

Fuel50 Master Services Agreement

Last updated: September 23, 2021

This Fuel50 Master Services Agreement, including all schedules and policies attached or referenced herein (collectively, "**Agreement**") governs all use of products and services provided by Career Engagement Group, including but not limited to Fuel50 CareerDrive™, the web-based, interactive career-management application delivering career growth and pathing tools, as well as the Website and certain training career development based programs, workshops, and coaching programs. This Agreement is entered into between Career Engagement Group or its Affiliate as may be specified in an applicable Order ("**Fuel50**") on the one hand, and the individual or entity accepting this Agreement on behalf of itself and its Affiliates ("**Client**") on the other hand. Fuel50 and Client are each a "**Party**" and collectively, the "**Parties.**" This Agreement is deemed accepted and becomes effective upon access to or use of the Website, Services or Products or as specified in a mutually-accepted Order between the Parties.

1. DEFINITIONS AND INTERPRETATION

1.1 **Definitions:** In this Agreement, capitalized terms have the following meanings unless defined elsewhere in the Agreement or applicable Order:

"**Affiliate**" means an entity directly or indirectly Controlled by, Controlling or under common Control with a Party, now or in the future. An entity shall "**Control**" another entity when it owns more than 50% of the equity or other voting interests, or otherwise has primary management or operational responsibility.

"**Business Day**" means a day other than a Saturday, Sunday, or a public holiday in the United States.

"**Business Hours**" means the hours from 8:00 am until 5:00 pm Pacific time on Business Days.

"**Career Management Solution**" means the Fuel50 CareerDrive™, Fuel50's proprietary, web-based Software-as-a-Service (or "**SaaS**") application delivering interactive career growth and pathing tools.

"**Fuel50 Content**" means any Content made available by Fuel50 through the Website, Products or Services, including any career learning content and any reports generated using the Services. For clarity, Fuel50 Content does not include Client Content.

"**Charges**" means the charges set forth in the applicable Order, for the Products and Services provided to the Client under this Agreement.

"**Client Content**" means any Content (excluding Usage Data) that originates from and is input, uploaded, posted, transferred, transmitted or otherwise made available by the Client, a Permitted User, or otherwise through the Client's or a Permitted User's account (including by Fuel50 on the Client's behalf) for the purpose of using the Services or facilitating the Client's and Permitted Users' use of the Services.

"**Content**" means any data, text, graphics, audio, video, information, application, files, software, and other materials.

"**Documentation**" means any documentation, user instructions or other materials regarding the Products or Services made available to Client by Fuel50.

"**Force Majeure**" means any cause beyond the reasonable control of a Party, including riots, acts of war, epidemics, governmental action, legislative change, strikes and other industrial action, communication line or internet failures, power failures, earthquakes or other disasters.

"**Initial Term**" has the meaning given in [Section 11.1](#).

"**Intellectual Property Rights**" means any patents, rights with respect to trademarks, service marks, and trade dress, rights in domain names, copyrights, trade secret rights, moral rights, rights with respect to design, know-

how, Confidential Information (defined in [Section 6.1](#)), data, databases, personal information, publicity and privacy rights, and any other intellectual or industrial property rights anywhere in the world, whether or not registered.

“**Laws**” means any applicable national, state, provincial and local laws, rules, regulations, directives, statutes, orders, judgments, decrees, rulings, and enforceable regulatory guidance.

“**Malware**” means any software, device or other subject matter (including any service, code, file or program) that is designed to: (a) prevent, impair or otherwise adversely affect the operation of any computer service, hardware or network, any telecommunications service, equipment or network or any other service or device; (b) prevent, impair or otherwise adversely affect access to or the operation of any program or data, including the reliability of any program or data (whether by re-arranging, altering or erasing the program or data in whole or part or otherwise); or (c) adversely affect the user experience, including worms, trojan horses, viruses and other similar things or devices.

“**Order**” means any written work order or amendment thereto that the Parties may enter into from time to time.

“**Permitted User**” means any employee of the Client who is authorized by the Client to use the Services.

“**Permitted User Subscriptions**” means the user subscriptions purchased by the Client, which entitle Permitted Users to access and use the Services in accordance with this Agreement.

“**Product(s)**” means: (a) Fuel50’s proprietary cloud-based services identified in an Order; (b) all Updates thereof that are generally made available by Fuel50 to its clients as part of Permitted User Subscriptions without additional charge; (c) any other modifications made by Fuel50 specifically for Client as part of the Services; (d) the Fuel50 Content; and (e) the Documentation.

“**Professional Services**” means the implementation, development and consulting services provided by Fuel50 under this Agreement that are set forth in an Order and an accompanying statement of work that is separately executed by the Parties.

“**Renewal Period**” has the meaning set out in [Section 11.1](#).

“**Security Incident**” means a breach of security of the Services leading to accidental or unlawful destruction, loss, alteration, unauthorized disclosure of, or access to, Client Content in the possession or control of Fuel50.

“**Services**” means the provision of access to and use of the Website and/or Product(s), and may include Training Programs and Professional Services as set forth in an applicable Order.

“**Term**” means from the commencement of this Agreement until either the last day of the Initial Term (if this Agreement is not renewed in accordance with [Section 11.1](#)) or the last Renewal Period (if this Agreement is renewed in accordance with [Section 11.1](#)), subject always to earlier termination of this Agreement in accordance with its terms.

“**Third Party Content**” means any third party Content, including any application functionality provided by a Fuel50-contracted third party.

“**Training Program**” means the Fuel50 proprietary training programs and associated Documentation.

“**Update**” means new versions of the Website, Products and Services that Fuel50 generally makes available to its clients without additional charge.

“**Usage Data**” means data generated from Client’s use of the Website, Products and Services (excluding Client Content) and which does not comprise personal data, and which is collected by Fuel50 on an aggregated, anonymized basis, and which does not allow Fuel50 or any third party to determine that such data relates to or was derived from Client or an individual user.

“**Website**” means the Internet site at the domain www.fuel50.com or www.fuel50CareerDrive.com or such other address notified to the Client by Fuel50, via which the Client can access and use the Services.

