



## Master Subscription Agreement

This Master Subscription Agreement (“**MSA**”) is between the SmartRecruiters entity set forth in an Order Form (“**SmartRecruiters**”) and the other party named in an Order Form (“**Customer**”) (each, a “**Party**,” and collectively, the “**Parties**”). By executing an Order Form, Customer agrees to the terms of this MSA. Customers not subscribed to a paid plan are not governed by this MSA.

### 1. Definitions.

In addition to the terms defined elsewhere in the Agreement, the terms set forth in in this Section 1 shall have the following meanings:

“**Agreement**” means this Master Subscription Agreement, Purchase Documents, the SLA, any schedules or other documents attached to this Agreement, and such other documents, attachments and exhibits that the Parties’ authorized representatives may mutually agree to in writing from time to time.

“**Authorized Users**” means Customer’s employees, contractors, consultants and representatives who are authorized by Customer to utilize the SmartRecruiters Applications and who are provided with access to the SmartRecruiters Applications by virtue of a password or the equivalent thereof. Any use by contractors, subcontractors or outsourcing vendors acting on Customer’s behalf shall be subject to the terms of the Agreement and Customer remains responsible for its obligations and for the activities and omissions of such third parties. Notwithstanding the foregoing, Authorized Users shall not be SmartRecruiters’ competitors (any talent acquisition related software company).

“**Candidate Content**” means any Content provided by a candidate to Customer that is uploaded to the SmartRecruiters Applications by a candidate.

“**Customer Content**” means any content provided, imported or uploaded to the SmartRecruiters Applications by Customer or Authorized Users on Customer’s behalf.

“**Effective Date**” means Customer’s signature date on the Order Form.

“**Order Form**” means the ordering document(s) executed by the Parties that represent the purchase of Customer’s Subscription and certain Services.

“**Professional Services**” means any implementation, training, consulting, data migration, conversion, integration or other services provided by SmartRecruiters as set forth in a Statement of Work or Order Form as the case may be.

“**Purchase Document**” shall mean an Order Form or Statement of Work executed by the Parties. Purchase Documents shall be deemed incorporated herein by reference.

“**Service Level Agreement**” or “**SLA**” means the service level agreement, available at <https://www.smartrecruiters.com/sla/>, which is incorporated by reference herein. SmartRecruiters may make changes to the SLA without Customer’s consent provided such changes do not have a material and adverse impact on Customer.

“**Services**” means the Professional Services and the support services described in the SLA.

“**SmartRecruiters Application**” means the software applications made available to Customer by SmartRecruiters via a Subscription.



“**Start Date**” means the start date as set forth in the Order Form.

“**Statement of Work**” or “**SOW**” means an agreement specifying the details for the performance of the Professional Services and signed by both Parties.

“**Subscription**” means the right of Authorized Users to access and use the SmartRecruiters’ Applications and Professional Services as set forth in an Order Form.

## 2. Use of SmartRecruiters Applications and Services.

**2.1. Access; License.** Subject to the terms and conditions of this Agreement, SmartRecruiters shall provide Customer’s Authorized Users access to the SmartRecruiters Applications via a Subscription as specified in this Agreement. SmartRecruiters grants Customer a worldwide, non-exclusive, non-transferable right to access the SmartRecruiters Applications solely for the internal purposes of locating and hiring potential employees for Customer.

**2.2. Proprietary Rights.** This Agreement is a Subscription agreement for Customer to use the SmartRecruiters’ Applications and Services. It is not a sale, or assignment and transfer, of any software, or any work product created by SmartRecruiters as part of any professional services. All rights not expressly granted to Customer, are reserved to SmartRecruiters. Because this is a Subscription agreement, Customer agrees that SmartRecruiters or its suppliers retain all right, title and interest (including all patent, copyright, trade secret, and other intellectual property rights) in and to the SmartRecruiters Applications, the Services, the Services deliverables and any and all underlying software (including interfaces), databases, all work product, know-how, procedures, techniques, and processes, developments, inventions, technology, algorithms, designs, or any materials provided by SmartRecruiters, and any adaptation, modification, derivation, addition or extension of the SmartRecruiters Applications and Services.

