

Terms & Conditions

This Agreement is made on the ____ day of ____, 2009
Between _____ (“Customer”) and Canadian Diabetes Association (“CDA”).

Preamble

Whereas CDA and _____ wish to enter into an agreement for the purpose of publishing job postings online in the ‘careers’ section of CDA’s Website (Diabetes.ca) the following Terms and Conditions will apply.

1. Binding Agreement.

By ordering or purchasing any products or services from CDA, Customer agrees to accept and abide by these terms and conditions. In addition to these Terms and Conditions regarding any order or purchase of products or services, Customer will review CDA’s other Terms and Conditions of use and policies posted on our Website. Those terms, including the Terms and Conditions of Use of the Website (www.diabetes.ca) generally, and CDA’s Privacy Policy, also govern the use of CDA’s Website by Customer. CDA reserves the right to make changes to our Website, Terms and Conditions and policies at any time. Any changes or revisions will be effective immediately upon their posting on the Website. If customer does not agree to ANY OF the terms and conditions OR THE POLICIES, customer may not order any products or services from CDA or use any of its Services.

2. Services.

CDA will provide Customer with the services (“Services”) that customer has elected to receive. Costs shall be in accordance with Schedule A as amended from time to time.

3. Payment.

Customer will pay to CDA the costs in the manner and amount set out in writing plus applicable taxes. Interest is payable at 12% per annum on unpaid amounts after 30 days where invoice.

4. Proprietary Items.

The provision of the Services does not grant any right, title or interest to Customer in software, products, trademarks, trade names, data, materials, tools or methodologies used by CDA’s, or in any of its proprietary or licensed rights, and ownership of all of the foregoing shall at all times remain with CDA or its licensors.

5. Use Strictly Limited to Recruitment.

The Customer will access and use the Services only for the purposes of (i) recruitment of job candidates for employment directly with Customer, or (ii) provided that Customer is ordinarily in the business of job recruitment for third parties (such Customer is hereinafter also referred to as a “Recruiter”) and has been retained by a third party (“Third Party Employer”) to recruit for a specific job opportunity, contacting specific job candidates in relation to that job opportunity. Customer will not disclose any information, including personal information, obtained through the use of the Services to any other person, individual or entity, except that a Recruiter may disclose to a Third Party Employer information regarding candidates for a specific job opportunity in respect of which the Recruiter has used the Services to post the job on behalf of the Third Party Employer. Any Recruiter will ensure that it has entered into an agreement with each Third Party Employer: (i) requiring the Third Party Employer to use the information provided by the Recruiter solely for the purpose of filling the job within the Third Party Employer for which the information was provided, and (ii) prohibiting the Third Party Employer from disclosing any of the information to any other person, individual or entity.

6. Further Restrictions.

Customer will not, directly or indirectly, whether on its own or in conjunction with any other person or entity:

- a. use the Services or disclose or promote that it is a subscriber to the Services to market its own recruitment services, to contact job candidates other than on a one-on-one basis for a specific job opportunity, or to engage in any other resale or commercial use of the Website or contents;
- b. post or use any job candidate's résumé on the Customer's own Website for the Customer's own or any other person's commercial or other purposes, except on an internal Website not accessible to the public and for the limited purposes set out in Section 6;
- c. send out any marketing emails or any other form of communication using job candidate or other personal information obtained through the Service;

7. Job Posting Content.

Without limiting any of the foregoing restrictions, the content of Job Postings will:

- a. be accurate and contain sufficient detail to clearly convey the nature and requirements of the employment position;
- b. not contain any content the reproduction of which would infringe any third party rights, including copyright, trademark or confidential information rights, such as material that has merely been copied from a third party job posting without that third party's prior written consent;
- c. not contain any personal or other information in violation of applicable privacy or personality rights of third parties;
- d. not contain material that is sexually explicit, obscene, defamatory, threatening, offensive, embarrassing, harassing, abusive, hateful, distasteful or contrary to applicable law;
- e. not require the payment of a fee by the person responding to the job posting;
- f. not be used to (i) impersonate another person, living or dead, (ii) post false, inaccurate or misleading information, (iii) engage in direct marketing or any multi-level marketing scheme including the posting of chain letters or pyramid schemes, (iv) post opinions or notices (that are not job postings), (v) post advertisements or solicitations of business, or (vi) engage in any scheme requiring or providing the option of monetary investment or for the provision of consulting services.

8. Notification of Security Breach.

Customer will immediately notify CDA of any unauthorized use of Customer's registration or identification information which was provided by the Association.

10. Term.

The term of this Agreement shall commence on the execution of the Agreement and shall continue in effect until terminated by either party providing 30 days notice. Either party may terminate this Agreement effective upon written notice to the other party if the other party defaults in a payment or other material obligation hereunder and continues in default for a period of 10 calendar days after written notice, except that the Association may terminate this Agreement immediately upon the occurrence of any event in breach of the provisions of Sections 7, 8 or 9 above. Either party may terminate this Agreement effective upon written notice to the other party in the event that the other party ceases to carry on its business or becomes the subject of a voluntary or involuntary petition in bankruptcy or any proceeding relating to insolvency.