- 1.2 **Interpretation:** For the purposes of this Agreement, unless the context requires otherwise: (a) words importing the singular or plural number include the plural and singular number respectively; (b) a reference to: (i) a “**person**” includes any individual, corporation, unincorporated association, government department or municipal authority; (ii) a Party to this Agreement include that Party’s successors and permitted assigns; (iii) “**\$**” is a reference to US currency; (iv) “**including**” and similar words do not imply any limitation; (v) “**herein**,” “**hereof**,” and “**hereunder**” and similar words refer to this Agreement as a whole and not to any particular section or paragraph; (vi) “**extent**” in the phrase “to the extent” means the degree to which a subject or thing extends,

and not simply “if”; and (vii) “Party” and “Parties” includes its or their permitted successors and assigns; and (c) headings and subheadings are inserted for the sake of convenience only and do not affect the interpretation of this Agreement.

2. SERVICES

2.1 **Fuel50 to Provide Services:** Subject to the Client purchasing the Permitted User Subscriptions or the Training Programs as applicable, in accordance with this Agreement, Fuel50 agrees to grant to the Client during the Term a personal, non-exclusive, non-transferable right to permit the Permitted Users to use, or receive the benefit of, the Website, Products and Services including use of the Fuel50 Content, through the Website and only for the Client’s internal business operations. The foregoing license includes Client’s right to use copies of downloadable reports generated by the Products only for Client’s internal business operations. The foregoing license is granted only to Client and any Affiliates as specified in an applicable Order. By using the Website, Products and Services, Fuel50 and the Client agree to abide by all terms and conditions of the Service Level Agreement, which is attached as Schedule 1 and fully incorporated herein by reference.

2.2 Fuel50 Talent Blueprint (Ontology):

(a) If Client has purchased a FuelEditor or Enterprise Mobility Edition license from Fuel50 with a minimum two-year term, Client may download the Fuel50 Talent Blueprint for internal use only during and after the Term of this Agreement; and Client will receive Updates thereto at no additional cost during the Term. After the Term, Client may purchase a standalone FuelEditor license from Fuel50 (priced separately) to continue receiving updates to the Fuel50 Talent Blueprint.

(b) If Client has purchased the Career Management Solution with less than a minimum two-year term, Client may download the Fuel50 Talent Blueprint for internal use only during the Term of this Agreement; and upon termination of this Agreement, Client must either (a) delete all copies of the Fuel50 Talent Blueprint (and certify such deletion in writing to Fuel50) or (b) purchase a standalone FuelEditor license from Fuel50 (priced separately) to entitle Client to retain and continue using the Fuel50 Talent Blueprint, including receiving Updates thereto.

(c) The Fuel50 Talent Blueprint is made available for Client’s internal use only. Client may not sell, resell, transfer or sublicense the Fuel50 Talent Blueprint, in whole or part, to any other entity or person at any time.

2.3 **Other Services:** At the request of the Client, Fuel50 may agree to provide Professional Services that relate to the Products but are not otherwise covered by this Agreement. Such additional services will be charged at Fuel50’s standard rates or as agreed with the Client in writing and otherwise will be subject to the terms and conditions of this Agreement.

2.4 **Third Party Content:** As part of the Client’s and Permitted Users’ use of, or in connection with Fuel50’s provision of the Website, Products and Services, the Client and Permitted Users may be provided with access to Third Party Content. Any Third Party Content is made available on an “AS-IS” basis, without any indemnification or support, and Fuel50 disclaims all warranties and conditions of any kind, whether express, implied, statutory, or otherwise. The Client is solely responsible for reviewing, accepting, and complying with any third party terms applicable to any Third Party Content. The Client’s and Permitted Users’ access to and use of Third Party Content is subject to this Agreement, as well as the applicable terms and conditions of such third parties, set forth at or as otherwise made available by Fuel50 from time to time, which are incorporated in this Agreement by reference. Third party agreements can be found here: <https://www.fuel50careerdrive.com/thirdparty>.

2.5 **Usage Data:** Fuel50 may collect, use, share and disclose Usage Data as further described in Schedule 2. As between Fuel50 and the Client, Fuel50 owns the Usage Data.

3. CLIENT CONTENT

- 3.1 **Right to Use:** The Client acknowledges that Fuel50 will require access to and use of Client Content to fulfill its obligations under this Agreement. As between the Client and Fuel50, the Client owns the Client Content. The Client grants to Fuel50 a non-exclusive, royalty free right to (and to authorize its employees, subcontractors and service providers to) access, use, copy, modify, perform and display Client Content to operate the Website and Products and perform the Services and to otherwise perform its obligations and exercise its rights under this Agreement.
- 3.2 **Approvals:** The Client will ensure that it has obtained all necessary consents and approvals for Fuel50 to exercise the rights described in Section 3.1 and Schedule 2.
- 3.3 **Security:**
- (a) Each Party will implement reasonable physical, technical and organizational safeguards designed to secure Client Content (with respect to Fuel50) and Fuel50 Content (with respect to Client) from unauthorized access, disclosure, loss, modification, or destruction.
 - (b) If a Party discovers a Security Incident has occurred, such Party will notify the other Party promptly (and in any event within 72 hours) unless otherwise prohibited by law or otherwise instructed by a law enforcement or supervisory authority. In addition to providing such notification, the notifying Party will promptly take reasonable steps to investigate and mitigate the effects of the Security Incident.

4. CLIENT OBLIGATIONS

- 4.1 **Permitted Users:** In relation to the Permitted Users, the Client undertakes that:
- (a) the maximum number of Permitted Users that it authorizes to access and use the Products and Services will not exceed the number of Permitted User Subscriptions it has purchased. If the Client wishes to increase the number of Permitted User Subscriptions, the Client will notify Fuel50 in writing; and if Fuel50 agrees to increase the number of Permitted User Subscriptions, Fuel50 will invoice the Client at the then-current rate for the additional Permitted User Subscriptions;
 - (b) it will not allow any Permitted User Subscription to be used by more than one individual Permitted User unless it has been reassigned in its entirety to another individual Permitted User, in which case the prior Permitted User will no longer have any right to access or use the Products and Services;
 - (c) it will cause each Permitted User to (i) keep a secure password for its use of the Products and Services, (ii) change such password on a regular basis, and (iii) keep such password confidential; and
 - (d) it will maintain a written, up to date list of current Permitted Users and provide such list to Fuel50 within 5 Business Days of Fuel50's written request.
- 4.2 **No Malware; Prohibited Activities:** The Client will not access, store, distribute or transmit any Malware, or any material during the course of its access and use of the Website, Products and Services that: (a) is unlawful, harmful, threatening, defamatory, obscene, infringing, harassing or racially or ethnically offensive; (b) is discriminatory based on race, gender, color, religious belief, sexual orientation, disability, or any other illegal activity; or (c) causes damage or injury to any person or property. Fuel50 reserves the right, without liability to the Client, to disable the Client's access to any material that breaches the provisions of this Section.
- 4.3 **Restrictions:** The Client will not:
- (a) except to the extent the following restrictions are not permitted under applicable Laws:
 - (i) and except to the extent expressly permitted under this Agreement, attempt or do any of the following: to copy, modify, duplicate, create derivative works from, frame, mirror, republish, download, display, transmit, or distribute all or any portion of the Website, Products and/or Services (as applicable) in any form or media or by any means; or
 - (ii) attempt or do any of the following: to reverse compile, disassemble, reverse engineer or otherwise reduce to human-perceivable form all or any part of the Website, Products and/or Services;