**2.3. Feedback.** “**Feedback**” means all comments and suggestions, whether written or oral, furnished by Customer or its Authorized Users to SmartRecruiters in connection with the Agreement. SmartRecruiters, in its sole discretion, may utilize the Feedback furnished by either Customer or Authorized Users to SmartRecruiters in connection with the Agreement provided SmartRecruiters does not reference or identify Customer. Customer hereby grants SmartRecruiters a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into SmartRecruiters products and services provided the Feedback does not identify Customer.

**2.4. Use Guidelines.** Customer shall use commercially reasonable efforts to make Authorized Users aware of the provisions of this Section 2.4.

**2.4.1. Restrictions.** Customer agrees Customer will not: (r) permit any third party to access and/or use SmartRecruiters Applications, other than the Authorized Users authorized under the Agreement or except for application programming interface access granted by a third party; (s) rent, lease, loan, or sell access to the SmartRecruiters Applications to any third party; (t) interfere with, disrupt, alter, translate, or modify the SmartRecruiters Applications or any part thereof, or the networks or services connected thereto (u) reverse engineer, decompile, disassemble or otherwise attempt to obtain or perceive the source code from which any software component of the SmartRecruiters Applications are compiled or interpreted, and Customer acknowledges that nothing in this Agreement will be construed to grant the Customer any right to obtain or use such code; (v) access the SmartRecruiters Applications to build or create a derivative, competitive, or similar product or service, or copy any ideas, features, functions or graphics of the SmartRecruiters Applications; (w) introduce software or automated agents or scripts to the SmartRecruiters Applications so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the SmartRecruiters Applications, (x) store any illegal content or content which violates applicable law, or material rights of third parties in the SmartRecruiters Applications, (y) attempt to access SmartRecruiters Applications by any means other than through the interface that is provided by SmartRecruiters, (z) intentionally engage in any activity that interferes with or disrupts the SmartRecruiters Applications or Services or infringes on SmartRecruiters’ and/or its third-party vendors’ brand or intellectual property rights.

Customer will use the SmartRecruiters Applications and all Candidate Content in conformance with all applicable laws.

**2.4.2. Unauthorized Use.** Customer shall ensure each username and password issued to an Authorized User will be used only by that Authorized User. Customer is responsible for making commercially reasonable efforts to maintain the confidentiality of all Authorized Users' usernames and passwords. Customer shall notify SmartRecruiters promptly of any actual or suspected unauthorized use of Customer's account, usernames or passwords. SmartRecruiters reserves the right to terminate any username and password which SmartRecruiters reasonably determines may have been used by an unauthorized third-party or for an unlawful purpose. SmartRecruiters shall notify Customer of any actual or suspected unauthorized use of Customer's account, usernames, or passwords.

**2.4.3. Purpose Restrictions.** Customer agrees not to use, or encourage or permit others to use, the SmartRecruiters Applications to: (s) stalk and/or harass someone; (t) harm minors in any way; (u) impersonate any person or entity, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity; (v) forge headers or otherwise manipulate identifiers to disguise the origin of any Content posted on or transmitted through the SmartRecruiters Applications; (w) use the SmartRecruiters Applications or Content such that it will mislead a third party into believing that he or she is interacting directly with SmartRecruiters; (x) engage in any chain letters contests, junk email, pyramid schemes, spamming (unsolicited bulk emails), or other duplicative or unsolicited messages (commercial or otherwise); (y) harvest, collect, gather or assemble information or data regarding data subjects without their consent or a legitimate basis, as the case may be; or (z) market any goods or services for any business purposes (including advertising and making offers to buy or sell goods or services), unless specifically allowed to do so by SmartRecruiters.

