.1. Access to or use of **the Platform** may be subject to limitations, capacities, buffers, delays, and other problems inherent in the use of the Internet and electronic communications and third-party vendor systems and software.

19.2. **MCI** is not responsible for any such delays, delivery failures, or other damage resulting from such interruption of access to **the Platform** due to actions or omissions by **the User**, Internet and electronic communications, or the performance, functions and limitations of **the User's** infrastructure.

19.3. **MCI** will schedule routine maintenance or upgrade times during which **the Platform** may be inaccessible.

20. SUSPENSION OF ACCESS TO THE PLATFORM FOR ONGOING HARM

20.1. **MCI** may with reasonably contemporaneous notice to **the User**, suspend access to **the Platform** if **MCI** reasonably concludes that **the Platform** is being used to engage in spamming, or illegal activity, and/or use of **the Platform** is causing immediate, material and ongoing harm to **MCI**, or others.

20.2. In the event **MCI** suspends access to **the Platform**, **MCI** will use commercially reasonable efforts to limit the suspension to the offending portion of **the Platform** and work with **the User** to resolve the issues causing the suspension of **the Platform** usage.

20.3. **The User** agrees that **MCI** shall not be liable to **the User** nor to any third party for any suspension of **the Platform** usage under such circumstances as described in this section.

20.4. Any suspension under this section shall not excuse **the User** from **the User's** obligation to make payments under this **Agreement**.

21. LIABILITY AND INDEMNITY

Notwithstanding anything to the contrary contained in this **Agreement**:

21.1. **The User** shall not have any claim of any nature whatsoever against **MCI** for any failure by **MCI** to carry out any of its obligations in terms of the agreement as a result of *Vis Major*.

- 21.2. For the purposes hereof **Vis Major** shall include, without being limited to, strikes, lockouts, accidents, shortages or unavailability of supplies or other stock from normal sources, riots, political or other disturbances, the elements, any act of any State or Government or any other authority, or any cause whatsoever (without being limited by the foregoing) beyond **MCI**'s control.
- 21.3. **The User** shall have no claim of any nature whatsoever whether for damages, special damages, a remission of any amounts due in terms of the **Agreement**, cancellation or otherwise, against **MCI**, its directors, employees, and agents, in respect of any loss or damage sustained by **the User** of any nature whatsoever, arising out of or connected with the **Agreement**, and the use of **the Platform** or otherwise.
- 21.4. In the case of losses arising from fraud, negligence, or wilful misconduct by **Either Party**, neither **MCI** nor **the User** limits or excludes its liability:
- (a) in respect of any theft, fraud or fraudulent misrepresentation by it or its employees, and in the case of **MCI**, by **MCI** personnel.
 - (b) for wilful misconduct and for gross negligence.
 - (c) for breach of Confidentiality, Intellectual Property, Data Protection, or any information security obligations under this Agreement.
 - (d) abandonment of the Agreement either by **MCI** or **the Client**; and
- to the extent such limitation or exclusion is not permitted by applicable Law, the maximum aggregate liability of **Each Party** for damages or alleged damages arising out of fraud, negligence or wilful misconduct, breach of contract or otherwise, shall not exceed, for **Each Party**, the greater of 100% of the Fees paid or under the Proposal/Quotation, or, if the **Agreement** is terminated in its initial term, 100% of the annualised amount of Fees for the time **the Platform** and / or **Services** were actually provided.

22. JURISDICTION

- 22.1. The parties hereby consent to the jurisdiction of the **South African Magistrate's Court** in terms of Section 45 of Act 32 of 1944, as amended, for all purposes in terms of this agreement. Both parties shall nevertheless be entitled to institute action in any other court having competent jurisdiction.

23. TERMINATIONS

- 23.1. **MCI** may suspend or terminate **User** access to **the Platform** at its sole discretion for violations of this **Agreement** or for breach of the **Proposal/Quotation**.
- 23.2. Upon termination, **the User** must cease all use of **the Platform**, and **MCI** may delete **the User's** account and data.

24. MCI CONTACT DETAILS

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