11. WARRANTY DISCLAIMER.

TO THE FULL EXTENT PERMISSIBLE BY APPLICABLE LAW, CDA DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, IN FACT OR IN LAW, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OR CONDITIONS OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION MAKES NO WARRANTIES OR REPRESENTATIONS THAT THE WEBSITE WILL OPERATE ERROR FREE.

CDA MAKES NO REPRESENTATION OR WARRANTY RESPECTING THE ACCURACY, COMPLETENESS OR CURRENCY OF ANY OF THE INFORMATION PROVIDED AS PART OF THE SERVICES AND DOES NOT WARRANT ANY RESULTS AS A CONSEQUENCE OF SUBSCRIBING TO THESE SERVICES, INCLUDING BUT NOT LIMITED TO THAT A JOB POSTING WILL BE VIEWED BY ANY NUMBER OF JOB CANDIDATES OR THAT CUSTOMER WILL SUCCEED IN FINDING CANDIDATES FOR THE JOB POSTINGS IT PROVIDES.

12. Limitation of Liability

CDA's maximum aggregate liability, including applicable lawyers' fees and court costs, to Customer or to any third party concerning the performance or non-performance of all Services or in any manner related to this Agreement, will be limited to direct damages in an amount not to exceed the charges paid by Customer to CDA, if any, during the one (1) month period immediately preceding the event giving rise to the liability. This limitation shall apply irrespective of the nature of the cause of action, demand or action, including but not limited to breach of contract, negligence, tort or any other legal theory, and will survive a fundamental breach or failure of the essential purpose of the Agreement. In no event will CDA be liable to Customer for any damage caused by events beyond CDA's reasonable control or any indirect, special, incidental, consequential, exemplary or punitive damages (even if advised of the possibility of such damages) arising out of the Services or otherwise related to this Agreement.

13. Indemnification

Customer hereby agrees to and shall be liable to CDA for all losses, costs, claims, damages, and expenses whatsoever, whether contractual or tortious, which CDA may suffer, sustain, pay or incur by reason of the Customer's use of the Website or Services, any breach of this Agreement or any failure by Customer to comply will all applicable laws, or the negligence or willful misconduct of Customer, or any of its affiliates, officers, directors, employees, consultants, agents or subcontractors.

14. Dispute Resolution

In the event of a dispute between the parties arising out of or in connection with this Agreement, the parties agree to act in good faith in attempting to resolve such dispute by way of negotiation. Either party may call for progressive management involvement in the dispute negotiations by written notice to the other party. Such a notice shall be without prejudice to the invoking party's rights to any other remedy permitted by this Agreement. Thereupon, the parties will use all reasonable efforts to arrange personal meetings or telephone conferences or both as needed, at mutually convenient times and places, between negotiators of the parties and successively senior management levels.

If either party feels that negotiation will not produce satisfactory results, within seven (7) calendar days of receiving or giving notice, it may request of the other party that the dispute be resolved by binding arbitration and if the parties thereafter agree to arbitrate the dispute, the dispute shall be resolved by binding arbitration conducted by a single arbitrator pursuant to the *Ontario Arbitration Act*, as amended from time to time. Any such arbitration shall be held in the City of Toronto and the arbitrator's award may be entered in any court of competent jurisdiction in the Province of Ontario. The arbitrator shall apportion costs for the proceedings, as applicable. If the parties cannot agree on an arbitrator within seven (7) calendar days of notification of either party of intent to arbitrate, either party may forward the dispute to the proper court

15. General.

This Agreement contains the entire understanding of the parties on the subject hereof, supersedes all previous agreements and may not be amended except in writing. Customer may not assign this

Agreement without the prior written consent of the Association. Sections 4 to 7 and 11 to 16 shall survive expiry or termination of this Agreement. The Association may assign this Agreement or any of its rights or obligations under this Agreement without the prior written consent of Customer. The waiver of any breach or default hereunder shall not constitute the waiver of any other or subsequent breach or default. Any notice hereunder shall be delivered by electronic means of communication, registered mail or courier and will be conclusively deemed to have been given on the day of actual delivery thereof and, if given by registered mail, on the 5th business day in Ontario following the deposit thereof in the mail and, if given by electronic communication, on the day of transmittal thereof if given during the normal business hours of the recipient and on the business day in Ontario during which such normal business hours next occur if not given during such hours on any day. This Agreement shall be interpreted, construed and governed by the laws in force in the Province of Ontario, without reference to its conflict of laws principles. For the purpose of all legal proceedings this Agreement will be deemed to have been performed in the Province of Ontario and the courts of the Province of Ontario will have jurisdiction to entertain any action arising under this Agreement. The Association and the Customer each attorn to the jurisdiction of the courts of the Province of Ontario.

Accepted:

Canadian Diabetes Association:

Name: _____
(Please Print)

Company Name: _____

Signature: _____

Date: _____

Customer:

Name: _____
(Please Print)

Company Name: _____

Signature: _____

Date: _____