

**COLLEAGUE SOFTWARE LIMITED**

**Standard Software Licence**

This Licence applies to the licensing of Software by **Colleague Software Limited** of 63b Thorpe Road, Norwich, NR1 1UD (registered in England and Wales under number 4320953) whose registered office is at Holland Court, The Close, Norwich, NR1 1DY ("**Licensor**") to the licensee specified on the Order Form ("**Licensee**").

This Licence is made on the date set out beneath the signature on the Order Form on behalf of the Licensee ("**Effective Date**") subject to the terms and conditions below and the details listed in the Order Form..

**1 Definitions and Interpretation**

1.1 In this Licence (except where the context otherwise requires) the following words and phrases shall have the following meanings:

"**Installation Date**" shall have the meaning attributed to it on the Order Form if any;

"**Client Access Licence**" means a licence for a single individual user to access and use the Software in accordance with this Licence;

"**Confidential Information**" means the Software, the Documentation and any information which is designated in writing by the party disclosing it to be confidential;

"**Documentation**" means any instruction manuals and other information associated with the Software which may be provided by the Licensor to the Licensee and which may be accessed by the Licensee from the Licensor's website at [www.colleague-software.co.uk/terms.asp](http://www.colleague-software.co.uk/terms.asp)

"**Escrow Agent**" means Mills & Reeve of Francis House, 112 Hills Road, Cambridge CB2 1PH.

"**Licence Fee**" means either the Perpetual Licence Fee or the Monthly Licence Fee as specified in the Order Form. If neither is specified "Licence Fee" shall mean the Monthly Licence Fee;

"**Licence Key**" means an alpha-numerical key provided by the Licensor to the Licensee which allows the Licensee to activate and use the Software;

"**Monthly Licence Fee**" means the monthly fee specified in the Order Form;

"**Order Form**" means the form signed on behalf of the Licensee by which it orders the Software from the Licensor;

"**Perpetual Licence Fee**" means the one-off fee specified in the Order Form;

"**Service Level Agreement**" means any agreement that may be entered into between the Licensor and the Licensee for

support and maintenance of the Software;

"**Software**" means a suite of software products in executable code form only known as Colleague designed to manage some of the processes used by the recruitment industry and shall include any upgrade of the Software made available to the Licensee pursuant to a Service Level Agreement;

"**Warranty Period**" means the period of 90 days commencing on the Installation Date.

1.2 In the event of any conflict between the provisions of this Licence and the provisions of the Order Form, the provisions of this Licence shall prevail.

**2 Acceptance**

2.1 The Licensee agrees and confirms that the terms and conditions of this Licence are deemed to be accepted by the Licensee upon signature of the Order Form or should the Licensee fail to sign the Order Form upon first use of the Software by the Licensee.

2.2 The Licensee shall ensure that only those persons authorised to do so shall sign the Order Form.

**3 Licence**

3.1 In consideration of the payment of the Licence Fee, the Licensor hereby grants to the Licensee a non-exclusive, non-transferable licence to use the Software to read data from, and write data to, the Licensee's database and to possess and refer to the Documentation in accordance with this Licence.

3.2 The Licensee acknowledges and agrees that use of the Software is limited to the number of Client Access Licences specified in the Order Form. A Client Access Licence must be obtained in respect of each individual user who is to

access or use the Software whether or not such access or use is concurrent with any other user. Should the Licensee wish to increase the number of Client Access Licences, the Licensor shall upon receipt of a request from the Licensee provide the Licensee with one or more additional Licence Keys. The Licensor reserves the right to charge for any increase in the number of Client Access Licences in accordance with its prevailing rates from time to time.

3.3 Except to the extent permitted by statute or pursuant to clause 3.4, the Licensee shall not reproduce, modify, adapt, merge, translate, disassemble, decompile, recompile or reverse engineer the Software or create derivative works based on the whole of or any part of the Software or incorporate the Software into or create interfaces with any other software program not provided or approved by the Licensor.