- (b) access or use all or any part of the Website, Products and/or Services in order to build a product or service which competes with or serves a substantially similar purpose to any of the Website, Products and/or Services;
 - (c) use the Website, Products and/or Services to provide services to third parties;
 - (d) license, sell, rent, lease, transfer, assign, distribute, display, disclose, or otherwise commercially exploit, or otherwise make any of the Website, Products and/or or Services available to any third party (except to Permitted Users as expressly permitted under, and in accordance with, this Agreement).
- 4.4 **Unauthorized Access:** The Client will use all reasonable efforts to prevent any unauthorized access to, or use of, the Website, Products and/or Services and, in the event of any such unauthorized access or use, promptly notify Fuel50 and cause such unauthorized access or use to cease as soon as reasonably possible.

5. CHARGES AND PAYMENT

- 5.1 **Charges:** The Client must pay to Fuel50 or, at the direction of Fuel50, Fuel50's authorized reseller of the Products and/or Services, the Charges set forth in the applicable Order, in accordance with the applicable Order and this [Section 5](#).
- 5.2 **Invoices:** The Client will be invoiced for Charges according to the applicable Order.
- 5.3 **Payment:** Payment of Charges will be due within 30 days after the date of the invoice, except where an Order expressly prescribes other payment dates. Except where otherwise stated, all Charges set forth in an Order are in U.S. dollars and must be paid in the currency set forth in the Order. All Charges are non-refundable, except as expressly set forth herein. Products and Services are subject to suspension for failure to timely remit payment therefor.
- 5.4 **Currency Control:** The Client represents and warrants that no currency control Laws prevent the payment to Fuel50 of any amounts due under this Agreement. In the event that any such Laws come into effect such that payment in U.S. dollars is not permitted, the Client will notify Fuel50 immediately, and if so instructed by Fuel50, deposit all monies due to Fuel50 to the account of Fuel50 in a local bank of Fuel50's choice.
- 5.5 **Taxes:** All amounts set forth in this Agreement are exclusive of any applicable taxes. The Client will pay, indemnify, and hold Fuel50 harmless from all import and export duties, customs fees, levies, or imposts, and all sales, use, value added, or other fees, governmental charges, or taxes of any nature (other than any U.S. taxes on Fuel50's income), including penalties and interest, and all government permit or license fees assessed upon or with respect to any products sold, leased, or licensed to the Client and any services rendered to the Client. If the Client is required by Laws to make any deduction or to withhold any amount from any sum payable to Fuel50 by the Client hereunder, (a) the Client will remit such amounts to the appropriate taxing authorities and promptly furnish Fuel50 with tax receipts evidencing the payments of such amounts, and (b) the sum payable by the Client upon which the deduction or withholding is based will be increased to the extent necessary to ensure that, after such deduction or withholding, Fuel50 receives and retains, free from liability for such deduction or withholding, a net amount equal to the amount Licensor would have received and retained in the absence of such required deduction or withholding.
- 5.6 **Disputed Invoices:** If the Client raises a bona fide dispute in relation to an invoice submitted under this [Section 5](#) ("**disputed invoice**"): (a) the Client must pay that part of the disputed invoice in respect of which no dispute exists, by the due date for that invoice; and (b) in respect of that part of the disputed invoice which is disputed: (i) if the dispute is resolved at least 10 Business Days before the due date for payment of that invoice, then the amount agreed by the Parties to be payable, or determined under [Section 13.1](#) to be payable, must be paid by the due date; and (ii) in all other cases, the amount agreed by the Parties to be payable, or determined under [Section 13.1](#) to be payable, must be paid within 10 Business Days of such agreement or determination.
- 5.7 **Late Payment:** If the Client does not pay any amount when due, Fuel50 may (without prejudice to its other rights): (a) charge interest on the unpaid amount from the due date until the date of actual payment at 1.5% (or the highest rate allowable by applicable Laws, whichever is lower); (b) without liability to the Client, suspend

or cease providing any of the Products and Services (including disabling the Client's password, account and access to any or all of the Products and Services), and Fuel50 will be under no obligation to provide any or all of the Products and Services while the invoice(s) remain unpaid.

6. CONFIDENTIALITY

6.1 **Confidential Information:** "Confidential Information" means all non-public data, information, and materials disclosed by one Party to the other Party in any form that is marked as or provided under circumstances reasonably indicating that it is confidential or proprietary. Without limiting the generality of the foregoing, as between the Parties, (a) Fuel50's Confidential Information includes the Products and Services; and (b) the Client's Confidential Information includes Client Content.

6.2 **General obligations of confidentiality:** Each Party agrees that, except to the extent expressly permitted under this Agreement, it will not use or disclose to any third party any Confidential Information of the other Party obtained from the other Party under or in connection with this Agreement. Each Party undertakes to use its reasonable efforts to ensure its personnel, agents and subcontractors are aware of and comply with the provisions of Section 6. In fulfilling the obligations in Section 6, each Party will as a minimum standard use the same degree of care to avoid disclosure as it uses to protect its own Confidential Information.

