

# SCOIR, INC

## COLLEGE TERMS OF SERVICE

~~Last Updated: January 5~~ Effective Date: April 1, 2022

Welcome to Scoir! Please read the following terms of service (this “Service (“Agreement”)”) ~~carefully as they contain~~ contains the legal terms and conditions of your access to and use of the Services (as defined ~~below~~ herein) provided by Scoir, Inc. (“Scoir”). The term “Customer” as used herein means the institution of higher education that utilizes or intends to utilize the Services. By your acceptance of this Agreement, either by your online digital indication of ~~Customer’s~~ acceptance or by your execution of an Order Form (as defined herein) that references this Agreement, you acknowledge that you have read, understand, and agree to the terms of this Agreement and you represent that you have the authority to bind your institution to this Agreement. ~~If you do not agree with these terms and conditions, you must not accept this Agreement and Customer must not use the Services.~~

Scoir may, from time to time, ~~propose modifications to modify~~ these terms of service. ~~Any proposed modification to We will~~ inform you of any modifications to this Agreement ~~will be via a~~ prominently displayed to Customer on the Website in-app notification and/or by email (if you authorize email notifications in your account settings). Customer will have an option to either “accept” or “decline” ~~the modification~~ modifications to this Agreement. If Customer does not accept the modifications, the previous version of these terms of service shall remain in force through the duration of the Subscription Term.

**1. SCOPE.** The Services, as defined herein, provide various means by which Customer can attract and engage with prospective applicants. The Services preclude, and technologically prevent, Customer from uploading, transmitting, or otherwise sharing Student Records or other Personally Identifiable Information with Scoir. No access to Customer’s proprietary or confidential information is required by Scoir to provide the Services. Additionally, Scoir will not upload, transmit, or otherwise share Student Records or Personally Identifiable Information with Customer when rendering the Services except to support a User’s application for enrollment pursuant to 34 CFR §99.31(a)(2).

**1.2. DEFINITIONS.** Capitalized terms defined herein shall have the meanings ascribed to them, including the following terms, which shall have the following meanings:

“**Affiliate**” means any entity which directly or indirectly controls, is controlled by, or is under common control with a party to this Agreement. For purposes of this definition, control means direct or indirect ownership or control of more than 50% of the voting interests of the subject entity.

“**Customer Information**” means all publicly available and non-confidential institutional content, data, materials, and information that Customer provides, posts, uploads, inputs, or submits for incorporation into the Website and which is accessible by some or all Users through the Services. Customer Information excludes “Personally Identifiable Information” and “Student Records,” as defined below.

“**Free Product**” means those Products, or any portion thereof, that Scoir makes available to Customer at no charge without the use of an Order Form.

“**Intellectual Property Rights**” means any patent, trademark, trade secret, service mark, copyright, moral right, right in design, know-how and any other intellectual or industrial property rights anywhere in the world whether or not registered.

“**Invitee**” means any User who is authorized by Customer to use the Services, or any portion thereof, for Customer’s benefit and for whom Customer has provisioned the Services. Invitees may include, without limitation, Customer’s or its Affiliate’s employees, representatives, consultants, contractors, ~~or~~ and agents.

“**Order Form**” means an ordering document ~~or online order~~ entered into between Customer and Scoir that identifies Customer and which specifies (i) the Term (as defined herein), the scope of Services/Products to be which Customer is subscribing and which Scoir will provided hereunder, and to Customer pursuant to this Agreement, (ii) the Subscription Term, and (iii) the fees payable by Customer for the Services.

“**Personally Identifiable Information**” means information, either alone or combined with other linked or linkable information, that is reasonably capable of being used to distinguish or trace the identity of an individual to a reasonable certainty.

“**Product-Specific Terms**” means the additional terms and conditions that apply to Customer’s use of specific Products and which are set forth in Schedule 1 hereto.

**“Products”** means Scoir’s web-based software applications, tools, features, and utilities set forth in **Schedule 1** hereto that are developed, operated, and maintained by Scoir, including hosting and other ancillary products and services.

**“Scoir Content”** means all information, data, text, messages, software, sound, music, video, photographs, graphics, images, and tags ~~incorporate~~incorporated into the Website by Scoir and accessible by all Users.

**“Services”** means the ~~student engagement and enrollment services, as further described in Section , which are developed, operated, and maintained by Scoir and Products~~ to which Customer has subscribed ~~under an~~pursuant to one or more Order Form~~Forms~~, or which are made available to Customer as a Free Product, and which Scoir shall make available to Customer via the Website during the Subscription Term.

**“Student Records”** means all data and records that directly relate to a student or prospective student and that are maintained by an educational agency or institution, or a party acting for or on behalf of the agency or institution, including but not limited to grades, transcripts, standardized test scores, class lists, discipline files, progress reports, evaluations, and letters of recommendation.

**“Subscription Term”** means the period of time further defined in Section 7.1 during which this Agreement ~~govern~~governs the relationship between Scoir and Customer with respect to the Services,~~as further defined in Section .~~

**“User”** means any person or entity who creates a user account on the Website. Users include, but are not limited to, Customer and Invitees.

**“User-Generated Content”** means materials or content inputted into the Website by a User and which is accessible by some or all Users through the Services.

**“Website”** means the ~~website~~online application services available at <https://app.scoir.com> ~~and, including~~ any subdomain thereof, ~~and all associated mobile applications.~~

### **2.3. PROVISION AND USE OF THE SERVICES**

~~2.1. — Description of Services. The Services provided by Scoir via the Website are intended to aid institutions of higher education in reaching and engaging with high school students to counsel them in their post-secondary pursuits and guide them through the college application process. The Services allow the Customer to, among other things: (i) maintain and publish to the Website a school profile containing content and data about its admissions process, student body enrollment, academic programs, student services, financial aid practices, and other non-confidential institutional information; (ii) schedule and promote information sessions and high school visits to attract and connect with prospective applicants; (iii) receive application-related materials from high schools; (iv) directly engage with high school counselors, and prospective applicants and their parents; and (v) access data to measure the effectiveness of initiatives related thereto.~~

3.1. — Access to Services. During the Subscription Term, Scoir will provide Customer and its Invitees access to use the Services as described in this Agreement and all applicable Order Forms. Scoir reserves the right to provide some or all elements of the Services through third party service providers.