### 3. Fees, Invoicing, and Payment.

**3.1. Fees; Payment.** Customer shall pay SmartRecruiters all fees set forth in the Agreement in full without any reduction for any offset, withholding, or other claims (except with respect to charges then under reasonable and good faith dispute as evidenced in a writing promptly sent by Customer to SmartRecruiters prior to the payment due date). Until paid in full, all past due fees not subject to a good faith dispute will bear an additional charge of the lesser of eight tenths of one percent (0.8%) per month or the maximum amount permitted under applicable law. The first invoice shall be issued on the Start Date. Except for a termination of the Agreement due to SmartRecruiters' material breach, or a termination in accordance with Section 13.1, all fees are non-refundable once paid to SmartRecruiters. Fees cannot be decreased during the Term.

**3.2. Employee Increases.** For SmartRecruiters' products based on Customer's Employee count, if the number of persons Customer hires and compensates for their work, including contractors if Customer is using SmartRecruiters Applications to recruit and hire contractors (each, an "**Employee**"), exceeds the amount specified in the Order Form, Customer is responsible for notifying SmartRecruiters on or about each anniversary of the Effective Date and paying any additional Subscription fees going forward (Customer is not required to pay any such fees retroactively) accordingly. SmartRecruiters shall invoice for any increase in the original number of Employees specified in the Order Form(s) upon the next annual period. If Customer acquires another company who begins using SmartRecruiters Applications, Customer must promptly notify SmartRecruiters and pay any additional fees in accordance with the agreed upon rates.

**3.3. Taxes.** All fees stated in or in relation to this Agreement are exclusive of any applicable value added taxes, use, sales, and other taxes imposed by all local, state, federal or foreign authorities, which are added to the fees and paid by Customer, except for taxes on SmartRecruiters' income, employees, or similar taxes.

### 4. Term; Termination.

**4.1. Term.** This Agreement starts on the Effective Date and remains in effect for the initial term ("**Initial Term**") as set forth in the Order Form. Any renewal(s) of the Initial Term shall be in accordance with the terms set forth in an Order Form (each, a "**Renewal Term**"). "**Term**" means the Initial Term and each Renewal Term.

**4.2. Termination.** Either Party may terminate this Agreement immediately upon written notice if the other Party materially breaches the Agreement and fails to cure such breach within thirty (30) days after receiving written notice of such breach. Where payment of undisputed fees is late for more than sixty (60) days after the due date of the undisputed invoice, SmartRecruiters reserves the right to suspend the Services and/or to terminate this Agreement by giving Customer seven days' prior written notice (email being sufficient).

**4.3. Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (i) SmartRecruiters will terminate Customer's access to the SmartRecruiters Applications and will cease providing any Services, and (ii) all fees owed by Customer will become immediately due and payable unless such termination is: (y) due to a material breach of the Agreement by SmartRecruiters, or (z) in accordance with section 13.1, in which case SmartRecruiters shall promptly refund to Customer all prepaid unearned Subscription fees.

**4.4. Data Return.** For 30 days after termination or expiration of this Agreement, SmartRecruiters will free of charge, provide access to Customer's public API, so that Customer can retrieve its data, including, without limitation, Customer Content and Candidate Content, in a format described on <https://dev.smartrecruiters.com/customer-api/overview/>. After 30 days, Customer agrees that no access to Customer's public API will be granted to Customer any further, and SmartRecruiters will remove Customer's access and delete Customer's data.

## 5. Marketplace; Job Distribution & SmartDistribute; Integrations; SmartJobs.

### 5.1. Marketplace.

**5.1.1. Background.** SmartRecruiters Applications are integrated with third-party software and services solutions that Customer has the option to purchase via SmartRecruiters' marketplace (the "**Marketplace**" and each third-party software products and services provider, a "**Marketplace Vendor**"). For the Marketplace, SmartRecruiters is merely an intermediary, similar to an app-store.

