

**SUBSCRIBER TERMS AND CONDITIONS TO BE AGREED TO IN WRITING BY AND
BETWEEN SUBSCRIBER AND VENDOR**

CAREERAIM LICENSE AND SERVICES AGREEMENT

THIS LICENSE AND SERVICES AGREEMENT (“Agreement”) for the license of software and provision of software support services is made in duplicate,

BETWEEN:

CAREERAIM Inc.,

a Canadian controlled corporation operating under the laws of the Province of Ontario, having its principal office at 4043 Carling Ave. Ottawa, Ontario, Canada K2K 2A4

(hereinafter called “Licensor”);

- and -

NAME OF LIBRARY HERE,

an organisation operating under the laws of the Province of _____, having its principal office at Street, City, Province, Canada

(hereinafter called “Licensee”);

WHEREAS the Licensor has designed and developed technology including inter alia copyright information, software, source code, object code, documentation, technical designs, hardware, trade secrets, practices, and know-how relating to the Licensor’s Job Search System (hereinafter called “Intellectual Property”);

AND WHEREAS the Licensor’s software provides users with the ability to aggregate publicly available information related to employment opportunities and other information from a variety sources (hereinafter called “Licensed Software”);

AND WHEREAS the Licensor provides the Licensed Software to remote users through the internet through an application service;

AND WHEREAS the Licensor and Licensee now desire to enter into an agreement for the use of the Licensed Software by the Licensee and the Licensee’s members under the terms and conditions set forth in this Agreement; and

NOW THEREFORE in consideration of the mutual premises, covenants, terms and conditions hereinafter set forth, and for other good and valuable consideration (the receipt and sufficiency of which are hereby acknowledged), the Parties hereto agree as follows:

**ARTICLE 1
INTERPRETATION**

1.1 General Interpretation.

- (a) the headings contained in this Agreement are for convenience of reference only and shall not affect the interpretation or meaning of this Agreement;
- (b) words in the singular include the plural and vice versa and words in any gender represent both the feminine and the masculine;
- (c) the word “including” shall mean “including without limitation” and is not to be construed to limit any general statement which it follows to the specific or similar items or matters immediately following it;
- (d) words or abbreviations which have well known or trade meanings are used herein in accordance with their recognized meanings unless otherwise defined;
- (e) any reference to a statute shall mean the statute in force as at the date hereof, together with all regulations promulgated thereunder, as the same may be amended, re-enacted, consolidated or replaced, from time to time, and any successor statute thereto, unless expressly provided; and

1.2 Definitions. The following terms shall have the following respective meanings for the purposes of this Agreement, including the Schedules:

- (a) **“Agreement”, “this Agreement”, “hereto”, “hereof”, “herein”, “hereby”, “hereunder”** and similar expressions mean this Software License Agreement;
- (b) **“Business Day”** means any day, other than a Saturday, Sunday, statutory or a civic holiday, observed in Ontario;
- (c) **“Client”** means any library patron or member to whom the Licensed Software is made available in any manner whatsoever by the Licensee;
- (d) **“Effective Date”** means the date this Agreement is signed by the last party;
- (e) **“Intellectual Property”** means any proprietary right provided under (i) copyright law, (ii) patent law, (iii) trade-mark law, (iv) design patent or industrial design law, (v) any other statutory provision, treaty, convention or common law principle applicable, which may provide a right in either (A) ideas, formulae, algorithms, concepts, methods, inventions, works or know-how generally including trade secret law, or (B) the expression of such ideas, formulae, algorithms, concepts, methods, inventions, works or know-how, including trade secrets;
- (f) **“Licensed Software Agreement”** means any type of agreement between the Licensee and its Clients, either formal or informal, for every disposition or provision of any service of, or related to, the Licensed Software including the lending, membership, rental, leasing, sale, bartering, End User Agreements, licensing or free use, but will at all times will include the Licensee’s terms of acceptable use of computers provided by the Licensee for Client use from which the Licensed Software can be accessed;