3.2. — Additional Products. During the Subscription Term, Customer may add Products to the Services by placing an additional Order Form or, if available, by activating the additional Products from within Customer’s Scoir account. This Agreement will apply to all additional Order Forms and additional Product activations.

~~2.1.3.3.~~ Customer Use. Subject to the terms and conditions of this Agreement, Scoir grants Customer the non-exclusive, non-transferrable, non-sublicensable, worldwide right to access and use, and to grant Invitees access to use, the Services for Customer’s own lawful and legitimate business or organizational purposes.

~~2.2.3.4.~~ Use by Invitees. Customer acknowledges and agrees that it is solely responsible for (i) determining who is an Invitee; (ii) informing each Invitee that their use of the Services is subject to these Terms of Service; and (iii) controlling each Invitee’s level of access to relevant portions of the Services.

3.5. — Account Ownership. Customer shall, at all times during the Subscription Term, designate and have designated: (i) one Invitee as an “account owner” authorized to serve as primary liaison to Scoir for account-related communications; and (ii) no less than one Invitee as “account administrator” authorized to create accounts for and manage permissions of other Invitees.

3.6. — Access Control. Customer shall take reasonable precautions to require its Invitees to secure usernames, passwords, and any other means of gaining access to the Services. Without limiting the foregoing, Customer agrees to not require Invitees to

disclose their passwords and will promptly revoke any Invitee's access to the Services following the termination of such Invitee's employment or engagement by Customer. Customer will promptly notify Scoir of any suspected unauthorized access to, or use of, the Services known to Customer.

3.7. Data Practices and Machine Learning. Scoir may monitor use of the Services by all Users and customers and use the information gathered in an aggregate and anonymized manner for machine learning and other purposes designed to improve the Services.

### 3.1. SCOIR'S RESPONSIBILITIES

3.2. Provision of Services. Subject to the terms of this Agreement, Scoir will make the Services available to Customer as more particularly described in any applicable Order Form. Each Order Form will (i) reference this Agreement, (ii) be incorporated by reference into this Agreement, and (iii) be subject to the terms and conditions of this Agreement.

3.1.3.8. Accuracy of Information. Scoir may, but is not obligated to, monitor or review User-Generated Content and Customer Information to ensure that it is not inappropriate, erroneous, defamatory, libelous, slanderous, obscene, or profane. If Scoir deems, at its sole discretion, any such User-Generated Content and Customer Information inappropriate, Scoir may remove such User-Generated Content and Customer Information from the Website, provided that Scoir promptly notifies Customer of any removal of its Customer Information. Notwithstanding the foregoing, Scoir will not be liable for the accuracy or appropriateness of any User-Generated Content, Customer Information, and Student Records. In addition, certain portions of the Services may enable Users to post reviews, make recommendations, or provide ratings. No review, recommendation, or rating provided within the Services shall be deemed to be either an endorsement by Scoir or an accurate statement of quality, competency, experience, or qualification pertaining to the subject matter thereof.

3.3. Technical Support. Scoir will provide Customer and its Invitees with technical support services reasonably necessary to ensure their continuous and optimal use of the Services offered hereunder.

4.1. FERPA Compliance. In the event that an educational agency or institution uploads or inputs into the Website any Student Records protected by The Family Educational Rights and Privacy Act of 1974 (FERPA), Scoir shall ensure, where applicable, that such educational agency or institution designates Scoir as a "School Official" pursuant to 34 CFR §99.21(a)(1)(i)(D) and that, in providing the Services, Scoir has a "legitimate educational interest" pursuant to 34 CFR §99.7(a)(3)(iii).

2.4. Data Practices and Machine Learning. Scoir may monitor use of the Services by all of our Users and customers and use the information gathered in an aggregate and anonymized manner for machine learning and other purposes designed to improve the Services.

3.2.1.1. Accessibility. Scoir shall use reasonable efforts to ensure that the Services maintain, at all times during the Term, compliance with all applicable federal and state laws and regulations providing for equally effective and substantially equivalent ease of use for persons with disabilities, including but not limited to those set forth in the Americans with Disabilities Act (ADA). The Web Content Accessibility Guidelines (WCAG) 2.0 Level AA shall be used to evaluate conformance of the Services with this Section.

2.5. Insurance. Without limiting Scoir's liability hereunder, Scoir shall, at its sole cost and expense, procure from a national insurance company having an A.M. Best Company financial strength rating of at least "A" and maintain throughout the Term the following or equivalent insurance policies with limits no less than:

- (a) Commercial general liability of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (b)(a) Professional liability of \$1,000,000 per occurrence and \$1,000,000 aggregate; and
- (c)(a) Data breach liability of \$1,000,000 per occurrence and \$1,000,000 aggregate.

Scoir further agrees to provide, upon request, Customer with copies of current and valid certificates of insurance evidencing Scoir's compliance with the above insurance requirements.

2.6. Equal Opportunity. Scoir warrants that, in compliance with Titles VI and VII of the Civil Rights Act of 1964 and other federal laws and regulations, it does not and, during the continuance of this Agreement, shall not discriminate on the basis of race, ethnicity, national origin, sex, gender, age, religion, disability, or veteran status in any of its policies, practices, or procedures.