**5.1.2. Marketplace.** Because products are provided by Marketplace Vendors, not SmartRecruiters, and such relationship is independent of SmartRecruiters and Customer: (r) Marketplace Vendors are not SmartRecruiters' agent, subcontractor, or sub-processor, (s) SmartRecruiters makes no representations or warranties regarding Marketplace Vendor products, (t) when Customer purchases Marketplace Vendor products through the Marketplace, a Marketplace Vendor's terms and conditions, including their data protection terms, and not this agreement, apply to Customer and govern Customer's use of Marketplace Vendor products. Accordingly, Customer is urged to review any Marketplace Vendor products' terms and conditions before purchasing or otherwise accessing any Marketplace Vendor products, (u) SmartRecruiters is not responsible for the content and the operation of any Marketplace Vendor products, (v) SmartRecruiters has no liability whatsoever to Customer related to Marketplace Vendor products provided SmartRecruiters did not breach this Agreement related to the Marketplace, (w) any exchange of data between Customer and any Marketplace Vendor (including job boards and aggregators) is solely between Customer and the Marketplace Vendor and SmartRecruiters is not responsible for any disclosure, modification or deletion of Customer's data resulting from access by a Marketplace Vendor, (x) if a Marketplace Vendor ceases to provide, or makes changes to, their product, including the products' interoperation with SmartRecruiters Applications, Customer is not entitled to any refund, credit, or other compensation (except for a refund of Marketplace Vendor products purchased where Customer has pre-bought Marketplace Vendor products that are no longer available), (y) any prepaid but unused Marketplace Vendor products purchased on the SmartRecruiters Application may expire 1-year from the date of purchase of the Marketplace Vendor products unless otherwise agreed between the Marketplace Vendor and Customer, and (z) upon Customer's written request, SmartRecruiters may act on Customer's behalf to procure Marketplace Vendor products.

**5.2. SmartDistribute.** As set forth in the Order Form, Customer may elect to subscribe to SmartRecruiters' "advanced job distribution" services to (i) manage job postings online, and (ii) distribute jobs to third party job boards and aggregators supported by SmartRecruiters (<https://marketplace.smartrecruiters.com/category/job-boards/>). In either case, SmartRecruiters will not be liable to the extent any resulting issue is outside SmartRecruiters' reasonable control or may be able to remove supported job boards if the third-party job board or aggregator ceases to provide these job distribution services.

**5.3. Purchased Integrations.** If a Purchase Document includes integrations to third-party services, SmartRecruiters shall make all reasonable efforts to ensure successful integrations. However, because an integration to any third-party software is dependent upon the technical setup of third-party systems, which are not under SmartRecruiters' control, SmartRecruiters is not liable for any failures relating to the integration.

#### **5.4. SmartJobs Product.**

**5.4.1. Applicability.** This section is only applicable to Customer if both Customer and SmartRecruiters both sign an Order Form containing SmartRecruiters' SmartJobs product and without such Order Form, this section shall have no force or effect between SmartRecruiters and Customer.

**5.4.2. Description.** SmartJobs is for purchasing, modifying, and removing job advertisements to make the best use of Customer's ad budget and to maximize candidate quality.

**5.4.3. Billing.** Notwithstanding anything else in the Agreement to the contrary, because SmartRecruiters is advancing Customer's payments to third-party job boards, payment for SmartJobs related fees is due within 30 days of the date of the invoice containing SmartJobs fees.

**5.4.4. Customer Obligations.** For SmartRecruiters to provide SmartJobs, Customer must (i) provide SmartRecruiters access to Customer's job board accounts, (ii) load and publish all of Customer's jobs to SmartRecruiters Technology, (iii) provide SmartRecruiters with information on the positions Customer wishes to fill, (iv) provide feedback to SmartRecruiters regarding candidate quality so SmartRecruiters can make adjustments, (v) promptly inform SmartRecruiters if Customer desires SmartRecruiters stop or begin, as the case may be, advertising for jobs, or switch advertising between job boards. SmartRecruiters shall comply with Customer's request once per business day.

**5.4.5. Reporting.** SmartRecruiters shall provide Customer monthly reports regarding Customer's SmartJobs use.

**5.4.6. Boosting Spend.** Customer may request SmartRecruiters allocate additional dollars from Customer's budget beyond the initial committed sum, e.g., on a particular job or set of jobs, upon receipt of a signed Order Form by Customer.

