

Big 5 Assessments

Terms & Conditions

1. SERVICES. During the Term (as defined in Section 14) and subject to terms and conditions of this Agreement, Big 5 Assessments agrees to provide the Services ordered by Customer as set forth on one or more Order Forms attached hereto (collectively, the 'Services') and Customer agrees to purchase such Services. Big 5 Assessments reserves the right to make changes to its Services and its hosting and technical infrastructure during the Term as deemed reasonably necessary by Big 5 Assessments, except such changes will not materially degrade the performance or functionality of the Services.

2. SUBSCRIPTIONS. Unless otherwise specified in the applicable Order Form, (i) Services are purchased as unit subscriptions and may be accessed by no more than the specified number of units specified in each Order Form, (ii) additional unit subscriptions may be added during the applicable subscription period specified in the Order Form at the same pricing as that for the pre-existing unit subscriptions under that Order Form, prorated for the remainder of the applicable subscription period in effect at the time the additional unit subscriptions are added, and (iii) the added unit subscriptions shall terminate on the same date as the subscription term for the pre-existing unit subscriptions under that Order Form. Total unit subscriptions are calculated on the last day of each contract year during the applicable subscription term, and unit subscriptions cannot be shared or used by more than one user at the same time but may be reassigned to new users replacing former users who are no longer present.

3. LICENSE; RESTRICTIONS. Subject to the terms and conditions of this Agreement, Big 5 Assessments hereby grants to Customer a limited, non-exclusive, non-transferable, non-sublicensable license to: (i) access and use the Services limited to the number of unit subscriptions set for which Customer has paid and (ii) use any then-current documentation (if any) provided by Big 5 Assessments in connection with the Services (collectively, 'Documentation'), in the case of (i) and (ii) solely for internal business purposes in accordance with this Agreement. Where applicable, Big 5 Assessments will deliver to Customer all user IDs and passwords as necessary for Customer's authorized employees and agents to access the Services in accordance with this Agreement. Customer is responsible for securing all its user IDs and passwords and for ensuring all its employees' and agents' compliance with this Agreement. Customer shall not: (i) resell, sublicense, lease, time-share or otherwise make the Services available to any third party; (ii) use the Services to send or store infringing or unlawful material; (iii) use the Services to send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (iv) attempt to gain unauthorized access to, or disrupt the integrity or performance of, the Services or the data contained therein; (v) modify, copy or create derivative works based on the Services; (vi) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; (vii) access the Services for the purpose of building a competitive product or service or copying its features or user interface; (viii) use the Services, or permit it to be used, for purposes of product evaluation, benchmarking or other comparative analysis intended for publication without Big 5 Assessments's prior written consent; or (ix) permit access to the Services by a direct competitor of Big 5 Assessments.

4. INTERNET CONNECTIONS; STORAGE; BANDWIDTH. Customer is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access Internet and use the Services, including all third-party access, telecommunications and Internet connection charges. During the Term, Big 5 Assessments will make available to Customer up to 1 GB of storage space per unit at no additional charge. Additional storage space may be purchased by Customer for an additional charge at a rate of £2.50 per 1 GB unit per month.

5. OWNERSHIP. Customer acknowledges and agrees, as between Big 5 Assessments and Customer; Big 5 Assessments will own all right, title and interest in the Services and any other materials furnished or made available by Big 5 Assessments hereunder, and all modifications and enhancements thereof, including all rights under copyright and patent and other intellectual property rights. There are no implied rights or licenses granted under this Agreement. Customer shall retain all ownership rights in the data stored by Customer in the Services ('Customer Data ') and Customer ' s Confidential Information (as defined below); provided that Big 5 Assessments may provide such Customer Data and Customer ' s Confidential Information to third parties solely for purposes of providing the Services. Notwithstanding the foregoing, Big 5 Assessments may provide data in the aggregate, which does not contain any identifying Confidential Information of Customer. Nothing between Customer and Big 5 Assessments shall affect the ownership of data provided directly to Big 5 Assessments by an applicant, candidate or employee of Customer pursuant to an end user or other agreement between Big 5 Assessments and such applicant, candidate or employee.