### **~~3. CUSTOMER'S RESPONSIBILITIES~~**

~~3.2.1.1. Access Control. Customer shall take reasonable precautions to require its Invitees to secure usernames, passwords, and any other means of gaining access to the Services. Without limiting the foregoing, Customer agrees to not require Invitees to disclose their passwords and will promptly revoke any Invitee's access to the Services following the termination of such Invitee's employment or engagement by Customer. Customer will promptly notify Scoir of any suspected unauthorized access to, or use of, the Services known to Customer.~~

~~3.1. Customer Information. Customer is responsible for any consents, notices, and permissions required for Scoir to receive and use Customer Information. Customer is solely responsible for any and all obligations with respect to the accuracy, quality, and legality of Customer Information.~~

~~1.2.1.1. Student Records. If Customer elects to receive Student Records via the Services, Customer acknowledges that the disclosure of Student Records, including all Personally Identifiable Information contained therein, is related to a User's application for enrollment pursuant to 34 CFR §99.31(a)(2). Customer represents and warrants that Customer and, if Customer provides any third party access to Student Records, each of its designees will comply fully with the provisions of 34 CFR §99, to the extent applicable, in storing and safeguarding all Student Records it receives via the Services.~~

~~3.4.3.9. Restrictions of Use. When using the Services, Customer represents and warrants that it will not (and will use reasonable efforts to prohibit any Invitee to):~~

- ~~(a) attempt to gain unauthorized access to any Personally Identifiable Information of a User;~~
- ~~(b) attempt to undermine the security or integrity of the Website and the Services, and, where the Services are hosted by a third party, that third party's computing systems and networks;~~
- ~~(c) use, or misuse, the Services in any way which may impair or degrade the functionality of the Services or Website, or other systems used to deliver the Services, or impair or degrade the ability of any other User to use the Services or Website;~~
- ~~(d) attempt to gain unauthorized access to any portions of the Services other than those expressly provisioned pursuant to a valid Order Form;~~
- ~~(e) transmit via, or input into, the Website, anything that directly or indirectly (i) knowingly contains any viruses, worms or other malicious computer programming codes intended or likely to damage Scoir's or any User's system or data; (ii) may reasonably be deemed to be offensive to a preponderance of Users; (iii) is deceptive, defamatory, obscene, pornographic or unlawful; or (iv) infringes or misappropriates any Intellectual Property Rights of a third party;~~
- ~~(f) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Services for the benefit of any unauthorized third party;~~
- ~~(g) access or use the Services to build a similar or competitive product or service; or~~
- ~~(h) attempt to modify, copy, adapt, create derivative works of, reproduce, disassemble, decompile or reverse engineer the Services or any computer programs used to deliver the Services or to operate the Website.~~

~~3.2. Communications. If Customer uses any communication tools available through the Website (such as a forum, chat room, or message center), Customer agrees only to use such communication tools for lawful, appropriate, and legitimate purposes. Customer must not use any such communication tool for posting or disseminating any material that is defamatory, libelous, or unrelated to the use of the Services.~~

### **4. SCOIR'S RESPONSIBILITIES**

4.1. Accessibility. Scoir shall use reasonable efforts to ensure that the Services maintain, at all times during the Subscription Term, compliance with all applicable federal and state laws and regulations providing for equally effective and substantially equivalent ease of use for persons with disabilities, including but not limited to those set forth in the Americans with Disabilities Act (ADA). The Web Content Accessibility Guidelines (WCAG) 2.0 Level AA shall be used to evaluate conformance of the Services with this Section 4.1.

4.2. Customer Support Services. Scoir agrees to support Customer and its Invitees in their use of the Services via Scoir's online self-service portal available at <https://scoir.helpdocs.io> and via email during customary business hours. Scoir will endeavor to use reasonable practices to respond to email support questions within one business day; in practice, Scoir's response times are generally faster. Scoir does not promise or guarantee any specific response time. Issues resulting from Customer's use of APIs or its modifications to code in the Services may be outside the scope of support services contemplated by this Section 4.2. Scoir will only provide support for integrations that are identified as being supported by Scoir. Scoir reserves the right, in its sole and reasonable discretion, to limit or deny access to support services to any User acting, or who has acted, in a way that results or has resulted in misuse of support or abuse of Scoir's support representatives.

4.3. Service Reliability. Subject to the terms and conditions of this Agreement, Scoir will use commercially reasonable efforts to make the Services generally available for use by Customer and its Invitees at any time, excluding planned downtime and any unavailability caused by circumstances beyond our reasonable control, including without limitation, acts of God, acts of government, floods, fires, earthquakes, civil unrest, acts of terror, strikes or other labor problems (other than those involving Scoir's own employees), Internet service provider failures or delays, denial of service attacks, or any other force majeure event or factors. Scoir acknowledges that Customer may consider a failure to reasonably meet its service reliability commitments to be a material breach of this Agreement. Accordingly, and notwithstanding anything to the contrary in this Agreement, Customer's sole remedy for Scoir's failure to reasonably meet its service reliability commitments shall be to terminate this Agreement for cause pursuant to Section 7.2.

4.4. Insurance. Without limiting Scoir's liability hereunder, Scoir shall, at its sole cost and expense, procure from a national insurance company having an A.M. Best Company financial strength rating of at least "A" and maintain throughout the Subscription Term the following or equivalent insurance policies with limits no less than:

- (a) Commercial general liability of \$1,000,000 per occurrence and \$2,000,000 aggregate;
- (b) Professional liability of \$1,000,000 per occurrence and \$1,000,000 aggregate; and
- (c) Data breach liability of \$1,000,000 per occurrence and \$1,000,000 aggregate.

Scoir further agrees to provide, upon request, Customer with copies of current and valid certificates of insurance evidencing Scoir's compliance with the above insurance requirements.

#### 4.5. FEES AND PAYMENTS

4.5.1. Subscription Fees. In consideration for the access rights granted to Customer and the Services made available by Scoir under this Agreement, Customer will pay to Scoir the fees set forth in the Order Form(s) in accordance with the fee schedule ~~set forth(s) specified~~ therein. Unless otherwise provided for in an Order Form, all fees are due and payable within thirty (30) days of the date of the invoice. All fees paid are non-refundable except as otherwise provided for herein. Customer agrees to provide Scoir with complete, accurate, and current billing and contact information at all times.