6.3 Exceptions:

- (a) The Client's obligations under Section 6.2 do not apply to the extent that any use or disclosure is necessary to enable the Client to make use of the Products, Services and Documentation in accordance with this Agreement.
- (b) Fuel50's obligations under Section 6.2 do not apply to the extent that any use or disclosure is necessary to enable it to comply with its obligations under this Agreement.
- (c) Fuel50's obligations with respect to a Security Incident are limited to the obligations set forth in Section 3.3, and the obligations under Section 6.2 do not apply to unauthorized disclosure or use resulting from Security Incidents.
- (d) The Parties agree that the obligations under Section 6.2 will not apply to any Confidential Information that:
 - (i) is or becomes generally available to the public other than by the receiving Party's breach of this Agreement, (ii) was rightfully possessed by the receiving Party at the time of disclosure, without any obligations of nondisclosure or nonuse to the disclosing Party, (iii) is rightfully received by the receiving Party from a third party without any obligations of nondisclosure or nonuse to the disclosing Party, or (iv) is independently developed by the receiving Party without use of or reference to the disclosing Party's Confidential Information. In addition, each Party may use or disclose the other Party's Confidential information (x) with the prior written consent of the other Party, and (y) to the extent required by applicable Laws.

7. INTELLECTUAL PROPERTY

7.1 **Ownership:** As between Fuel50 and the Client, Fuel50 owns all rights, title and interest in and to the Website, Products, Services, Documentation, Usage Data, and anything Fuel50 develops or creates, solely or working jointly with others, in the performance of Services or otherwise under an Order or this Agreement ("**Work Product**"), and Client will not dispute such ownership. To the extent that ownership of any Work Product vests in the Client, the Client hereby assigns to Fuel50 all right, title and interest (including all Intellectual Property Rights) in and to all Work Product and waives any and all moral rights in the Work Product to which it may now or in the future be entitled under the Laws of any jurisdiction. As between Fuel50 and the Client, the Client owns all rights, title and interest in and to all Client Content and will have sole responsibility for the legality, reliability, integrity, accuracy and quality of Client Content.

7.2 **Feedback:** If the Client or any Permitted User provides to Fuel50 any ideas, proposals, suggestions, or other materials ("**Feedback**"), whether related to the Products, Services, Documentation or otherwise, the Client

hereby grants (and will cause the Permitted User to grant) to Fuel50 a non-exclusive, perpetual, irrevocable, transferable, royalty-free license (with the right to sublicense through multiple tiers) to use and otherwise exploit such Feedback for any purpose.

- 7.3 **Reservation of Rights:** Except as expressly granted herein, neither Party is granted any rights or licenses, whether express or implied, under the other Party's Intellectual Property Rights. Nothing in this Agreement will be deemed to grant the Client any ownership interest in any Intellectual Property Rights in or to any of the Website, Products, Services or Documentation.

8. WARRANTIES

- 8.1 **Mutual Warranties:** Each Party warrants to the other that it has full power and authority to enter into and perform its obligations under this Agreement which, when executed, will constitute valid and binding obligations on the Party in accordance with its terms.
- 8.2 **Disclaimers:** EXCEPT AS PROVIDED IN SECTION 8.1, FUEL50 AND ITS LICENSORS, SERVICE PROVIDERS, SUPPLIERS, SUBCONTRACTORS AND DISTRIBUTORS (THE "FUEL50 PARTIES") PROVIDE NO WARRANTIES OR CONDITIONS WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING THE WEBSITE, PRODUCTS, SERVICES AND DOCUMENTATION), WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, INCLUDING WARRANTIES AND CONDITIONS OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF EXPRESS OR IMPLIED WARRANTIES OR LIMITATIONS ON HOW LONG SUCH WARRANTIES LAST, SO THE EXCLUSIONS OR LIMITATIONS IN THIS SECTION 8.2 MAY NOT APPLY TO THE CLIENT. THE FOREGOING EXCLUSIONS AND LIMITATIONS ARE NOT INTENDED TO APPLY TO: (A) DEATH OR BODILY INJURY TO THE EXTENT DIRECTLY CAUSED BY A FUEL50 PARTY'S GROSS NEGLIGENCE; OR (B) A FUEL50 PARTIES' FRAUD OR WILLFUL MISCONDUCT. FUEL50 DOES NOT GUARANTEE ANY RESULTS, OR THE ACCURACY OF ANY RESULTS, THAT THE CLIENT OR ANY PERMITTED USER MAY OBTAIN FROM THE PRODUCTS, SERVICES AND DOCUMENTATION.

9. IP INDEMNITY

- 9.1 **Infringement:** Each Party (the "Indemnifying Party") will defend and/or settle, any claim, suit, action or proceeding brought by a third party against the other Party (the "Indemnified Party") alleging that the Career Management Solution as provided or performed by Fuel50 (when Fuel50 is the Indemnifying Party) or the Client Content (when Client is the Indemnifying Party) infringes, misappropriates, or violates any third party Intellectual Property Rights ("Infringing Item") (individually, an "Action," and collectively, "Actions"). The Indemnifying Party will pay all damages finally awarded and settlement amounts entered into to the extent based upon an Infringing Item. In relation to any Action:
- (a) the Indemnified Party must fully cooperate with the Indemnifying Party in defending or settling any Action and, if the Client is the Indemnified Party, make Permitted Users available to give statements, advice and evidence as the Indemnifying Party may reasonably request;
 - (b) the Indemnified Party must notify the Indemnifying Party promptly in writing of any Action and gives the Indemnifying Party complete authority and information required for the conduct of the defense or settlement of the Action; and
 - (c) the Indemnifying Party will have the sole control of the conduct of any Action and all negotiations for its settlement or compromise.

The foregoing is subject to the limitations set forth in Section 10 and states the Client's sole and exclusive rights and remedies, and Fuel50's (including Fuel50's employees', agents' and subcontractors') entire obligations and liability, for infringement, misappropriation, or violation of any third party Intellectual Property Rights or interests.

- 9.2 **Limitations.** If the Career Management Solution or the Client Content is or in the Indemnifying Party's judgment may become the subject of any Action, or if a court determines that the Career Management Solution or the

Client Content infringes, misappropriates or violates a third party right, then the Indemnifying Party may: (i) modify the Career Management Solution or Client Content to avoid infringement, misappropriation, or violation (while maintaining comparable functionality); (ii) procure the right (at the Indemnifying Party's cost) for the Career Management Solution or Client Content; or (iii) replace the Career Management Solution or Client Content with a suitable replacement. If, in the case of Fuel50, it considers the actions in clauses (i), (ii) and (iii) to be not commercially feasible, Fuel50 may terminate this Agreement and refund to the Client the portion of any amounts paid by the Client in respect of the Career Management Solution less a pro-rata reduction for use. The foregoing is subject to the limitations set forth in Section 10 and states the Client's sole and exclusive rights and remedies, and Fuel50's (including Fuel50's employees', agents' and subcontractors') entire obligations and liability, for infringement, misappropriation, or violation of any third party Intellectual Property Rights or interests.