3.4 For the avoidance of doubt, the Licensee has the right to make backup copies of the Software to the extent such copies are reasonably necessary for the Licensee's own operational security and use within the scope of this Licence. The Licensee shall maintain full records of the date and creation of any copies of the Software made pursuant to this clause and shall make all such records available to the Licensor for inspection.

3.5 The Licensee shall only use the Software and the Documentation for its internal business purposes, and shall not make the Software or the Documentation available for use by any third party in any manner whatsoever.

3.6 The licence granted in clause 3.1 shall commence on the date the Licensee correctly enters a valid Licence Key into the Software.

3.7 The Licensor may, on reasonable notice, visit the premises in which the Software is being used in order to determine whether the use of the Software by the Licensee complies with this Licence. The Licensee shall grant the Licensor such access to its premises and to the equipment and any other computer hardware on which the Software is being used as is required to enable the Licensor to verify that this Licence is being complied with.

#### **4 Documentation**

4.1 The Licensee shall not copy the whole or any part of the Documentation, and shall not remove any trade mark, copyright or proprietary notices from the Documentation.

#### **5 Delivery and Installation**

5.1 If an Installation Date is given on the Order Form, the Licensor shall install the Software by that date by using one of the following methods chosen by the Licensor at its option:

5.1.1 instructing the Licensee remotely via email or telephone on how to install the Software;

5.1.2 installing the Software remotely by accessing the Licensee's systems; or

5.1.3 attending the Licensee's premises to install the Software.

5.2 Time shall not be of the essence in respect of installation of the Software.

#### **6 Payment and payment terms**

6.1 The Licence Fee shall be due and payable in accordance with the provisions of this clause 6.

6.2 The Perpetual Licence Fee shall be due and payable by the Licensee to the Licensor upon the Licensee entering into this Licence in accordance with clause 2.

6.3 The first payment of the Monthly Licence Fee shall be due and payable by the Licensee to the Licensor upon the Licensee entering into this Licence in accordance with clause 2. Each further payment shall be due and payable in advance of each subsequent 3 calendar months.

6.4 The Licensor will invoice the Licensee for the amount of the Licence Fee and any other sums due under this Licence when such sums fall due. If the Licensee does not pay the Licence Fee or any other sums due under this Licence within 14 days of the date of the relevant invoice, the Licensor reserves the right to:-

6.4.1 suspend the licence granted under clause 3;

6.4.2 charge interest at a daily rate on all sums outstanding until payment in full is received whether before or after judgment at a rate of 3% above the base lending rate of Lloyds TSB Bank plc from time to time. The Licensor reserves the right to claim interest under the Late Payment of Commercial Debts (Interest) Act 1998 and/or ;

6.4.3 terminate this Licence immediately.

## 7 Intellectual property rights

7.1 The Licensee acknowledges that the Licensor owns, or is licensed to use, all copyright and other intellectual property rights of whatever nature in and relating to the Software and the Documentation, including any customisations, configurations, enhancements or any other development of the Software that may be carried out by the Licensor pursuant to this Licence or a Service Level Agreement ("Developments").

7.2 The Licensee further acknowledges and agrees that all copyright and other intellectual property rights in and to any aspect of the Developments created or in any way contributed to by the Licensee shall be and remain the property of the Licensor and the Licensee hereby assigns to the Licensor with full title guarantee by way of present and future assignment all copyright and other intellectual property rights in and relating to any such Developments.

7.3 The Licensee hereby irrevocably and unconditionally waives all moral rights under the Copyright, Designs and Patents Act 1988 in connection with the Licensee's authorship of any Developments.

7.4 The Licensee shall, if and whenever required to do so by the Licensor, execute further document and do all further things necessary for vesting full legal title in any Developments in the Licensor.

7.5 The Licensor warrants that the use and licence of the Software and the Documentation in accordance with this Licence will not infringe the copyright belonging to any third party.