4.5.2. Non-Payment. If Customer fails to pay amounts due under ~~this~~ Section 5, ~~then~~ Scoir's sole ~~recourses are~~ recourse is to suspend Services pursuant to Section 6.2 and to terminate this Agreement pursuant to Section 7.2. Notwithstanding the foregoing, if any Customer payment is dishonored or returned because it cannot be processed by a bank, Scoir reserves the right to charge Customer any bank fees or charges for return items that Scoir incurs.

4.5.3. Taxes. ~~The fees are exclusive of taxes, which~~ Scoir ~~will~~ may charge ~~as applicable, and~~ Customer agrees to pay, any sales, use, or value-added taxes applicable to ~~its use~~ the provision of the Services. Customer shall have no liability for any taxes based upon Scoir's gross revenues or net income.

(a) If Customer is a tax-exempt organization, Customer agrees to provide Scoir with a valid and accurate certificate of sales tax exemption within seven (7) days of submitting an Order Form.

(b) Scoir is solely responsible for ~~the collection and~~ timely remittance to state and/or local authorities of any ~~applicable~~ sales and use taxes it collects from Customer related to ~~its~~ the sale of goods and services ~~pursuant to~~ under this Agreement.

4.5.4. Payment by Credit Card. If paying by credit card, Customer authorizes Scoir to charge its credit card or bank account for all fees payable. Customer further authorize Scoir to use a third party to process payments for fees payable, and consent to the disclosure of payment information to such third party as required to process such payments.



~~4.5.5.5.~~ Recordkeeping. Scoir shall maintain, in accordance with U.S. Generally Accepted Accounting Principles, records for all fees charged to Customer hereunder for a period of five (5) years following termination of this Agreement; and, during such five-year term, Customer and/or its designee may audit Scoir's records related to fees charged to Customer hereunder.

## 5.6. SERVICE SUSPENSIONS

~~5.1.6.1.~~ Suspension for Prohibited Acts. Scoir may suspend any User's access to any or all Services without notice for use of the Services in a manner that Scoir deems, at its reasonable and sole discretion, to: (i) violate applicable local, state, or federal laws or regulations; or (ii) violate any restrictions of use contained in Section 3.8. If Scoir suspends a User's access pursuant to this Section 6.1, Scoir shall, as soon as commercially practical, provide Customer written notice describing the violation and, for violations capable of being resolved, Scoir shall endeavor to restore said User's access promptly after the cause of the violation has been resolved.

~~5.2.6.2.~~ Suspension for Non-Payment. In the event that any fees due and payable hereunder remain unpaid for a period of fourteen (14) days or more after the due date specified on the corresponding invoice, Scoir may suspend Customer's (and its Invitees') access to any or all of the Services until such amounts are paid in full. Scoir will notify Customer at least fourteen (14) days before suspension.

~~5.3.6.3.~~ Suspension for Present Harm. If Customer's website or use of the Service is (i) being subjected to denial-of-service attacks or other disruptive activity; (ii) being used to engage in denial-of-service attacks or other disruptive activity; (iii) creating a security vulnerability for the Services or others; or (iv) causing harm to any Users, then Scoir may, with written electronic and telephonic notice to Customer, suspend all or any access to the Service. Scoir will try to limit the suspension to the affected portion of the Services and promptly resolve the issues causing the suspension.

## 6.7. SUBSCRIPTION TERM; TERMINATION

~~6.1.7.1.~~ Subscription Term. ~~The Term~~ This Agreement shall ~~begin~~ commence on the date of Customer's first acceptance hereof of an Order Form and shall continue ~~for the period of time set forth in the Order Form~~, unless lawfully terminated sooner as permitted herein. ~~This Agreement shall not, until the latest subscription period end date set forth in an Order Form.~~ Notwithstanding the foregoing, the Subscription Term for Free Products shall begin on the date Customer first utilizes the Services related to such Free Products and automatically renew at the end on August 1st of the Term each year.

~~6.2.7.2.~~ Termination for Cause. Either party may terminate this Agreement for cause if the other party materially breaches any provision of this Agreement and such breach, if capable of being cured, is not cured within thirty (30) days of receiving written notice of such breach from the other party.

~~6.3.7.3.~~ Post-Termination Rights. Upon any termination of this Agreement, all licenses, rights, and permissions granted to Customer hereunder will immediately terminate. If this Agreement is terminated by Customer pursuant to Section 7.2, Scoir will promptly refund Customer any prepaid fees relating to Customer's access and use of the Services after the effective date of termination. Within thirty (30) days after the effective date of termination of this Agreement, Scoir shall delete and permanently erase from the Website all Customer Information that it is not legally required to maintain and, upon written request from Customer, provide Customer with written certification of such deletion. Scoir shall not be liable for any costs, losses, damages, or liabilities arising out of or related to termination of this Agreement.

~~6.4.7.4.~~ Surviving Provisions. Section 5 (~~Student Records~~), Section (Fees and Payments), Section 7.3 (Post-Termination Rights), Section 7.4 (Surviving Provisions), Section 8 (Proprietary Rights), Section 10 (Disclaimers; Limitation of Liability) and Sections 12.2, 12.3 ~~to~~, 12.8, 12.9 ~~to~~, 12.10, and 12.11 (General Provisions) will survive any termination or expiration of this Agreement.

## 7.8. PROPRIETARY RIGHTS

~~7.1.8.1.~~ Scoir Ownership. Scoir, or its licensors, owns all worldwide right, title, and interest (including all Intellectual Property Rights) in and to the Website, Services, Scoir Content, and software applications used to provide the Services. This Agreement does not convey any proprietary interest in or to any of Scoir's Intellectual Property Rights or rights of entitlement to the use thereof except as expressly set forth herein.

~~7.2.8.2.~~ Customer Ownership. Customer owns all worldwide right, title, and interest (including all Intellectual Property Rights) in and to the Customer Information. Customer hereby grants Scoir a non-exclusive, limited right to ~~to~~, during the Term, use, copy, transmit, store, and back-up Customer Information for the purpose of providing the Services ~~to Customer~~ and as otherwise permitted by this Agreement.