- 9.3 **Exceptions:** Fuel50, its employees, agents and subcontractors will have no obligation under Section 9.1 to the extent that the Action is based on: (a) a modification of the Career Management Solution by anyone other than Fuel50; (b) a modification of the Career Management Solution by Fuel50 in compliance with Client's written instructions; (c) the Client's use of the Career Management Solution in a manner contrary to the instructions given to the Client by Fuel50; or (d) the Client's use of the Career Management Solution after notice of the alleged or actual infringement, misappropriation, or violation from Fuel50 or any appropriate authority.

10. LIMITATION OF LIABILITY

TO THE FULLEST EXTENT ALLOWED BY APPLICABLE LAWS, (A) FUEL50 WILL NOT BE LIABLE TO THE CLIENT FOR ANY INDIRECT, INCIDENTAL, SPECIAL OR CONSEQUENTIAL LOSS OR DAMAGE, LOSS OF PROFITS, OR LOSS OF REVENUE, ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, AND (B) THE MAXIMUM AGGREGATE LIABILITY OF FUEL50 FOR ALL CLAIMS FOR LOSS OR DAMAGE ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AMOUNTS ACTUALLY PAID BY THE CLIENT TO FUEL50 IN THE 12 MONTHS PRIOR TO THE DATE ON WHICH THE LIABILITY AROSE. IN ADDITION, FUEL50 WILL NOT BE IN BREACH OF THIS AGREEMENT AND WILL NOT BE LIABLE TO THE EXTENT THAT FUEL50 IS UNABLE TO COMPLY WITH ANY PROVISION OF THIS AGREEMENT DUE TO ANY NEGLIGENCE, DEFAULT OR FAILURE OF CLIENT TO COMPLY WITH ITS OBLIGATIONS UNDER THIS AGREEMENT.

11. TERM AND TERMINATION

- 11.1 **Term:** This Agreement commences on access to or use of the Services and with respect to any applicable Order, continues for the term specified in the applicable Order (the "**Initial Term**") unless terminated in accordance with this Agreement. Following the Initial Term, this Agreement will automatically renew for further periods of one (1) year each (each term, a "**Renewal Period**") unless either Party gives at least 90 days' written notice of its intention to terminate this Agreement at the expiration of the Initial Term or the then-current Renewal Period.
- 11.2 **Termination for Cause:** Either Party may terminate this Agreement immediately by giving notice to the other Party, if the other Party: (a) commits a material breach of this Agreement and fails to remedy that breach within 10 Business Days of receipt of notice of the breach from the first Party; or (b) becomes insolvent, is placed in receivership or liquidation, is the subject of any winding up or liquidation resolution or order, or is subject to any other form of insolvency action or administration.
- 11.3 **Effect of Termination:** Upon expiration or termination of this Agreement for any reason: (a) all rights and licenses granted under this Agreement will immediately terminate; (b) any amounts incurred by Fuel50 for Services performed prior to the expiration or termination date will become due and payable; (c) each Party will return and make no further use of any equipment, property, Documentation, Confidential Information and other items (and all copies of them) belonging to the other Party; (d) Fuel50 will delete from the Products and Services all Client Content relating to Permitted Users and if requested by the Client prior to Client Content being deleted, Fuel50 will provide a spreadsheet of Client Content to the Client (in raw output form); and (e) such termination is without prejudice to the rights and obligations of the Parties accrued up to and including the date of termination.

11.4 **Survival:** Sections 1, 5 (with respect to amounts incurred by Fuel50 prior to the expiration or termination date) 6, 7, 9 (with respect to Actions that arose prior to the expiration or termination date), 10, 11.3 and 12 survive the expiration or termination of this Agreement.

12. COMPLIANCE WITH LAWS

12.1 General:

- (a) The Client understands and agrees that the Website, Products and Services are subject to certain Laws, which include without limitation, governmental procurements Laws and Laws related to bribery, fraud, corruption, or international trade, such as the U.S. Foreign Corrupt Practices Act, and any applicable anti-bribery or trade Laws of other countries, as amended, the U.S. Export Administration Regulations Act of 1979, as amended, the U.S. International Traffic in Arms Regulations, and the sanctions, regulations and Executive Orders administered by the U.S. Treasury Department Office of Foreign Assets Control and U.S. Department of State.
- (b) Without limiting any of Fuel50's or the Client's other commitments under this Agreement, each Party will comply with all Laws applicable to such Party's performance of and/or exercise of its rights and obligations under this Agreement.
- (c) The Client's compliance with its obligations under this Agreement will extend to Laws that apply to the access to or use of the Products and Services, as well as any other of the Client's activities hereunder. Such Laws include those that apply to online conduct, online content, and the processing or international transfer of data (including any personal information). The Client will also cause Permitted Users to comply with all such Laws.
- (d) **Permits:** The Client agrees that it has, and will maintain, at its own expense, all permits, licenses, consents and approvals that apply to the Products and Services or their use hereunder, including for the Client and Permitted Users (a) to receive and use the Products and Services in accordance with all applicable Laws, and (b) to otherwise exercise the Client's rights and perform its other obligations as set forth in this Agreement (collectively, the "**Permits**"); provided that if obtaining any of the foregoing Permits is Fuel50's responsibility under applicable Laws and applicable Laws do not permit the Client to obtain such Permits on Fuel50's behalf, Fuel50 will obtain such Permits at its own expense.