7.6 Subject to clauses 7.7 and 7.8, in the event of any claim being brought against the Licensee that the normal use or possession of the Software or the Documentation in accordance with this Licence infringes the copyright of a third party, the Licensor hereby indemnifies and will keep indemnified the Licensee against any damages that are awarded to be paid to any such third party in respect of a claim and any losses, costs (including all reasonable legal fees) and expenses incurred by or on behalf of the Licensee **PROVIDED THAT** the Licensee:

7.6.1 shall as soon as reasonably practicable notify the Licensor in writing of any such claim of which it becomes aware;

7.6.2 does not make any admission as to liability or compromise or agree any settlement of any claim without the prior written consent of the Licensor, which consent shall not be unreasonably withheld or delayed, or otherwise prejudice the Licensor's defence of any claim;

7.6.3 gives the Licensor, or such person as the Licensor shall direct, immediate and complete control of the conduct or settlement of all negotiations and litigation arising from any claim; and

7.6.4 upon payment of its reasonable costs, gives the Licensor and such other third parties as the Licensor shall direct all reasonable assistance with the conduct or settlement of any such negotiations or litigation.

7.7 In the event of a claim that the use by the Licensee of the Software or the Documentation in accordance with the provisions of this Licence infringes the copyright of a third party, the Licensor shall have the right in its absolute discretion and at its own expense to:

7.7.1 procure the right for the Licensee to continue using the Software and/or the Documentation in accordance with the terms of this Licence;

7.7.2 make such alterations, modifications or adjustments to the Software and/or the Documentation so that they become non infringing; or

7.7.3 replace the Software and the Documentation with non-infringing software and documentation.

7.8 In the event that the Licensor is unable to resolve the claim by taking one of the actions under clause 7.7, the Licensor shall have the right to terminate this Licence upon repayment to the Licensee of the Licence Fee depreciated on a straight line basis over three years and any fees paid in advance by the Licensee to the Licensor pursuant to a Service Level Agreement.

7.9 The provisions of clauses 7.5 to 7.8 shall not apply and the Licensee shall

indemnify the Licensor against all liabilities, costs and expenses which the Licensor may incur as a result of any claim attributable to the use or possession by the Licensee of the Software and the Documentation other than in accordance with the provisions of this Licence.

## **8** **Warranty**

8.1 The Licensor warrants that the Software will during the Warranty Period under normal use conform in all material respects with the functionality outlined in the Documentation. If the Licensor is notified by the Licensee in writing of any material errors during the Warranty Period the Licensor shall at its own expense correct any such demonstrable errors in the Software or the Documentation within a reasonable time. If the Licensor is unable to correct such errors, the Licensor shall notify the Licensee and the Licensee may terminate this Licence in writing returning the Software, any copies of the Software and any copies of the Documentation to the Licensor and on such return the Licensor shall refund the Licence Fee. The provisions of this clause 8.1 set out the extent of the Licensor's liability to the Licensee in respect of a breach of the warranty contained in this clause 8.1.

8.2 EXCEPT AS EXPRESSLY SET OUT IN CLAUSE 8.1, ALL CONDITIONS, WARRANTIES, TERMS AND UNDERTAKINGS, EXPRESS OR IMPLIED, WHETHER BY STATUTE, COMMON LAW, TRADE PRACTICE, CUSTOM, COURSE OF DEALING OR OTHERWISE (INCLUDING WITHOUT LIMITATION AS TO QUALITY, PERFORMANCE OR FITNESS OR SUITABILITY FOR PURPOSE) IN RESPECT OF THE SOFTWARE, THE DOCUMENTATION AND ANY INSTALLATION OF THE SOFTWARE AND PROVISION OF THE SERVICES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMISSIBLE BY LAW.

## **9** **Limitation of liability**

9.1 Nothing in this Licence shall exclude or restrict the liability of either party to the other for death or personal injury resulting from the negligent act of one party or for liability for any fraudulent misrepresentation by a party to this Licence.

9.2 The Licensee acknowledges and agrees that:

9.2.1 the amount of any loss which the Licensee might incur as a result of any defect in the Software or

failure on the part of the Licensor is better or only known to the Licensee and may be disproportionate to the payments due from the Licensee to the Licensor under this Licence;

9.2.2 it is likely to be more expensive for the Licensor to obtain insurance giving specific cover for this risk than for the Licensee to do so; and

9.2.3 the Licensor is keen to keep the price of the Software as competitive as possible,

and in view of the matters set out in this clause 9.2 the Licensee agrees that it is fair and reasonable for the Licensor to exclude and limit its liability as set out in this Licence.