6. FEES; RENEWAL. Customer will pay the applicable fee set forth on the Order Form for the Services, in accordance with the fees, charges, and billing terms set forth in the Order Form (collectively, ' Fees '). Big 5 Assessments reserves the right to amend the fees payable for the Services at any time during the Term upon thirty (30) days prior notice to Customer; except such amended fees will not be applicable until the beginning of the next Renewal Subscription Term (as defined in Section 14). All Fees will be paid in advance per the terms found in the Order Form. All charges, payments and amounts will be in United States dollars, UK Pounds (Sterling) or, Euro's. Any payment not received from Customer thirty (30) days after the initial charge attempt may accrue late charges at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the date such payment was due until the date paid, and may result in suspension of Customer ' s ability to access the Services until payment is made. Customer shall reimburse Big 5 Assessments for all reasonable costs incurred by Big 5 Assessments in collection of delinquent amounts not subject to a reasonable and good faith dispute. The Fees do not include any direct or indirect local, state, federal or foreign taxes, levies, duties or similar governmental assessments of any nature, including value-added, sales, use or withholding taxes, and Customer is responsible for paying all such taxes, excluding taxes based on Big 5 Assessments ' s net income. Customer shall reimburse Big 5 Assessments for all reasonable, pre-approved and appropriately documented travel and related expenses incurred by Big 5 Assessments in performing implementation, support, training or other professional services for Customer.

7. SUPPORT. Big 5 Assessments will use commercially reasonable efforts to provide the support services set forth on Schedule A to these Terms and Conditions. Big 5 Assessments will use its reasonable efforts to implement and maintain industry standard technical, administrative and physical security measure, policies and procedures to ensure the

confidentiality and privacy of personal data provided, obtained or stored by Big 5 Assessments in connection with its provision of the Services to the Customer.

8. **TERMS OF ENGAGEMENT.** Customer acknowledges and agrees that the Big 5 Assessments' website located at www.Big5assessments.com (the 'Site') is only a venue for potential employers to post job postings and job seekers to submit candidate resumes. Big 5 Assessments does not screen or censor the job postings or candidate resumes. Big 5 Assessments does not have any control over the quality, suitability, truth, accuracy, timeliness, safety or legality of the jobs postings or the candidate resumes submitted. Customer assumes all risks associated with dealing with other users with whom it comes in contact through the Site and the Services. Big 5 Assessments is not involved in the actual transaction between Customer and any job seeker. The specific terms of any employment or contractor agreement between Customer and any job seeker will be negotiated solely between Customer and that job seeker. Customer understands that its interactions and dealings with other users of the Site and the Services are solely between Customer and such other user. Big 5 Assessments shall not be responsible for any loss or damage of any kind incurred as a result of any such interactions and/or dealings, and Big 5 Assessments will have no obligation to become involved in such dispute.

9. **WARRANTIES; WARRANTY DISCLAIMER.** Customer represents and warrants that (i) it has the legal power to enter into and perform its obligations under this Agreement; (ii) it has collected and shall maintain and handle all personal data in compliance with all applicable data protection and privacy laws; and (iii) it shall comply with all other applicable laws, rules and regulations in its performance hereunder, including without limitation, labor and employment laws. Each user of the Services is responsible for any content and materials that such user posts or submits on or through the Services, including, without limitation, job listings and candidate resumes, and Big 5 Assessments has no obligation to verify or authenticate, in whole or in part, any job listings or candidate resumes. Big 5 Assessments has no liability for any inaccuracies, errors or omissions in the job listings or candidate resumes. **BIG 5 ASSESSMENTS MAKES NO EXPRESS, IMPLIED OR STATUTORY REPRESENTATIONS, WARRANTIES, OR GUARANTEES IN CONNECTION WITH THE SITE, THE SERVICES OR ANY MATERIALS CONTAINED ON THE SITE. UNLESS OTHERWISE EXPLICITLY STATED, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SITE, THE SERVICES, MATERIALS AND ANY INFORMATION OR MATERIAL CONTAINED ON THE SITE IS PROVIDED TO YOU ON AN 'AS IS,' 'AS AVAILABLE' AND 'WHERE-IS' BASIS WITH NO WARRANTY, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.**