12.2 **Import and Export Compliance:** The Client agrees that it will not (and will cause Permitted Users not to) use or otherwise export, re-export, transfer or release, whether oral, visual, or deemed to be an export or reexport, or otherwise (collectively, "**export**"), except as authorized by U.S. Laws and the Laws of the jurisdictions in which the Products and Services were accessed or used. In particular, but without limitation, the Products and Services may not be exported (including by accessing the Products and Services), directly or indirectly: (a) to any person listed or deemed to be a blocked, prohibited or trade-restricted person or party by the U.S. Commerce Department, U.S. Treasury Department, or U.S. Department of State by operation of law or otherwise; (b) for any purpose or use prohibited by the U.S. government, such as for nuclear, chemical, or biological weapons production or proliferation; or (c) to any destination or transit point subject to comprehensive sanctions by the U.S. government, as may be amended from time to time, without having obtained the required U.S. authorization(s) prior to such export. The Client represents and warrants that its and Permitted Users' access and use of the Website, Products and Services will not violate any such Laws and that the Client is not located in any such country or on any such list or deemed to be on such list. The Client will not (and will cause the Permitted Users not to) access or use the Website, Products and Services for any purposes prohibited by U.S. Laws, including the development, design, manufacture or production of nuclear, missiles, or chemical or biological weapons.

13. MISCELLANEOUS

13.1 **Disputes:** If a dispute, claim or controversy arises out of or relates to this Agreement (each, a "**Dispute**"), the Party claiming that a Dispute has arisen must first give written notice to the other Party specifying the nature

of the Dispute. Upon receipt of such notice, the Parties will use all reasonable efforts to resolve the Dispute by discussion, consultation, negotiation or other informal means. If, after 30 days from the date of delivery of such notice, the Parties are unable to resolve the Dispute, then the Dispute will be resolved using binding arbitration as follows:

- (a) If the Client's principal place of business is in the United States, Canada or Mexico, the arbitration will be administered by the American Arbitration Association ("AAA") in accordance with the AAA's Commercial Arbitration Rules and Mediation Procedures in effect at the date of this contract.
- (b) If the Client's principal place of business is in any country in APAC (defined below), then the arbitration will be administered by the Singapore International Arbitration Centre ("SIAC") in accordance with the Arbitration Rules of the SIAC in effect at the date of this contract.
- (c) If the Client's principal place of business is outside of the United States, Canada, Mexico or any country in APAC, then the arbitration will be administered by the International Chamber of Commerce ("ICC") in accordance with ICC Rules of Arbitration.
- (d) The arbitration rules specified in this Section 13.1 are referred to as the "Rules." For the purposes of this Agreement, "APAC" means the Asia-Pacific geographic region that includes the following countries: Australia, Bangladesh, Brunei, Burma, Cambodia, China (including Hong Kong Special Administrative Region and Macau Special Administrative Region), Christmas Islands, Fiji, India, Indonesia, Japan, Kiribati, Laos, Malaysia, Marshall Islands, Federated States of Micronesia, Mongolia, Nauru, New Zealand, Palau, Papua New Guinea, Philippines, Samoa, Singapore, Solomon Islands, South Korea, Sri Lanka, Taiwan, Thailand, Timor-Leste, Tonga, Tuvalu, Vanuatu and Vietnam.
- (e) Either Party may commence the arbitration process called for by this Agreement by filing a written demand for arbitration with the applicable arbitration organization and delivering a copy of such demand to the other Party to this Agreement in accordance with the notice provision of this Agreement. In no event will demand for arbitration be made or permitted after the date when the institution of legal or equitable proceedings based on the Dispute would be barred by the applicable statute of limitations. The place of arbitration will be Orange County, California, United States.
- (f) Arbitration under this Section 13.1 will be conducted in English
- (g) **If for any reason a claim proceeds in court rather than in arbitration, each Party waives any right to a jury trial.**
- (h) Notwithstanding anything to the contrary herein, either Party may seek injunctive relief in a court of competent jurisdiction to prevent irreparable harm from occurring at any time. Each Party will bear its own fees and costs of prosecuting or defending the arbitration, and the Parties will split the arbitrators' fees and the applicable arbitration organization's administrative costs, regardless of the outcome. The provisions of this Section and judgment upon the award rendered by the arbitrator may be enforced by any court of competent jurisdiction. The arbitrator(s) will render its decision as soon as reasonably possible after its appointment and must follow the terms of this Agreement.
- (i) **The Client agrees that any dispute resolution proceedings, whether in court or in arbitration, will be conducted only on an individual basis and not in a class, consolidated or representative action.**

13.2 **Force Majeure:** Neither Party is liable to the other Party for any delays or failure to perform any obligations under this Agreement to the extent such delays or failures result from any Force Majeure. The Party affected by a Force Majeure must: (a) immediately notify the other Party in writing and provide full information concerning the Force Majeure event including an estimate of the time likely to be required to overcome that Force Majeure event; (b) use reasonable efforts to overcome the event and minimize any loss to the other Parties; and (c) continue to perform its obligations as far as practicable. A Party may terminate this Agreement by notice in writing if, as a result of Force Majeure event, either Party is unable to perform any of its material obligations under this Agreement for 20 Business Days or more.