**5.4.7. DISCLAIMERS.** FOR THE SMARTJOBS PRODUCT, SMARTRECRUITERS CANNOT GUARANTEE (1) THAT ANY APPLICANTS WILL MEET ANY SPECIFIC STANDARDS OR JOB CRITERIA, (2) ANY PARTICULAR VOLUME OF CANDIDATES, OR (3) ANY PARTICULAR VOLUME OF HIRES. SMARTRECRUITERS ABILITY TO MANAGE ADVERTISING IS DEPENDENT ON THIRD PARTY JOB BOARDS, PROGRAMMATIC ADVERTISING NETWORKS, PUBLISHERS, AND OTHER THIRD PARTIES FROM WHOM SMARTRECRUITERS ACQUIRES TRAFFIC. ACCORDINGLY, SMARTRECRUITERS CANNOT GUARANTEE THE RESPONSE TIME OR QUALITY OF SERVICE DELIVERED BY THESE THIRD PARTIES. SMARTRECRUITERS IS NOT LIABLE FOR ANY POOR APPLICANT CONVERSION THAT RESULTS FROM A LACK OF CANDIDATE FOLLOW-UP BY CUSTOMER.

## **6. Customer Content.**

**6.1. Customer License Grant.** For the Term of the Agreement, Customer grants SmartRecruiters a limited, non-exclusive, worldwide, royalty-free and fully paid license to: (a) use, reformat, display, and modify the Customer Content solely for the purpose of, and to the extent necessary, to perform the Agreement for Customer (including, where applicable, sharing and providing Customer Content with candidates & employees); and (b) use Customer's trademarks, service marks, and logos to perform the Agreement for Customer (e.g. to post jobs that include Customer's logo). Unless otherwise agreed by the Parties, SmartRecruiters may not use Customer's trademarks, service marks, and logos for any other purpose. All rights in and to the Customer Content not expressly granted to SmartRecruiters in this Agreement are reserved by Customer. As between the Parties, Customer retains all right, title and interest in and to the Customer Content and SmartRecruiters acknowledges that it neither owns nor acquires any additional rights in and to Customer Content not expressly granted by this Agreement.

**6.2. SmartAssistant (AI License Grant).** SmartRecruiters uses certain elements of Customer Content to provide SmartRecruiters' SmartAssistant artificial intelligence tool, and to enhance Customer's use of SmartAssistant. For these sole purposes, Customer grants to SmartRecruiters and its affiliates a royalty-free, worldwide, and irrevocable license to use Customer Content on an aggregated and non-descriptive basis provided that SmartRecruiters removes any and all information that is specific to, or could identify, Customer or an individual data subject, including any personally identifiable information. The automated

capabilities are used to facilitate the recruitment process. All hiring decisions are ultimately at Customer's discretion.

**6.3. Customer Content Responsibility.** Customer shall be responsible for, and assumes the risk, responsibility and expense of: (i) any problems resulting from the accuracy, quality, integrity, legality, reliability, and appropriateness of all such Customer Content; (ii) acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for it and its Authorized Users to connect to, access, and use the SmartRecruiters Applications and Services; and (iii) SmartRecruiters being compelled to be a witness in any proceeding to which SmartRecruiters is not a party or if SmartRecruiters receives a subpoena with respect to any proceeding to which SmartRecruiters is not a party that are in any way related to Customer's use of the SmartRecruiters Applications or Services.

## 7. Representations and Warranties.

**7.1. SmartRecruiters Warranties.** SmartRecruiters represents and warrants that it (i) has all rights to provide Customer a Subscription to the SmartRecruiters Applications and it has and will maintain all necessary third-party licenses necessary for the performance of the Agreement, (ii) during the Term of this Agreement, it will: (a) provide the SmartRecruiters Applications and Services in accordance with the Agreement; and (b) implement and maintain backup, security and business continuity measures, in accordance with industry practices, and (iii) will perform the Services in a good, workmanlike, and professional manner. Customer's remedy for a breach of the warranty in section 7.1(iii) shall be re-performance of the relevant Services free of charge.