7.3.8.3. User Feedback. Any feedback, comments and suggestions Customer or its Invitees may provide for improvements to the Services shall be deemed to have been given voluntarily and Scoir will be free to use, disclose, reproduce, license or otherwise distribute, and exploit such feedback as Scoir sees fit, entirely without obligation or restriction of any kind.

## **8.9. INDEMNIFICATION**

8.1-9.1. Infringement Indemnification. Scoir shall indemnify, defend, protect, and hold harmless Customer, its affiliates~~Affiliates~~, officers, directors, and employees, from and against any and all damages awarded by a court, arbitration, or settlement, including associated penalties, fines, and expenses arising out of or incurred by the Customer as a result of any actual or threatened claim alleging that the licensing, use, or other exploitation of the Services by Customer in accordance with the rights granted hereunder constitutes, under applicable laws of any jurisdiction within the United States of America, an infringement, dilution, or unauthorized use of any patent, copyright, trademark, or trade secret of any third-party. In the event that (i) some or all of the Services is held by a court of competent jurisdiction to infringe; (ii) an injunction is obtained against use of any material portion of the Services; or (iii) Customer believes in its good faith judgment that the Services is infringing, then Scoir shall promptly, at its sole option and expense, (a) procure for Customer the right to continue to use the infringing Services; (b) replace or modify the infringing Services to make its use non-infringing while being capable of performing essentially the same functions; or (c) require Customer to return or remove the infringing Services and cancel all rights thereto. If Scoir implements option (iii) above, then Customer may, at its option, terminate this Agreement, with immediate effect upon written notice to Scoir, and be entitled to recover all amounts paid by Customer during the Subscription Term that directly relate to the infringing Services.

8.2-9.2. Exclusions. Notwithstanding the foregoing, Scoir will have no obligation under this Section 9 or otherwise with respect to any infringement claim based upon (i) any use of the Services not in accordance with this Agreement; (ii) any use of the Services in combination with other products, equipment, software or data not supplied by Scoir; or (iii) any modification of the Services by any person other than Scoir or its authorized agents.

8.3-9.3. Obligations. Scoir's indemnifying obligations set forth above are expressly conditioned upon each of the following: (i) Customer will promptly notify Scoir in writing of any threatened or actual claim; (ii) Scoir will have sole control of the defense and settlement, if any, of any claim giving rise to the indemnity obligations herein; provided, however, that no settlement will be binding against Customer without Customer's prior written consent; and (iii) Customer will cooperate with Scoir to facilitate the defense and settlement, if any, of any claim.

8.4-9.4. Exclusive Remedy. This Section 9 states the entire liability of Scoir and the sole and exclusive remedy of Customer and any of its affiliates~~Affiliates~~, officers, directors, and employees for infringement claims and actions related hereto.

## **9.10. DISCLAIMERS; LIMITATION OF LIABILITY**

9.1-10.1. Disclaimer of Warranties. Customer's use of the Services is entirely at Customer's own risk. The Services are provided "AS IS" and on an "AS AVAILABLE" basis. TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, SCOIR DISCLAIMS ALL REPRESENTATIONS, WARRANTIES, AND CONDITIONS, WHETHER STATUTORY, EXPRESS OR IMPLIED, INCLUDING THOSE OF FITNESS FOR A PARTICULAR PURPOSE, MERCHANTABILITY, NON-INFRINGEMENT, OR THE ACCURACY, RELIABILITY, QUALITY OF ANY CONTENT, DATA, OR INFORMATION MADE AVAILABLE VIA THE SUBSCRIPTION SERVICES. EACH PARTY DISCLAIMS ALL LIABILITY AND INDEMNIFICATION OBLIGATIONS FOR ANY HARM OR DAMAGES CAUSED BY ANY THIRD-PARTY HOSTING PROVIDERS. SCOIR DOES NOT WARRANT THAT THE SUBSCRIPTION SERVICES WILL BE COMPLETELY SECURE, FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT OR DESTRUCTION.

9.2-10.2. No Indirect Damages. TO THE EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY OR ITS AFFILIATES HAVE ANY LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT FOR ANY LOSS OF PROFITS, REVENUE, GOODWILL, OR BUSINESS OPPORTUNITY, OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, CONSEQUENTIAL, COVER, OR PUNITIVE DAMAGES, WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY, EVEN IF A PARTY OR ITS AFFILIATES HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF A PARTY'S OR ITS AFFILIATES' REMEDY OTHERWISE FAILS OF ITS ESSENTIAL PURPOSE. THE FOREGOING DISCLAIMER WILL NOT APPLY TO THE EXTENT PROHIBITED BY LAW.

9.3-10.3. Limitation of Liability. EXCEPT FOR CUSTOMER'S LIABILITY FOR THE PAYMENT OF FEES, SCOIR'S INDEMNIFICATION OBLIGATIONS IN SECTION 9, AND EITHER PARTY'S VIOLATION OF INTELLECTUAL PROPERTY RIGHTS, IF, NOTWITHSTANDING THE OTHER TERMS OF THIS AGREEMENT, EITHER PARTY OR ITS AFFILIATES IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY, ITS AFFILIATES OR ANY THIRD PARTY, THE PARTIES AGREE THAT, TO THE EXTENT PERMITTED BY LAW, THE AGGREGATE

LIABILITY OF A PARTY AND ITS AFFILIATES WILL BE LIMITED TO A SUM EQUAL TO THE GREATER OF (A) TOTAL AMOUNTS PAID OR PAYABLE BY CUSTOMER FOR THE SUBSCRIPTION SERVICES IN THE TWELVE-MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO A CLAIM AND (B) ONE HUNDRED U.S. DOLLARS. THE FOREGOING LIMITATION WILL APPLY WHETHER AN ACTION IS IN CONTRACT OR TORT AND REGARDLESS OF THE THEORY OF LIABILITY BUT WILL NOT LIMIT CUSTOMER'S PAYMENT OBLIGATIONS SET FORTH HEREIN.