13.3 **Notices:**

- (a) Each notice, agreement and other communication (each a “**communication**”) to be given, delivered or made under this Agreement must be in writing but may be sent by personal delivery, post (by airmail) or email to the address of the other Party as set out in the applicable Order (or to any other address or number from time to time designated for that purpose by notice by a Party to the other).
 - (b) A communication under this Agreement is effective: (i) in the case of personal delivery, when delivered; (ii) if mailed, 3 Business Days after mailing; and (iii) if made by email, upon successful transmission of that email, provided that any communication received or deemed received after 5:00 pm on a day which is not a Business Day is deemed not to have been received until the next Business Day.
- 13.4 **Assignment:** The Client may not assign or attempt to assign or transfer this Agreement or any of its rights, interests or obligations under this Agreement, except with the prior written consent of Fuel50. Without limiting any other right of Fuel50 hereunder, Fuel50 will have the right to assign or transfer this Agreement to its Affiliates, or to successors-in-interest to all or substantially all of the business or assets of Fuel50 pertaining to the subject matter hereof, in each case without the consent of the Client. Subject to the preceding sentence, the rights and obligations of the Parties will inure to the benefit of, each of the Parties’ respective assignees and successors and are binding on the Parties and their successors and assignees. Any attempted assignment other than in accordance with this Section 13.4 will be null and void. Nothing in this Agreement restricts Fuel50 from appointing subcontractors to perform Fuel50 obligations under this Agreement, so long as Fuel50 remains responsible for their performance.
- 13.5 **Relationship of the Parties:** Nothing in this Agreement will be construed as creating an agency, partnership, joint venture or any other form of association between the Parties. Fuel50 and the Client are independent parties for all purposes relating to this Agreement. No Party has authority to act or to assume any obligation or liability on behalf of the other Party except as expressly provided in this Agreement.
- 13.6 **No Third Party Beneficiaries:** Except as expressly set forth in this Agreement (including with respect to the Permitted Users), this Agreement does not create any third party beneficiary right in any person that is not a Party to this Agreement.
- 13.7 **Amendments:** Fuel50 may change this Agreement and any components referenced herein (except any Orders). If Fuel50 makes a material change to the Agreement, Fuel50 will give reasonable prior notice to Client, either at Client's email address on file or by messaging Client through the Services. Client may review the most current version of this Agreement at any time by visiting this page, as well as any other pages referenced herein. The materially-revised Agreement will become effective on the date set forth in our notice, and all other changes will become effective upon posting of the change. If Client accesses or uses the Services after such effective date, that use will constitute Client's acceptance of the revised terms and conditions.
- 13.8 **Counterparts:** This Agreement may be signed in counterparts which together will constitute one agreement binding on the Parties, notwithstanding that both Parties are not signatories to the original or same counterpart.
- 13.9 **Governing Law:** This Agreement (including the arbitration provisions set forth in Section 13.1) will be governed by and construed in accordance with the laws of the State of California and the federal laws of the United States of America, without prejudice to the provisions of the Laws of the country where the Client has its principal place of business that cannot be derogated from contractually and without regard to conflict of law principles (as such Laws are applied to agreements entered into and to be performed entirely within the U.S. between residents of the U.S.).
- 13.10 **Language:** This Agreement is in the English language only, which language will be controlling in all respects, and all versions hereof in any other language will not be binding on the Parties. All communications and notices to be made or given pursuant to this Agreement will be in English.
- 13.11 **Waiver:** No forbearance, delay or indulgence on the part of either Party in enforcing any provision of this Agreement will prejudice or restrict the rights of that Party nor will any waiver of any of its rights operate as a waiver of any subsequent breach.

13.12 **Severability:** If any provision of this Agreement is deemed invalid, unenforceable or in conflict with applicable Laws, that provision is hereby replaced with a provision which, as far as possible, accomplishes the original purpose of that provision. The remainder of this Agreement will be binding on the Parties.

13.13 **Entire agreement:** This Agreement (including its Schedules) and any executed Orders, supersedes and extinguishes any prior or contemporaneous agreements, representations, understandings, or communications, whether written or oral, and constitutes the full and entire understanding of the Parties with respect to the subject matter hereof. If there is a conflict among the Agreement, its Schedules, or any executed Orders, then the documents will control in the following order of precedence: (a) the applicable executed Order, except to the extent the applicable Order expressly states otherwise; (b) the applicable Schedule; (c) this Agreement.

Last updated: September ____, 2021

SCHEDULE 1

SERVICE LEVELS AND SUPPORT

1. **DEFINITIONS.** The following terms will have the following meanings when used in this Schedule 1:
 - 1.1 **“Available”** or **“Availability”** means the Career Management Solution made available at www.fuel50careerdrive.com or such other URL designated by Fuel50 is accessible and functioning in all material respects in accordance with its Documentation. Fuel50 makes no covenant regarding Availability in connection with (a) use of the Internet Explorer 11 (IE11) browser or (b) Third Party Content.
 - 1.2 **“Calendar Month”** means the period between the first day of each successive calendar month.
 - 1.3 **“Downtime”** means the minutes during the Calendar Month when the Career Management Solution is not Available to the Client, except for any Excluded Minutes.
 - 1.4 **“Excluded Minutes”** means the minutes that the Career Management Solution is not Available caused by:
 - (a) acts or omissions of the Client or its Permitted Users, licensors, service providers, suppliers or subcontractors;
 - (b) breach of the terms of the Agreement by the Client or its Permitted Users;
 - (c) the Client’s or its Permitted Users’ failure to adhere to the Career Management Solution Documentation;
 - (d) software, hardware, or third-party services not selected, provided, or controlled by Fuel50; or
 - (e) Force Majeure as described in the Agreement.
 - 1.5 **“Incident”** means a problem reported by the Client that is reproducible and that Fuel50 confirms is a nonconformity of the Career Management Software with Fuel50’s published specifications or Documentation that results in a loss of all functionality or substantial features or functionality within the Career Management Software.
 - 1.6 **“Level 1 Support”** means call answering, logging and screening for the severity level of a reported problem and use of commercially reasonable efforts to diagnose the root cause of the problem. Problems that are confirmed to be Incidents will be escalated to Level 2. Level 1 Support does not include responding to or resolving any issues related to Client data integrity or Client single sign-on (SSO) issues.
 - 1.7 **“Level 2 Support”** means end user support following Level 1 Support to address Incidents in accordance with their relative severity.
 - 1.8 **“Maximum Uptime”** means the total minutes in the Calendar Month minus Maintenance Minutes during the same Calendar Month.
 - 1.9 **“Maintenance Minutes”** means the number of minutes elapsed during maintenance performed by Fuel50 that results in the Career Management Solution not being Available, where Fuel50 has provided the Client with reasonable advance notice thereof, but in no event less than two (2) business days advance notice.
 - 1.10 **“Response Time”** means the period of time (measured in minutes) between when Fuel50 acknowledges receipt of a request for Support Services submitted by the Client or a Permitted User and when the request for Support Services is resolved (as determined by Fuel50 in its sole discretion).
 - 1.11 **“Uptime Percentage”** means the Maximum Uptime minus Downtime and divided by Maximum Uptime for a Calendar Month.
2. **AVAILABILITY OF CAREER MANAGEMENT SOLUTION.**
 - 2.1 Fuel50 will use commercially reasonable efforts to make the Career Management Solution Available each Calendar Month in accordance with the following metric: Uptime Percentage \geq 99.5%.
 - 2.2 Fuel50 maintains a standing scheduled maintenance window of 8:00 PM - 8:30 PM (Pacific Time Zone) on Saturdays as needed. Fuel50 may schedule additional scheduled Downtimes outside of the standing scheduled maintenance window by providing notification to Client at least two (2) business days in advance; this notification will be provided via the agreed upon communication protocol to designated support representatives. Fuel50 reserves the right to perform regularly scheduled maintenance during non-core business hours.