**7.2. WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SMARTRECRUITERS APPLICATIONS AND SERVICES ARE PROVIDED "AS IS," AND SMARTRECRUITERS MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SMARTRECRUITERS APPLICATIONS AND SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY SMARTRECRUITERS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SMARTRECRUITERS DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, THAT OPERATION OF THE SMARTRECRUITERS APPLICATIONS OR SERVICES SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SMARTRECRUITERS APPLICATIONS AND SERVICES WILL MEET CUSTOMER'S PARTICULAR REQUIREMENTS OR EXPECTATIONS.

## 8. Confidentiality.

**8.1. Definition; Use. "Confidential Information"** means any non-public or proprietary information or material relating to a Party, whether orally, in writing disclosed to the receiving Party, in electronic, tape, disk, or any other physical or visual form, by or on behalf of the disclosing Party, that is marked or designated as confidential or might reasonably be considered as confidential, including without limitation, all know-how, trade secrets, scientific, technical, statistical, strategic, financial or commercial information. Each Party agrees to: (a) use the Confidential Information of the other Party only for the purposes described and as permitted herein; and (b) restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement.

**8.2. Exceptions.** The foregoing provision will not apply to Confidential Information that (a) is publicly available or in the public domain when disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations before disclosure; (e) is independently developed by the recipient; (f) is approved for release or disclosure by the disclosing party in writing without restriction; (g) is disclosed pursuant to the order requirement of a court, administrative agency, or other governmental body, provided the receiving party provides reasonable

advance notice to enable the disclosing party to a protective order, or (h) to establish a Party's rights under this Agreement.

## 9. Individual Accounts.

Any individual has the option to set up a personal account in SmartRecruiters' software. With this personal account, an individual is able to coordinate different application profiles and application processes for multiple companies. The collection and processing personal data for an individual's personal account is not done by SmartRecruiters for Customer. Instead, it is done solely for the individual by SmartRecruiters. Therefore, the relationship between an individual with an individual account and SmartRecruiters is not governed by this Agreement.

## 10. Anti-Bribery.

Neither Party shall receive or offer any bribes, gifts, or things of value in connection with this Agreement. Each Party hereby undertakes that, at the Effective Date, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control from doing the foregoing.

## 11. Open-Source Software.

The SmartRecruiters Applications include certain free and/or open-source software components ("**Open-Source Software**"). The Open-Source Software is governed by the respective/relevant Open-Source Software terms. The license terms of the Open-Source Software that are included in SmartRecruiters Applications, and the relevant categories and components, are available at: <https://www.smartrecruiters.com/terms-and-conditions/FOSS-2/>. SmartRecruiters shall not use Open-Source Software in any way that imposes obligations on Customer other than as stated in this Agreement. SmartRecruiters shall comply with all Open-Source Software terms and conditions.

## 12. Limitation of Liability.

TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL, PUNITIVE, EXEMPLARY CONSEQUENTIAL DAMAGES, LIABILITY (INCLUDING REASONABLE ATTORNEY'S FEES) RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. IN ANY EVENT, EXCEPT FOR AMOUNTS OWED TO SMARTRECRUITERS BY CUSTOMER AS SET FORTH IN THE AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY UNDER OR IN RELATION TO THIS AGREEMENT SHALL BE LIMITED TO THE FEES PAID BY CUSTOMER UNDER THIS AGREEMENT FOR THE THEN-CURRENT SUBSCRIPTION YEAR, REGARDLESS OF WHETHER SUCH LIABILITY ARISES FROM A MATERIAL BREACH OF CONTRACT, TORT, BREACH OF STATUTORY DUTY, OR OTHERWISE. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL NOT APPLY TO ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE, ANY LIABILITY ARISING FROM FRAUD OR WILLFUL MISCONDUCT, ANY LIABILITIES THAT MAY NOT BE EXCLUDED UNDER APPLICABLE LAW, OR SMARTRECRUITERS' INTELLECTUAL PROPERTY INDEMNIFICATION.