9.4.10.4. Third Party Products. SCOIR AND ITS AFFILIATES DISCLAIM ALL LIABILITY WITH RESPECT TO THIRD-PARTY PRODUCTS MADE AVAILABLE THROUGH THE SUBSCRIPTION SERVICES. OUR LICENSORS SHALL HAVE NO LIABILITY OF ANY KIND UNDER THIS AGREEMENT.

9.5.10.5. Agreement to Liability Limit. CUSTOMER UNDERSTANDS AND AGREES THAT ABSENT ITS AGREEMENT TO THIS LIMITATION OF LIABILITY, SCOIR WOULD NOT PROVIDE THE SUBSCRIPTION SERVICES TO CUSTOMER.

9.6.10.6. Exceptions. EXCLUSIONS AND LIMITATIONS SET FORTH IN THIS SECTION 10 WILL NOT APPLY TO CLAIMS AND DAMAGES RESULTING FROM A PARTY'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT.

## 11. REGULATORY ACKNOWLEDGEMENTS

### ~~10.1. GENERAL PROVISIONS~~

~~3.3. Publicity. Customer hereby grants Seoir the limited right to display, in accordance with Customer's published trademark usage guidelines (if any), Customer's name and logo on Seoir's digital properties. Customer may limit or withdraw this permission at any time by completing and submitting a "Publicity Restrictions" form located at [\[redacted\]](#). Seoir hereby grants Customer permission to display, in accordance with Seoir's published trademark usage guidelines, Seoir's name, logo, and links to the Website on Customer websites and other materials as Customer may reasonably deem appropriate to promote the Services. The rights granted under this Section shall expire upon termination of this Agreement.~~

~~3.4. No Agency. For the avoidance of doubt, each of Seoir and Customer are entering into this Agreement as principals and not as agent for any other company. Subject to any permitted Assignment under Section [\[redacted\]](#), the obligations owed by Seoir under this Agreement shall be owed to Customer solely by Seoir and the obligations owed by Customer under this Agreement shall be owed solely to Seoir.~~

~~10.1.1.1. Relationship of the Parties. Seoir is an independent contractor to Customer. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.~~

~~10.2.1.1. No Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.~~

10.3.11.1. Contract for Services. This Agreement is a contract for the provision of services and not a contract for the sale of goods. The provisions of the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), or any substantially similar legislation as may be enacted, shall not apply to this Agreement. If Customer is located outside of the territory of the United States, the parties agree that the United Nations Convention on Contracts for the International Sale of Goods shall not govern this Agreement or the rights and obligations of the parties under this Agreement.

11.2. HIPPA; FISMA; GLBA. Customer acknowledges that the Services are not intended to comply with industry-specific regulations such as the Health Insurance Portability and Accountability Act (HIPAA), the Federal Information Security Management Act (FISMA), or the Gramm-Leach-Bliley Act (GLBA). Customer agrees that it will not use the Services in a manner that would violate such laws.

10.4.11.3. Covered Telecommunications Equipment or Services. Seoir shall not provide "covered telecommunications equipment or services" (as defined in FAR 52.204-25) to Customer in the performance of this Agreement. Seoir represents that: (i) it does not use covered telecommunications equipment or services; and (ii) it does not knowingly use any equipment, system, or service that uses covered telecommunications equipment or services.

10.5.11.4. IRCA Compliance. Seoir represents and warrants that it does not and shall not knowingly utilize, directly or indirectly, the services of an illegal immigrant in the United States in the performance of this Agreement; and that it shall comply with the requirements of the U.S. Immigration Reform and Control Act, 8 U.S.C. § 1324a, as amended, and its successors, if any, regarding the screening, hiring, and employment of all labor forces used in connection with its provision of the Services.



~~10.6.11.5.~~ OFAC; Prohibited Transactions. Neither Scoir nor any of its Affiliates nor, to the knowledge of Scoir, any director, officer, agent, employee, or person acting on behalf of Scoir or any of its Affiliates, is currently subject to any U.S. sanctions administered by the Office of Foreign Assets Control of the U.S. Treasury Department; and Scoir will, at all times during the continuance of this Agreement, comply with the Iranian Transactions and Sanctions Regulation, 31 CFR § 560.201, et seq.

~~11.6.~~ Equal Opportunity. Scoir warrants that, in compliance with Titles VI and VII of the Civil Rights Act of 1964, Executive Order 13988, and other federal laws and regulations, it does not and, during the continuance of this Agreement, shall not discriminate on the basis of race, ethnicity, national origin, sex, gender, sexual orientation, gender identity, age, religion, disability, or veteran status in any of its policies, practices, or procedures.

## 12. GENERAL PROVISIONS

~~12.1.~~ Publicity. Customer hereby grants Scoir the limited right to display, in accordance with Customer's published trademark usage guidelines (if any), Customer's name and logo on Scoir's digital properties. Customer may limit or withdraw this permission at any time by completing and submitting a "Publicity Restrictions" form located at [www.scoir.com/publicity-restrictions](http://www.scoir.com/publicity-restrictions). Scoir hereby grants Customer permission to display, in accordance with Scoir's published trademark usage guidelines, Scoir's name, logo, and links to the Website on Customer websites and other materials as Customer may reasonably deem appropriate to promote the Services. The rights granted under this Section 12.1 shall expire upon termination of this Agreement.

~~12.2.~~ Governing Law and Jurisdiction. This Agreement shall be interpreted, governed, and construed in accordance with the laws of the state where Customer is principally located; provided, however, that, if Customer is principally located outside the United States of America, then this Agreement shall be interpreted, governed, and construed in accordance with the laws of the State of Delaware. The parties hereby agree, to the extent not barred by immunity, that any dispute may be heard by any state or federal court located within the capital city or principal city of such state, and the Parties hereby consent to the personal jurisdiction and exclusive venue of such courts.

~~10.7.12.3.~~ Compliance with Laws. Each of Scoir and Customer shall comply with all applicable U.S. federal, state, and local laws and regulations and nothing in this Agreement shall (i) require or be construed to require either party to violate such provisions of law, or (ii) subject either party to liability or render either party in breach of this Agreement for adhering to such provisions of law. If this Agreement or either party's performance under it causes, creates, or involves a violation of law, rule, order, or regulation, or threatens to do so, or interferes with Customer's non-profit status, rights, or privileges, then Customer may terminate this Agreement without liability.