ARTICLE 2
GRANT

2.1 Grant of Rights. Subject to the terms and conditions of this Agreement, the Licensor hereby grants to the Licensee:

- (a) **Internal Access** - a non-Sole, non-exclusive, non-transferable, fee bearing license to provide the Licensed Software to up to (ENTER NUMBER HERE) Concurrent Users of Licensee Clients from within library branches within the IP Address ranges described in Schedule A;
- (b) **External Access** - a non-Sole, non-exclusive, non-transferable, fee bearing license to provide the Licensed Software to up to (ENTER NUMBER HERE) Concurrent Users of Licensee Clients from outside the library through an internet proxy connection with the IP Address described in Schedule A;
- (c) **Staff Access** - a non-Sole, non-exclusive, non-transferable license to provide the Licensed Software to Licensee's Staff, for the purpose of assisting Clients, Client Account Administration and the integration of the Licensed Software with the Licensee's business process;

2.3 Sub-license. The Licensee will Sub-license the Licensed Software to Clients through a Licensed Software Agreement. Clients may not Sub-license the Licensed Software.

2.4 No Sharing of User Accounts or Data. User Accounts and user account login credentials are not to be shared in any way whatsoever.

2.5 End User. The Licensee will ensure that all Clients conform to the terms and conditions of this Agreement.

2.6 Compliance with the Law. The Licensee agrees to comply at all times with all applicable laws, orders, regulations and statutes in force in the places where the licensed rights granted under Article 2.1.

2.7 No Additional Rights. No additional rights or licenses other than as provided for in Article 2.1, whether express or implied, are granted by the Licensor under or by virtue of this Agreement and no such rights or licenses shall continue to have effect after the termination of this Agreement except as otherwise provided herein or as agreed in writing by the Licensor.

2.8 Statutory Protection. The Licensee shall not apply for any patent, registration of copyright or trademark, or other form of protection or registration of the Licensed Software or Intellectual Property except as noted in 2.1 (c).

**ARTICLE 3
LICENSE FEES**

3.1 License Fee. In consideration of the license granted to the Licensee under this Agreement, the Licensee shall remit to the OCLC SERVICE CENTER an annual License Fee of (ENTER LICENCE FEE HERE).

**ARTICLE 4
INDEMNIFICATION**

4.1 Indemnification. The Licensee agrees that it will indemnify and save harmless the Licensor from and against any and all claims of loss or damage of any nature whatsoever, arising from the Licensee's, any Sub-licensee's or any End User's use, Sale, distribution or other commercial exploitation of the Licensed Software.

4.2 Third Party Information. Any information that is made available through the use of the Licensed Software remains the property of the originators and is subject to any restrictions that the originators may place upon its use, the Licensor will not be responsible for any breach of such restrictions that may be committed by any user of the Licensed Software.

**ARTICLE 5
TERM, RENEWAL AND TERMINATION**

5.1 Term. The Licensee and the Licensor agree that the Term will be one year from the Effective Date.

5.2 Renewal. This agreement may be renewed on an annual basis by giving notice in writing to OCLC or the Licensor.

5.3 Termination for Convenience. Either party may terminate this Agreement given ninety (90) days notice at any time by instruments in writing.

5.4 Termination Rights. At the end of the Term of this Agreement Licensor agrees that:

- (a) the right of the Licensee to use, Sub-License and the ability to exercise any other right granted in respect of the Licensed Intellectual Property as provided herein by the Licensor shall automatically cease;
- (b) the Licensee shall discontinue all use of the Licensed Software, and, within thirty (30) days following the termination, destroy or return all materials forming part of the Licensed Software which are in its possession or under its control and shall delete all copies of all materials forming part of the Licensed Intellectual Property from all computers, memory banks or any other storage media, regardless of form, in such a manner that they may not be reconstituted;
- (c) where any such Licensed Software is returned, destroyed or deleted, the Licensee shall provide, within thirty (30) days following the termination, a written certification to the Licensor that all such Licensed Intellectual Property was returned, deleted or destroyed as required and both the senior technical officer and an authorized signing officer of the Licensee shall sign this certification;

- (d) the Licensee shall immediately remit all fees as they relate to Sales that have already been made for the Licensed Software, or other payments that would otherwise eventually have become due, including all related certified Sales Report information required to support this payment;
- (f) such termination shall not limit either party from pursuing other remedies available to it, including injunctive relief; and

**ARTICLE 6
REPRESENTATIONS AND WARRANTIES**

6.1 No Warranty. Subject to the Article entitled **No Other Warranty**, the Licensor warrants that, to the best of its knowledge, the Licensed Software pursuant to this Agreement does not infringe on the intellectual property of others. The Licensed Software Property and Licensed Software provided pursuant to this Agreement are provided “as is”. The Licensor makes no representation or warranty that the Licensed Intellectual Property or any Licensed Software is free from defect, is of merchantable quality or is fit for a particular purpose or that its use, either individually or in combination or in conjunction with the Intellectual Property of the Licensee or a third party will not infringe upon the Intellectual Property rights of third parties.