## 13. Indemnification.

**13.1. SmartRecruiters Indemnification.** SmartRecruiters shall defend, indemnify, and hold harmless Customer from and

against any and all claims, suits, proceedings, losses, damages, liabilities, costs, and expenses (including, without limitation, reasonably attorney's fees) arising out of any claims, demands, suits, or proceedings brought by a third party alleging the SmartRecruiters Applications infringe upon any patent, copyright, or trademark, or misappropriates any trade secret or other intellectual property rights of any third party. If any portion of the SmartRecruiters Applications becomes, or in SmartRecruiters' opinion is likely to become, the subject of a claim of infringement, SmartRecruiters may, at SmartRecruiters' option: (a) procure for Customer the right to continue using the SmartRecruiters Applications; (b) replace the SmartRecruiters Applications with a non-infringing solution which does not materially impair the functionality of the SmartRecruiters Applications; (c) modify the SmartRecruiters Applications so that it becomes non-infringing; or (d) if none of the foregoing options are commercially practicable, then SmartRecruiters may terminate the Agreement and shall refund any fees paid by Customer to SmartRecruiters for the remainder of the Term then in effect, and upon such termination, Customer will immediately cease all use of the SmartRecruiters Applications. This Section 13.1 states the entire liability and obligation of SmartRecruiters, and Customer's exclusive remedy, regarding any intellectual property infringement relating to SmartRecruiters Applications.

**13.2. Exclusions; Customer Indemnity.** Notwithstanding section 13.1, SmartRecruiters shall have no obligation under this section or otherwise with respect to any infringement claim based upon: (i) any use of the SmartRecruiters Applications not in accordance with this Agreement, (ii) Customer Content, (iii) the negligence or willful misconduct of Customer, (iv) any third party application provided or utilized by Customer in combination with the SmartRecruiters Applications not sold by SmartRecruiters, or (v) any dispute or issue between Customer and any third-party, except those claims covered by Section 13.1 (collectively, the "**Customer Indemnity Obligations**"). Customer will indemnify (including without limitation payment of any settlement amount, damages, or judgment), defend and hold SmartRecruiters, including its officers, directors, employees, consultants, affiliates, subsidiaries and agents harmless from and against every claim, liability, damage, loss, and expense, including reasonable attorneys' fees and costs, arising out of or in any way connected with the Customer Indemnity Obligations, provided that such dispute or issue does not arise as a result of SmartRecruiters' breach of the Agreement.

**13.3. Indemnitee Obligations.** The indemnifying party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified party shall promptly notifying the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party having sole control of the defense or settlement of any claim or suit; (c) the indemnified party cooperating with the indemnifying party to facilitate the settlement or defense of any claim or suit; (d) the indemnified party not making any admissions of liability or compromise in relation to the claim without the Indemnifying party's prior consent (such consent not to be unreasonably withheld; and (e) the indemnified party using reasonable endeavors to mitigate its and the indemnifying party losses, liability, costs and expenses in respect of the claim.

## 14. Miscellaneous.

**14.1. Survival.** Any sections related to proprietary rights, payment of fees, confidentiality and non-disclosure, indemnification, and limitation of liability shall survive any termination or expiration of this Agreement.

**14.2. Electronic Signature; Facsimile; Email Transmission; Counterparts.** The Agreement (including an Order Form or SOW) may be executed and delivered by electronic signature, facsimile or email and each full reproduction, including reproductions by photocopy or scan, shall be deemed an original. Receipt of any such reproduction or facsimile or email transmission shall be deemed delivery of an original.

**14.3. Assignment.** The Agreement shall be binding upon the Parties' respective successors and permitted assigns. Neither party shall assign the Agreement, and/or any of its rights and obligations hereunder, without the prior written consent of the other party, which consent shall not be unreasonably withheld. Notwithstanding the above, either party may assign or transfer the Agreement upon a change of control or pursuant to a sale of all or substantially all the stock or assets of the assigning party.