10. **CONFIDENTIALITY.** 'Confidential Information' means any information that the receiving party knows or has reason to know (either because such information is marked or otherwise identified by the disclosing party orally or in writing as confidential or proprietary, has commercial value, or because it is not generally known in the relevant trade or industry). Any information about a job seeker (including, without limitation, candidate personnel information) that a Customer obtains through the Services and the existence and terms and conditions of this Agreement shall be treated as Confidential Information of Big 5 Assessments. Each party agrees that it will not use, copy or reproduce such confidential information other than to fulfill its duties and obligations under this Agreement. The prohibitions contained in this Section 10 will not apply to information (i) already lawfully known by the receiving party without restriction on disclosure prior to disclosure by the disclosing party, (ii) generally known to the public

without the receiving party's breach of any confidentiality obligations to the disclosing party, or (iii) lawfully obtained by the receiving party without restriction on disclosure from a third party who is not violating any confidentiality obligations to the disclosing party by making such disclosure. Neither party will disclose to third parties, other than its agents and representatives on a need-to-know basis in order to fulfill the receiving party's duties and obligations under this Agreement, any Confidential Information of the other party, without the prior written consent of the other party. Notwithstanding the foregoing, each party will be entitled to disclose the Confidential Information of the other party (a) to the extent required by applicable law or (b) the order of a court of competent jurisdiction, government agency or other legal process, provided that the disclosing party will, to the extent not prohibited, provide notice of such required disclosure and allow the non-disclosing party to object prior to the disclosure of the confidential information.

11. INDEMNIFICATION. Big 5 Assessments shall defend, indemnify and hold Customer harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with claims, demands, suits, or proceedings ('Claims ') made or brought against Customer by a third party (i) alleging that the Services as provided by Big 5 Assessments and used by Customer in accordance the applicable Documentation infringes or misappropriates the intellectual property rights of a third party: and (ii) to the extent resulting from the theft or compromise of job seeker data via the Service to the extent caused by Big 5 Assessments' s breach of its obligations relating to security of the Service as set forth in Section 7. Upon notice of a claim of intellectual property infringement or if, in Big 5 Assessments' s opinion, a claim of intellectual property infringement is likely, Big 5 Assessments shall have the right, at its sole option and expense, to: (a) procure for Customer the right to continue using the Services under the terms of this Agreement; (b) replace or modify the Services to be non-infringing without material decrease in functionality; or (c) if the foregoing options are not commercially reasonable, terminate this Agreement and refund Customer all prepaid fees for the remainder of its subscription term after the date of termination. Customer acknowledges and agrees that Big 5 Assessments' s obligation to indemnify Customer under subsection (ii) of this Section 11 shall not apply if any theft or compromise of any job seeker or other personal data is the result of Customer' s or its employee' s or agent' s actions or inactions, negligence or wilful misconduct, including without limitation, any failure to adequately secure its user IDs, passwords, systems or equipment. Big 5 Assessments' s liability under this Section 11 shall not exceed in the aggregate the amounts covered by Big 5 Assessments' s insurance for such event. Customer shall defend, indemnify and hold Big 5 Assessments harmless against any loss, damage or costs (including reasonable attorneys' fees) incurred in connection with Claims made or brought against Big 5 Assessments by a third party alleging that the Customer Data, or Customer' s use of the Service in violation of this Agreement, infringes or misappropriates the intellectual property rights of, or has otherwise harmed, such third party or for any breach of Customer' s representations and warranties set forth in this Agreement. The Customer' s liability under this Section 11 shall not exceed in the aggregate the amounts covered by the Customer' s insurance for such event. The indemnified party will (i) promptly notify the indemnifying party in writing of any Claim for which indemnity is claimed, provided that failure to so notify will not remove the indemnifying party' s obligation except to the extent it is prejudiced thereby, (ii) allow the indemnifying party to solely control the defence of any Claim and all negotiations for settlement (provided that in no event may either party enter into any third-party agreements which would in any manner whatsoever affect the rights of, or bind the other party in any manner to such third party, without the prior written consent of the other

party) and (iii) provide reasonable cooperation to the indemnifying party, at the indemnifying party's sole expense, in defending the Claim. The remedy set forth in this Section 11 states the sole and exclusive obligation and liability of Big 5 Assessments for intellectual property rights infringement or misappropriation of any kind.