9.3 SUBJECT TO THE PROVISIONS OF CLAUSE 9.1, THE LIABILITY OF THE LICENSOR TO THE LICENSEE FOR DIRECT DAMAGE TO THE PHYSICAL PROPERTY OF THE CUSTOMER RESULTING FROM THE NEGLIGENCE OF THE LICENSOR, ITS EMPLOYEES, AGENTS OR SUBCONTRACTORS SHALL BE LIMITED FOR ANY ONE INCIDENT OR SERIES OF INCIDENTS TO THE SUM OF £500,000.

9.4 SUBJECT TO THE PROVISIONS OF CLAUSES 9.1, 9.3 AND 9.5 THE LIABILITY OF THE LICENSOR TO THE LICENSEE FOR DIRECT LOSS IN CONTRACT, TORT OR OTHERWISE ARISING OUT OF OR IN CONNECTION WITH THIS LICENCE OR THE LICENSEE'S USE OF THE SOFTWARE OR THE DOCUMENTATION SHALL BE LIMITED FOR ANY ONE INCIDENT OR SERIES OF INCIDENTS TO 125% OF THE LICENCE FEE.

9.5 SUBJECT TO THE PROVISIONS OF CLAUSE 9.1, IN NO CIRCUMSTANCES SHALL THE LICENSOR BE LIABLE TO THE LICENSEE WHETHER IN CONTRACT, TORT, NEGLIGENCE, BREACH OF STATUTORY DUTY OR OTHERWISE IN RESPECT OF LOSS OF PROFITS, REVENUE, GOODWILL, BUSINESS OPPORTUNITY, CORRUPTION OR LOSS OF OR COST OF RESTORATION OF DATA OR FOR USE OF ANY RESULTS OBTAINED BY USE OF THE SOFTWARE OR ANY OTHER INDIRECT, CONSEQUENTIAL, FINANCIAL OR ECONOMIC LOSS OR DAMAGE COSTS OR EXPENSES WHATSOEVER OR HOWSOEVER ARISING OUT OF OR IN CONNECTION WITH THIS LICENCE OR THE LICENSEE'S USE OF THE SOFTWARE OR THE DOCUMENTATION.

## **10 Term and termination**

- 10.1 This Licence shall commence on the Effective Date and shall continue until terminated in accordance with this clause 10.
- 10.2 This Licence may be terminated immediately by either party if:
- 10.2.1 the other commits a material or persistent breach of any term of this Licence and which (in the case of a breach capable of being remedied) shall not have been remedied within 30 days of a written request to remedy the same;
- 10.2.2 an interim order is made, or a voluntary arrangement approved, or if a petition for bankruptcy order is presented or a bankruptcy order is made against the other party or if a receiver or trustee is appointed of the other party's estate or a voluntary arrangement is approved or an administration order is made, or a receiver or administrative receiver is appointed over any of the other party's assets or undertaking or a resolution or petition to wind up the other party is passed or presented (otherwise than for the purposes of reconstruction or amalgamation), or if any circumstances arise which entitle the Court or a creditor to appoint a receiver, administrative receiver or administrator or to present a winding up petition or make a winding up order.
- 10.3 If the Licence Fee is the Monthly Licence Fee either party may terminate this Licence on 3 months' written notice to the other;
- 10.4 The Licensor may terminate this Licence immediately upon the termination of a Service Level Agreement for non payment of fees owed by the Licensee to the Licensor.
- 10.5 The Licensor may terminate this Licence in accordance with clauses 6.4 or 7.8.
- 10.6 The Licensee may terminate this Licence in accordance with clause 8.1.

10.7 Any termination of this Licence shall be without prejudice to any other rights or remedies either party may be entitled to under this Licence or at law.