**14.4. Entire Agreement; Priority.** This Agreement, including any Order Form(s) and Statements of Work, and the documents referred to therein, constitutes the entire agreement between Customer and SmartRecruiters and governs Customer's use of the SmartRecruiters Applications and Services, and as of the Effective Date supersedes all prior and written agreements, arrangements,



communications and representations. Any term or condition specified in a Customer's purchase order and/or any Customer's terms and conditions are void and not applicable to the Agreement. If there is any inconsistency among the terms and conditions of the Agreement and a Purchase Document, the terms of the Purchase Document shall control.

**14.5. Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

**14.6. Governing Law.** This Agreement will be governed by the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.

**14.7. Waiver.** The waiver by either party of a breach of any provision of the Agreement will not operate or be interpreted as a waiver of any other or subsequent breach.

**14.8. Force Majeure.** Except for payment obligations, neither party will be liable to the other for any failure to meet its obligations under the Agreement where such failure is caused by events beyond its reasonable control such as failure of communications networks, inability to timely obtain instructions or information from the other party, governmental action, fire, storms, floods or other acts of God, provided that the party seeking to rely on such circumstances gives written notice of such circumstances to the other party hereto and uses reasonable efforts to overcome such circumstances.

**14.9. Amendments.** Any modification or variation of this Agreement shall not be effective unless it is in writing, refers specifically to this Agreement, and is duly executed by each of the Parties.

**14.10. Publicity.** Given the public nature of the relationship between the Parties, either party may include the name and logo of the other party in lists of customers and vendors, regardless of format or media.

**14.11. Government Purchasers.** Unless Customer is a part of the Federal Government of the United States, this clause does not apply. Each of the components that constitute the SmartRecruiters Applications is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end Authorized Users acquire the SmartRecruiters Applications with only those rights set forth herein.

**14.12. Independent Contractors.** Each Party's relationship to the other Party is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have, nor represent to any third party that it has, any authority to act on behalf of the other Party.

**14.13. Notices.** Notices will be only validly served pursuant to this Agreement where the notice has been sent by tracked delivery and/or by email where receipt of the notice is acknowledged in writing by the other Party. Any notice provided to Customer pursuant to this Agreement shall be sent to Customer's address mentioned in the Order Form. Any notice provided to SmartRecruiters pursuant to this Agreement shall be sent to SmartRecruiters, Inc., 225 Bush Street, Suite #300, San Francisco, CA 94104, Attn: Chief Executive Officer, copy: Head of Legal at [legal@smartrecruiters.com](mailto:legal@smartrecruiters.com).

**14.14. Governing Law Other Than a U.S. State.**

**14.14.1. French Law.** If French law governs this Agreement, then notwithstanding the provisions of the Article 1222 of the "Code Civil", the affected Party will not have the right to order the execution of the obligations by a third party at the expense of the defaulting Party, and neither Party intending to make the contractual relationship subject to a cooling-off period. This subsection 14.14.1 only has force or effect between the Parties if French law governs the Agreement, otherwise it shall have no force or effect.

**14.14.2. German Law.** If German law governs this Agreement, SmartRecruiters shall only be liable in the event of a breach of a material contractual obligation, the fulfilment of which is a prerequisite for the proper performance of the Agreement and on the observance of which the Customer could rely (Kardinalspflicht), but only to the extent of the typical, foreseeable damage. Unless otherwise agreed in individual cases, SmartRecruiters shall provide all Professional Services under this Agreement as services within the meaning of section 611 of the German Civil Code ("**BGB**"). Either Party may terminate this Agreement in writing with immediate effect for good cause in accordance with section 314 BGB. If the important reason is



the breach of an obligation under the Agreement, the termination is only permissible if the other party has not remedied the important reason within 30 (thirty) days of the written notice or has not commenced reasonable efforts to remedy the important reason acceptable to the terminating party. § 314 para. 2 sentences 2, 3 of the German Civil Code remain unaffected. This subsection 14.14.2 only has force or effect between the Parties if German law governs the Agreement, otherwise it shall have no force or effect.