12. WAIVER OF CONSEQUENTIAL DAMAGES. BIG 5 ASSESSMENTS SHALL NOT BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY DAMAGES RESULTING FROM CUSTOMER'S USE OR RELIANCE ON THE SITE, SERVICES AND/OR ANY MATERIAL ON THE SITE, INCLUDING, WITHOUT LIMITATION, JOB POSTINGS AND CANDIDATE RESUMES. IN NO EVENT SHALL BIG 5 ASSESSMENTS BE LIABLE TO CUSTOMER OR ANY THIRD PARTY FOR ANY INDIRECT, EXTRAORDINARY, EXEMPLARY, PUNITIVE, SPECIAL, INCIDENTAL, OR CONSEQUENTIAL DAMAGES (INCLUDING LOSS OF DATA, REVENUE, PROFITS, BUSINESS INTERRUPTION, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF CUSTOMER'S USE OF THE SITE AND/OR NEGLIGENCE. BIG 5 ASSESSMENTS SHALL NOT BE LIABLE FOR ANY ACTIONS, OMISSIONS AND/OR DECISIONS MADE BY ANY USER OF THE SITE, INCLUDING, WITHOUT LIMITATION, HIRING DECISIONS.

13. LIMITATION OF LIABILITY. EXCEPT FOR THE PARTIES' INDEMNIFICATION OBLIGATIONS, IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY ARISING OUT OF THIS AGREEMENT, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED THE - GREATER OF AMOUNTS ACTUALLY PAID BY CUSTOMER DURING THE TWELVE (12) MONTHS PRECEDING THE INCIDENT GIVING RISE TO LIABILITY (OR IF SUCH CLAIM ARISES DURING THE INITIAL TWELVE (12) MONTHS OF THIS AGREEMENT, THE FEES EXPECTED TO BE PAID DURING SUCH TWELVE (12) MONTH PERIOD) OR \$100,000 OR EQUIVALENT CURRENCY.

14. TERM AND TERMINATION. This Agreement commences upon execution (including electronic click-through execution) (the 'Effective Date') and continues until the last unit subscription for which Customer has paid in accordance with this Agreement has expired, unless earlier terminated as set forth herein. Unit subscriptions commence on the date that Customer is first provisioned access to the Services ('Initial Access Date') and continue for the specific term as outlined in the Order Form (the 'Initial Subscription Term'). Upon the expiration of the Initial Subscription Term, all of Customer's unit subscriptions will automatically renew for successive, additional subscription terms of one (1) year (each, a 'Renewal Subscription Term') unless and until either party notifies the other party of its intent not to renew at least sixty (60) days prior to the expiration of the Initial Subscription Term or then-current Renewal Subscription Term. The Initial Term, together with any and all Renewal Subscription Terms, is collectively referred to as the 'Term.' A party may terminate this Agreement: (i) upon thirty (30) days written notice if the other party materially defaults in performing its obligations under this Agreement and such default continues unremedied for a period of thirty (30) days following written notice of default; (ii) if the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors or (iii) if either party undergoes a change of control in favor of a direct competitor of the other party. Unless the Agreement has been terminated for Customer's failure to pay fees as required, after termination Big 5 Assessments shall make available to Customer an electronic copy of all Customer Data then available in Big 5 Assessments's production systems, in a standard data format (e.g., flat file) that is reasonably accessible by Customer. After thirty (30) days following termination, Big 5 Assessments will have no obligation to maintain or provide any Customer Data and shall

thereafter, unless legally prohibited, delete all Customer Data in its systems or otherwise in its possession or under its control.

15. GOVERNMENT USERS. If Customer is a federal government entity, Big 5 Assessments provides the Services, including related software and technology, for ultimate federal government end use solely in accordance with the following: Government technical data and software rights related to the Hosted Service include only those rights customarily provided to the public as defined in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data & Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If greater rights are needed, a mutually acceptable written addendum specifically conveying such rights must be included in this Agreement.

16. USE OF NAMES AND LOGOS. Subject to the terms and conditions of this Agreement, each party grants to the other party a non-exclusive, worldwide, royalty-free license, without the right to sublicense, to use the other party's name and logo on its web site and in customer or vendor lists. Each party's use of other party's name and logo shall be in compliance with the other party's trademark usage guidelines, as amended from time to time. All uses of the other party's name and logo shall inure to the benefit of the other party.

17. RELATIONSHIP OF PARTIES. The parties are independent contractors, and no partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties is created hereby. There are no third party beneficiaries to this Agreement.