~~12.4.~~ Relationship of the Parties. Scoir is an independent contractor to Customer. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties.

~~12.5.~~ No Agency. For the avoidance of doubt, each of Scoir and Customer are entering into this Agreement as principals and not as agent for any other company. Subject to any permitted Assignment under Section 1.1, the obligations owed by Scoir under this Agreement shall be owed to Customer solely by Scoir and the obligations owed by Customer under this Agreement shall be owed solely to Scoir.

~~12.6.~~ No Third-Party Beneficiaries. There are no third-party beneficiaries under this Agreement.

~~10.8.1.1.~~ Authority. Each party represents to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms. Customer further represents that it has the authority to procure its Affiliates' compliance with the terms of this Agreement.

~~10.9.1.1.~~ Governing Law. This Agreement shall be interpreted, governed, and construed in accordance with the laws of the state where Customer is principally located; provided, however, that, if Customer is principally located outside the United States of America, then this Agreement shall be interpreted, governed, and construed in accordance with the laws of the State of Delaware. The parties hereby agree, to the extent not barred by immunity, that any dispute may be heard by any state or federal court located within the capital city or principal city of such state, and the Parties hereby consent to the personal jurisdiction and exclusive venue of such courts.

~~10.10.1.1.~~ Entire Agreement; Amendments. This Agreement, including all Order Forms hereunder and any subsequent modifications hereto, is the entire agreement between Customer and Scoir regarding Customer's use of Services and it supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. This Agreement may be amended and the observance of any provision of this Agreement may be waived only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or

~~privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.~~

~~10.11.12.7.~~ Assignment. Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the other party's prior written consent (not to be unreasonably withheld); provided, however, that either party may assign this Agreement in its entirety ~~(together with all Order Forms)~~, without the other party's consent in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all ~~of~~ its assets. Subject to the foregoing, this Agreement will bind and inure to the benefit of the parties, their respective successors and permitted assigns.

12.8. Notice. Except for the service of legal documents required to be delivered in physical form, the parties agree to use email to satisfy required or permitted written approvals, notices, and consents under this Agreement. Scoir will provide all notices to Customer by sending an email to Customer's identified account owner. Customer shall provide all notices to Scoir by sending an email to legal-notices@scoir.com. Email notices will be treated as received when sent.

~~10.12.12.9.~~ Waiver. No delay or omission of a party to exercise any right hereunder shall be construed as a waiver of any such right ~~and such.~~ Each party ~~reserves the right to may~~ exercise its rights granted herein at any ~~such right from time to time, as often as may be deemed expedient.~~

~~10.13.12.10.~~ Severability. Any provision of this Agreement that is prohibited or unenforceable in any jurisdiction shall, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Notwithstanding the foregoing, if such provision could be more narrowly drawn so as not to be prohibited or unenforceable in such jurisdiction while, at the same time, maintaining the intent of the parties, it shall, as to such jurisdiction, be so narrowly drawn without invalidating the remaining provisions of this Agreement or affecting the validity or enforceability of such provision in any other jurisdiction.

12.11. Entire Agreement. This Agreement, including all schedules and Order Forms and lawful modifications hereto, constitutes the entire agreement between Customer and Scoir regarding Customer's use of Services and it supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Any provision of this Agreement may be waived only with the signed written consent of both parties. Neither failure nor delay on the part of any party in exercising any right, power, or privilege hereunder shall operate as a waiver of such right, nor shall any single or partial exercise of any such right, power, or privilege preclude any further exercise thereof or the exercise of any other right, power, or privilege.

~~10.14.12.12.~~ Public Inspection of Agreement. Scoir acknowledges and agrees that this Agreement and all documents Scoir provides Customer as required herein, may, if and to the extent deemed public records under applicable law, be public records and may at all times be subject to public inspection.

~~3.5. — Email Notices.~~ ~~Except for the service of legal documents required to be delivered in physical form, the parties agree to use email to satisfy required or permitted written approvals, notices, and consents under this Agreement. Scoir will provide all notices to Customer by sending an email to Customer's identified account administrator. Customer shall provide all notices to Scoir by sending an email to . Each notice will be treated as received when the email is sent.~~

~~10.15.12.13.~~ Electronic Signatures. Each of the parties consents to the use of electronic signatures as valid execution and delivery of this Agreement and any other document relating thereto.

~~3.6. — Counterparts.~~ This Agreement may be executed in any number of identical counterparts. If so executed, each of such counterparts shall constitute this Agreement. ~~In proving this Agreement, it shall not be necessary to produce or account for more than one such counterpart.~~

12.14. ##### Authority. Each party represents to the other that it has full power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms. Customer further represents that it has the authority to procure its Affiliates' compliance with the terms of this Agreement.

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## SCHEDULE 1

### PRODUCTS AND PRODUCT-SPECIFIC TERMS

This Schedule 1 to the College Terms of Service identifies the Products to which Customer may subscribe pursuant to an Order From and the additional terms and conditions that apply to Customer's subscription and use of such Products. The Products covered herein are:

- (a) Profile Management
- (b) Receive Docs
- (c) Visits
- (d) Content Personalization
- (e) In-App Messaging
- (f) CRM Match
- (g) Unified Messaging
- (h) Application Integration

#### 1. Profile Management

1.1. Product Description. "Profile Management" enables Customer to publish to the Website certain non-confidential institutional information comprising a "school profile," which may include but is not limited to content and data about its student body enrollment, academic programs, student services, financial aid practices, admissions process, application rounds and due dates, and application material requirements. Content and data that Customer provides as part of the Profile Management services shall be deemed Customer Information.

1.2. Use Authorization. By inputting Customer Information into the Website, Customer or its Invitees represents that it has procured the necessary consents, notices, and permissions required for Scoir to receive and publish such Customer Information.