3. SUPPORT SERVICES. Fuel50 will provide Level 1 Support and Level 2 Support as described in this Schedule 2 (“**Support Services**”).

Fuel50 will use commercially reasonable efforts to make available to the Client and Permitted Users email reporting via help@fuel50.com or such other email designated by Fuel50 for the submission of requests for Support Services, and each request for Support Services submitted to Fuel50’s helpdesk will be acknowledged by Fuel50 promptly and in no event more than as described in Section 3.2 below, after the email request is received by Fuel50.

3.1 Fuel50 will use commercially reasonable efforts to update the Client or the applicable Permitted User on the status of each request for Support Services.

3.2 Fuel50 will prioritize resolving requests for Support Services for an Incident that, as determined by Fuel50 in its sole discretion, critically impacts the Client’s and Permitted Users’ use of the Career Management Solution over all other requests for Support Services. Fuel50 will make Support Services available during Business Hours. Services issues and their priority are defined below, and Fuel50 will address these issues as set forth below:

Severity Level	Definition	Sample issues
1. Critical	Business outage or significant Customer impact that threatens future productivity	Many or all users are unable to access the Services. Services response time is severely degraded from standard.
2. Urgent	High-impact problem where production is proceeding, but in a significantly impaired fashion; there is a time-sensitive issue important to long term productivity that is not causing an immediate work stoppage.	Some users are unable to access the Services. Services performance is unstable.
3. Important	Important issue that does not have significant current productivity impact.	User requires a patch for non-emergency break-fix situation.
4. Informational	Request for information or enhancement, or minor technical issue that has only a minor impact to Customer productivity.	User wants to see a new feature in Services.

Severity Level	Receipt Acknowledged	Restoration Target
1	4 hours	8 hours
2	4 hours	48 hours
3	1 business day	To be determined with proposed course of action (may be next release)
4	1 business day	To be determined with proposed course of action (may be next release)

4. REPORTS.

- 4.1 Upon the Client's written request up to once per calendar quarter, Fuel50 will send the Client a report for the requested quarter during the Term that consists of (a) the average Response Time for the applicable calendar quarter; (b) a list of common user issues for which requests for Support Services hereunder were submitted in the applicable calendar quarter and (c) any recommendations made by Fuel50 to the Client or mitigation plans implemented by Fuel50 to reduce the frequency of occurrence of a particular user issue. Fuel50 will provide this report within 10 Business Days after receipt of written request.
- 4.2 Fuel50 will measure the Response Time for each request for Support Services it receives in a calendar quarter and calculate the total Response Time by summing the Response Time for all request for Support Services Fuel50 received in a calendar quarter. The average Response Time for a calendar quarter will be calculated by dividing the total Response Time by the total number of requests for Support Services Fuel50 received in a calendar quarter. The parties from time to time may establish recommendations or mitigation plans as mutually agreed in writing with respect to address concerns with reported Response Times

SCHEDULE 2

DATA COLLECTION AND USE

1. CLIENT CONTENT

1.1 The Client must upload at least the following minimum data about an employee in order to set up the employee as a Permitted User:

- First Name
- Last Name
- Email Address

1.2 The Client may elect to upload additional information about its Permitted Users by configuring the Services to synchronize with the Client's Human Resources Information System (HRIS) including:

- Information on the user's role in the organization (such as title, description, skills required, qualifications required, role level)
- Previous roles held within the organization
- Any demographics on the user for reporting purposes as per the Client's chosen list
- Employee ID, date started current role, date joined the company
- Career Framework data, such as roles, business units, functions, skills and competencies within the organization

1.3 Fuel50 may use Client Content and/or Usage Data in providing, supporting, developing, and improving the Services and its other products and services. For example, Fuel50 may use role movements and other organizational data in Client Content and/or Usage Data to train computer algorithms which perform analytical functions. Fuel50 also may use Client Content and/or Usage Data for analytical purposes such as to perform site optimization, or to provide usage and analysis reports to clients. From time to time, Fuel50 may perform analytics that use Client Content and/or Usage Data to generate industry wide reports which can be shared publicly. Examples might be an aggregate view of employee values by industry sector. These reports do not contain any data that can be attributed to an individual end user or any specific client.

2. USAGE DATA

2.1 Fuel50 collects Usage Data in connection with its operation of the Services, including the following:

- The Services collect user login activity, including login date, and the IP address of the user on an anonymized basis. This is used for usage and analytics reporting as well as to aid with detecting and preventing malicious behaviour. The Service also tracks completions data of various features within its product suite which is used for providing analytics and reporting to client HR administrators. Fuel50 may also use such completions data to advise the Client on their use of the Service, such as their launch strategy and how to maximize the value they glean from the Services.
- The Services record the IP address of the user in its database on an anonymized basis, for analytics purposes such as reporting on usage by country or city and for use in detecting and preventing malicious behaviour.
- The Services collect an anonymized copy of the following data generated in connection with Client's use of the Services, which will be deemed Usage Data: (a) "Roles," "Role Movements," "Jobs"; (b) FuelFactor exercise results and history; (c) login history & usage history of the Services including, without limitation, pages visited, sessions and other Usage Data; (d) "Skills," "Competencies," "Skill Levels," "Competency Levels"; (e) "Goals," "Actions," "Gigs," "Mentorships"; (f) "Saved Journeys," "Target Roles"; (g) Feedback given/received; and (h); survey results including, without limitation, Career Checkup exercise completion results.
- The Services use third-party analytics services like Google Analytics to track usage and activity data, such as:
 - Computer Operating System
 - Browser name and Version
 - Screen Resolution

- Full URL accessed
- Page accessed within site
- Screen Colors
- Page Title
- Languages (set in the browser)
- Encoding Type
- Viewport size
- Java Enabled (yes/no)
- Flash Version
- Location of the user at the Country and City level only

A list of third-party subprocessors of personal data can be found here:

<https://www.fuel50careerdrive.com/subprocessor-notice>.

2.2 Fuel50 may use and disclose Usage Data in providing, supporting, developing and improving the Services and its other products and services, for researching industry trends, and for other business purposes; provided that Fuel50 will not disclose Usage Data to any third party in any manner that reveals the identity of Client or any Permitted Users other than to its service providers, as permitted under the Agreement, or required to comply with applicable Laws.