18. NOTICES. Any notice required or permitted hereunder will be given in writing and delivered: (a) in the case of Customer, to the contact person listed on the Order Form and (b) in the case of Big 5 Assessments, to the contact person listed below, as follows (with notice deemed given as indicated): (i) by personal delivery when delivered personally; (ii) by established overnight courier upon written verification of receipt; (iii) by facsimile transmission when receipt is confirmed in writing or orally; (iv) by certified or registered mail, return receipt requested, on date of verification of receipt; or (v) by electronic delivery when receipt is confirmed in writing or orally. Either party may change its contact person for notices and/or address for notice by means of notice to the other party given in accordance with this Section 18.

Big 5 Assessments:
c/o Personal Consultancy Solutions Limited
Attn: Legal Department
The Magdalen Centre
The Oxford Science Park
Oxford
Oxfordshire, OX4 4GA
United Kingdom

19. WAIVER. No waiver of any provision of this Agreement shall be effective unless in writing and signed by the party against whom the waiver is to be asserted.

20. SEVERABILITY. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

21. REMEDIES. Except as otherwise provided, remedies provided herein are in addition to, and not exclusive of, any other remedies of a party at law or in equity. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, such provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions shall remain in effect.

22. FORCE MAJEURE. Neither party shall be liable to the other for any delay or failure to perform hereunder due to circumstances beyond such party's reasonable control, including acts of God, acts of government, flood, fire, earthquakes, civil unrest, acts of terror, strikes or other labor problems (excluding those involving such party's employees), service disruptions involving hardware, software or power systems not within such party's possession or reasonable control, and denial of service attacks.

23. ASSIGNMENT. Both Customer and Big 5 Assessments may not assign this Agreement or any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party, and any such attempted assignment in violation of the foregoing will be void. This Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

24. GENERAL RELEASE. In the event that you have a dispute with one or more users of the Site or the Services, you release Big 5 Assessments (and our agents and employees) from claims, demands and damages of every kind and nature, known and unknown, suspected and unsuspected, disclosed and undisclosed, arising out of or in any way related with such dispute.

25. ARBITRATION. All disputes between Customer and Big 5 Assessments relating to or arising from this Agreement in any way will be arbitrated according to the rules of the International Chamber of Commerce, including any dispute about the scope of this arbitration agreement, and including all questions about the types of disputes that are subject to this arbitration agreement, all of which Customer and Big 5 Assessments agree will be decided by the arbitrators, whose decision will be final and binding. Any issue concerning the extent to which a dispute is subject to arbitration, or concerning the applicability, interpretation or enforceability of this agreement, including any contention that all or part of this agreement is invalid or unenforceable, shall be governed by the International Chamber of Commerce arbitrators. Customer and Big 5 Assessments acknowledge and agree that, in any arbitration proceeding, no depositions will be taken, and all other forms of discovery of facts will be limited to those things that the arbitrators determine, in their sole discretion, to be necessary. Further, in any arbitration proceeding, (i) there shall be no award of punitive, exemplary, incidental or consequential or other special damages, and (ii) the parties will conduct the arbitration confidentially and expeditiously and will pay their own costs and expenses of arbitration, including their own attorneys' fees. The proceeding and the decision shall be kept confidential by the parties. The arbitration award may be enforced in any court having jurisdiction over the parties and the subject matter of the arbitration.

26. GOVERNING LAW. This Agreement shall be governed exclusively by the internal laws of the United Kingdom, without regard to its conflicts of laws rules, and all disputes hereunder shall be subject to the exclusive jurisdiction of the courts located in the United Kingdom. The United Nations Convention on Contracts for the International Sale of Goods shall not apply.

27. COUNTERPARTS. This Agreement may be executed by facsimile and in counterparts.

28. ENTIRE AGREEMENT. This Agreement, including any Order Forms and any amendments or addenda attached hereto and documents incorporated by reference herein, will constitute the entire agreement between the parties with respect to the subject matter hereof, and all prior agreements, representations, and statements with respect to such subject matter are superseded hereby. No modification of any provision of this Agreement shall be effective unless in writing and either signed or accepted electronically by an authorized representative of the party against whom the modification is to be asserted. However, to the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form entered into by Customer with Big 5 Assessments, the terms of this Agreement shall prevail. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Big 5 Assessments Policies, the terms of the applicable Big 5 Assessments Policy shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in a Customer purchase order or other order documentation shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

SCHEDULE A: SUPPORT TERMS

Please see support terms located at <http://www.big5assessments.com/sla> and <http://www.big5assessments.com/support>