6.2 Guarantee of Serves. While the Licensor uses good commercial practices to deliver a high quality product to Clients through the Internet, the Licensor makes no guarantee of the availability of services or Client suitability of Licensed Software.

6.3 No Other Warranty. The Licensor has not made and does not make any representations to the Licensee as to the scope of any proprietary rights in respect of the Licensed Software or that such rights may be exploited without the possible infringement of proprietary rights of others.

6.4 Acknowledgement of Validity. The Licensee hereby recognizes and acknowledges the validity of CareerAIM proprietary rights in the Licensed Software and Intellectual Property hereunder, and agrees not to contest, during the term of this Agreement, such validity either directly or indirectly, by assisting other parties.

6.5 Use. The Licensor is not responsible for: direct, consequential or any other damages relating to any use of Licensed Software.

6.6 Binding Agreement. This Agreement is a legal and valid obligation binding on each Party and is enforceable in accordance with its terms. The execution, delivery and performance of this Agreement by each Party does not conflict with any agreement, instrument or understanding, oral or written, to which each Party is a party or by which either Party may be bound, nor violate any law or regulation of any court, governmental body or administrative or other agency having authority over either Party.

**ARTICLE 7
ASSIGNMENT**

7.1 Assignment by Licensee. The Licensee shall not, without the Licensor's prior express written consent, assign, delegate, convey, encumber, Sub-license, pledge or otherwise transfer this Agreement, or any rights or obligations under it, to any third party. Such consent of the Licensor may be withheld for any reason. Any such assignment by the Licensee without such consent shall be of no effect.

7.2 Inurement and Binding Effect. This Agreement and everything contained herein shall inure to the benefit of and be binding upon the permitted successors and assigns of the Parties hereto.

ARTICLE 9 GENERAL

9.1 Amendment. This Agreement may be amended only by written agreement mutually executed by the authorized representatives of the Parties.

9.2 Compliance. The Licensee covenants and agrees to comply, at all times, with the orders, regulations, and statutes in force in the places where the right and license granted herein are exercised.

9.3 Disputes / Arbitration. All disputes arising in connection with this Agreement which cannot be resolved through good faith negotiations to the mutual satisfaction of both parties within thirty (30) days (or such longer period as may be mutually agreed upon) shall be submitted by the Parties to binding arbitration pursuant to the Commercial Arbitration Act, Chapter C-34.6 (R.S.C., 1985, c. 17 (2nd Supp.)), as amended, and wherein:

- (a) The Party requesting such arbitration shall do so by written notice to the other Party.
- (b) The costs of the arbitration and the fees of the arbitrator shall be borne equally by the Parties.
- (c) The arbitration shall take place in Ottawa, Ontario, before a single arbitrator to be chosen jointly by the Parties. Failing agreement of the parties on a single arbitrator within 30 days of such notice requesting arbitration, either Party may apply to a judge of the Ontario Court for the appointment of a single arbitrator. Without limiting the generality of the foregoing, the Arbitrator shall be at Arms length from both parties and shall not be a Client of the audit or legal firm or firms who advise either Party, nor shall the Arbitrator be a person who is otherwise regularly retained by such Parties.
- (d) The arbitrator shall issue a written award within thirty (30) days of completion of the hearing. The award shall be rendered in such form that judgment may be entered thereon in any court having jurisdiction.

9.4 Effective Date. All the rights, duties and obligations of the Parties set forth in this Agreement shall commence and be in full force and effect from the date of execution by the last Party to become a signatory.