10.8 Within seven days of the termination of this Licence (by either party for whatever reason) the Licensee shall, at the Licensor's option, either return to the Licensor or destroy all copies of the Software and the Documentation in its possession and a duly authorised officer of the Licensee shall certify in writing to the Licensor that the Licensee has complied with such obligation.

## **11 Confidentiality**

11.1 Neither party shall at any time after the date of this Licence:

11.1.1 divulge or communicate to any person, company, business entity or other organisation;

11.1.2 use for its own purposes or for any purposes other than those of the other party; or

11.1.3 through any failure to exercise due care and diligence, cause any unauthorised disclosure of

any trade secrets or Confidential Information relating to the other party **PROVIDED THAT** these restrictions shall cease to apply to any such information which shall become available to the public generally otherwise than through a breach of a duty of confidentiality owed to the other party and **FURTHER PROVIDED THAT** neither party shall be restricted from disclosing the Confidential Information or any part of it pursuant to a judicial or other lawful government order, but only to the extent required by such order and subject to the party obliged to comply with such order giving the other party as much notice of the terms of the order as may be reasonably practicable.

## **12 Escrow**

12.1 The Licensor shall, on the written request of the Licensee and at the Licensee's expense, deposit a copy of the source code in escrow with the Escrow Agent in accordance with the Escrow Agent's standard terms and conditions of escrow from time to time.

## **13 General**

13.1 The failure or delay of the Licensor to exercise or enforce any right under this Licence shall not operate as a waiver of

- that right or preclude the exercise or enforcement of it at any time or times thereafter.
- 13.2 Neither party shall be liable for any delay in or for failure to perform its obligations under this Licence, other than an obligation to make any payment due to the other party, if that delay or failure is caused by circumstances beyond the control of that party including, without limitation, fires, strikes, insurrection, riots, embargoes, or regulations of any civil or military authority.
- 13.3 This Licence together with the Order Form constitutes the entire understanding between the parties with respect to the subject matter of this Licence and supersedes and replaces all prior licences, agreements, negotiations and discussions between the parties relating to it and in particular relating to the Software or any previous version of the Software. The Licensee confirms and acknowledges that it has not been induced to enter into this Licence by any representation, warranty, or undertaking not expressly incorporated into it. However, nothing in this Licence purports to exclude liability for any fraudulent statement or act.
- 13.4 No variation of this Licence shall be valid unless it is in writing and signed by an authorised representative of each of the parties.
- 13.5 The Licensee shall not be entitled to assign this Licence nor any of its rights or obligations hereunder nor sub-licence the use of the Software or the Documentation.
- 13.6 The Licensor shall be entitled to assign and subcontract this Licence or any of its rights or obligations hereunder in whole or in part at any time without notice to the Licensee.
- 13.7 The Contracts (Rights of Third Parties) Act 1999 shall not apply to this Licence, and nothing in this Licence shall confer or purport to confer on any third party any benefit or any right to enforce any term of this Licence or operate to give any third party the right to enforce any term of this Licence.
- 13.8 If any provision of this Licence shall be held to be unlawful, invalid or unenforceable, in whole or in part, under any enactment or rule of law, such provision or part shall to that extent be severed from this Licence and rendered ineffective as far as possible without modifying or affecting the legality, validity or enforceability of the remaining provisions of this Licence which will remain in full force and effect.
- 13.9 Any notice to be given under this Licence shall be in writing and shall be delivered by hand, sent by first class post or sent by facsimile (such notice to be confirmed by letter posted within 12 hours) to the address of the Licensor set out in this Licence and to the address of the Licensee set out in the Order Form or sent by e-mail to the email address of the other party (or such other address or email address as may have been notified). Any such notice or other document shall be deemed to have been served: if delivered by hand - at the time of delivery; if sent by post - upon the expiration of 48 hours after posting; and if sent by facsimile or by e-mail - at 9.00 am on the next business day after the facsimile or email was dispatched.
- 13.10 This Licence shall be governed by and construed in accordance with English law and each party hereby irrevocably submits to the non exclusive jurisdiction of the English Courts.