1.3. Accuracy of Information. Customer is solely responsible for the accuracy, quality, and legality of Customer Information. Customer warrants that the institutional information it publishes on the Website is, to the best of its knowledge, accurate in all material respects at the time it is provided and that it is consistent in all material respects with similar information reported to the U.S. Department of Education and/or published on its own digital properties.

1.4. Maintenance Obligations. Customer acknowledges that it is solely responsible for periodically reviewing and updating the institutional information it publishes on the Website.

#### 2. Receive Docs

2.1. Product Description. "Receive Docs" enables Customer to streamline the application process for students and their counselors by electronically receiving application-related Student Records, such as transcripts, letters of recommendation, secondary school reports, and early decision agreements, from an educational agency or institution.

2.2. FERPA Compliance. In the event that an educational agency or institution uploads or inputs into the Website any Student Records protected by The Family Educational Rights and Privacy Act of 1974 (FERPA), Scoir shall ensure, where applicable, that such educational agency or institution designates Scoir as a "School Official" pursuant to 34 CFR §99.31(a)(1)(i)(B) and that, in providing the Services, Scoir has a "legitimate educational interest" pursuant to 34 CFR §99.7(a)(3)(iii).

2.3. Confidentiality of Student Records. If Customer subscribes to Receive Docs as part of its Services, Customer acknowledges that the disclosure of Student Records, including all Personally Identifiable Information contained therein, is related to a User's application for enrollment pursuant to 34 CFR §99.31(a)(2). Customer represents and warrants that Customer and, if Customer provides any third-party access to Student Records, each of its designees will comply fully with the provisions of 34 CFR §99, to the extent applicable, in storing and safeguarding all Student Records it receives via the Services.

### **3. Visits**

3.1. Product Description. “Visits” enables Customer to identify high schools with students demonstrating interest in their institution, to communicate with registered visit attendees and their high school counselors, and to plan and schedule both in-person and virtual visits to high schools.

3.2. Compliance with Laws and Regulations. Customer acknowledges that its subscription to Visits and its use thereof may subject it and its Invitees to laws and regulations concerning safe interactions with minors. Customer further acknowledges that it and the educational agencies or institutions with which it may schedule a visit shall be wholly responsible for ensuring Customer’s compliance with any such laws and regulations.

### **4. Content Personalization**

4.1. Product Description. “Content Personalization” enables Customer to attract more prospective applicants by creating and/or repurposing existing digital content and media, including, without limitation, the promotion of virtual information sessions, that is displayed to Users based on a match between their expressed preferences or attributes and the subject matter of such digital content and media.

4.2. Accuracy of Information. Digital content and media provided for Content Personalization shall be considered Customer Information. Customer is solely responsible for the accuracy, quality, and legality of Customer Information. Customer warrants that the institutional information it publishes on the Website is, to the best of its knowledge, accurate in all material respects at the time it is provided.

### **5. In-App Messaging**

5.1. Product Description. “In-App Messaging” enables Customer to convert more students who demonstrate interest in their institution by sending student Users and/or their parents and guardians highly personalized and contextualized messages that Customer creates and delivers via the Website utilizing a broad range of segmentation parameters and event-based triggers.

5.2. Acceptable Use. Customer agrees only to use the In-App Messaging services for lawful, appropriate, and legitimate purposes. Customer must not use the In-App Messaging services for posting or disseminating any material that is defamatory, libelous, or unrelated to the intended purpose of the Services.

### **6. CRM Match**

6.1. Product Description. “CRM Match” enables Customer to match electronic records, and synchronize non-Personally Identifiable Information, of student Users with information contained in Customer’s customer relationship management system (sometimes referred to as an enrollment management system or information management system). CRM Match allows Customer to, among other things, quantify the number of “stealth students”, identify “first source” attribution of student prospects, and track “channel conversion” performance metrics.

(a) As used above, the term “stealth students” means those student Users who have expressed an interest in Customer via the Website but who are not associated with a record in Customer’s own customer relationship management system; the term “first source” means the channel that first identifies a student prospect to Customer; and the term “channel conversion” means those data that measure the progression of a prospect from the moment of inquiry to the commitment of enrollment.

6.2. Required Integrations. CRM Match requires Customer to utilize and maintain a working bi-directional technological integration between the Website and its customer relationship management system (sometimes referred to as an enrollment management system or information management system). Scoir has no obligations or liability to Customer for software developed or employed by Customer to enable such bi-directional integration.

### **7. Unified Messaging**

7.1. Product Description. “Unified Messaging” enables Customer to manage the consistency of its communication initiatives to student prospects by creating, sending, and tracking messages to student Users on the Website utilizing the user interface of its own customer relationship management system (sometimes referred to as an enrollment management system or information management system).

7.2. Required Products. Customer’s subscription to and use of Unified Messaging requires an active subscription to CRM Match services.

## **8. Application Integration**

8.1. Product Description. “Application Integration” enables student Users to initiate an electronic application for admission on the Website and to transmit such application information to Customer (“Submitted Form”). Customer acknowledges that, depending on its preferences and policies, a Submitted Form might not be sufficient to complete an application for admission. In such cases, Users will be required to complete and submit a final application for admission utilizing Customer’s own website or online application services.

8.2. Required Membership. Customer’s subscription to and use of Application Integration requires Customer to be a current dues-paying member of the Coalition for College. For more information about Coalition for College and its membership eligibility requirements, please visit [www.coalitionforcollegeaccess.org/eligibility-criteria](http://www.coalitionforcollegeaccess.org/eligibility-criteria).

8.3. Required Integrations. Customer’s subscription to and use of Application Integration requires Customer to utilize and maintain a working bi-directional technological integration between the Website and its institutional application platform or service.

8.4. Equal Treatment. Customer may not discriminate against or disadvantage any applicant based on the method by which such applicant submits an application for admission. Customer agrees to provide an easy-to-use, prominent reference to the Website in its application materials that describe or reference the various ways applications for admission to the Customer may be submitted. Nothing herein shall be construed to limit the ability of Customer to express opinions about various applications, application forms, or application providers.

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