9.5 Entire Agreement. This Agreement, including all Schedules hereto, and the agreements contemplated herein or therein, supersedes all prior agreements, understandings, negotiations and discussions between the Parties, whether oral or written, and constitutes the entire Agreement between the parties with respect to the matters contemplated herein. All Schedules attached hereto are by this reference made a part of this Agreement and are incorporated herein.

9.6 Force Majeure. Neither Party shall be liable to the other for any loss or damage for delay or non-delivery or other failure to discharge its obligations hereunder resulting from, or caused by, force majeure. If such lack of performance is continuous for three (3) months, the defaulting party shall submit before the end of the three (3) months or within 10 days thereafter a plan outlining how it will rectify the lack of performance. If the defaulting party has not submitted the plan or if the plan is not accepted by the other party, which acceptance shall not unreasonably be withheld, the other party may terminate this

Agreement with thirty (30) days notice.

9.7 Independent Companies. Each of the Parties hereto is acting as an independent Company and nothing in this Agreement shall be deemed to constitute either of the Parties a partner or Client of a joint venture with or an agent of the other Party and neither Party has any express or implied right or authority to assume or create any legal obligations or responsibilities on behalf of, or in the name of, the other Party.

9.8 Jurisdiction. Except as expressly provided elsewhere in this Agreement, this Agreement shall be governed by the laws of the Province of Ontario, and the federal laws of Canada applicable therein, without regard to its rules on the conflict of laws. Each party hereby irrevocably agrees to the exclusive jurisdiction of the courts of Ottawa in the Province of Ontario.

9.9 Legal Capacity. Each of the Parties to this Agreement represents and warrants that it has the capacity to enter into this Agreement, that the signatories have the authority to sign on behalf of the Parties and that this Agreement constitutes a legal, valid and binding obligation of the Parties.

9.10 Notice. All notices, invoices, payments, deposits and other documents and communications shall be given to the Parties at the addresses specified in this Article. Unless otherwise provided in this Agreement, all documents and communications shall be in writing and may be delivered by mail, or by facsimile transmission addressed as follows:

In the case of the Licensor:

Attention: David Forster
CareerAIM Inc.
4043 Carling Ave. Suite 120
Ottawa, Ontario,
K2K 2A4

Tel No.: (613) 482-3336

In the case of the Licensee:

Attention: (Contact Name)
(ADDRESS)

Tel. No.:

Fax No.:

A notice shall be deemed to have been sent and received on the day it is delivered personally or on the next Business Day if delivered by courier or on the day which transmission is confirmed, if telecopied. If such day is not a Business Day or if the notice is received after ordinary office hours (time of place of receipt), the notice shall be deemed to have been sent and received on the next Business Day. Any party may change its address for the purpose of this Agreement by notice in writing to the other parties as provided herein.

9.11 Severability. The various provisions of this Agreement shall be considered legally severable. If any provision or portion of this Agreement is determined to be unenforceable or prohibited by any applicable treaty, law or regulation such provision or portion shall be modified to conform with said applicable treaty, law or regulation and the original intent of the parties. The remaining provisions shall remain in full force and effect providing the intent of the Agreement is not substantially changed.

9.12 Fax Counterpart. This agreement may be executed by fax counterpart and when the two parts are signed it will comprise a binding agreement.

9.13 Survival. The provisions of Articles 1, 4, 5, and 7 will remain in force and effect after the termination of this Agreement, until such time as the Parties may mutually agree to the release of the obligations contained therein.

9.14 Waiver. Save as otherwise expressly set out herein, no waiver of any provision of this Agreement shall be binding unless it is in writing. No indulgence or forbearance by a Party shall constitute a waiver of such Party's right to insist on performance in full and in a timely manner of all covenants in this Agreement. Waiver of any provision shall not be deemed to waive the same provision thereafter, or any other provision of this Agreement at any time.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate by their proper officers, duly authorized to act on their behalf.

For the Licensor:

.....
David Forster
CareerAIM Inc.

Dated this day of MONTH, 200_.

Witnessed by:

.....
Name:]

For the Licensee:

.....
(NAME)

Dated this day of MONTH, 200_.

Witnessed by:

.....
Name:]

**Schedule A
IP ADDRESSES**

Library, Branch or Proxy Name	IP Address or Range of Addresses	Concurrent Users (Seats)

