



# Master Subscription Agreement

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**Last modified on April 24th, 2020**

This Master Subscription Agreement (“**MSA**”) between SmartRecruiters and Customer (each, a “**Party**,” and collectively, the “**Parties**”) identified on the applicable Order Form sets out the terms and conditions applicable to Customer’s use of the Services (as hereinafter defined) provided by SmartRecruiters. 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

“**Agreement**” means any Order Form(s), the Data Processing Agreement, this Master Subscription Agreement, the SLA, the Description, and any Schedules or other documents attached to or referred to in this Agreement;

“**Candidate Content**” means any Content provided by a candidate to Customer that is uploaded to the Services by the Candidate;

“**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;

“**Content**” means any and all content, information, data, images, photos, video, sound, notes, and works of authorship, articles, or other materials;

“**Customer**” means the customer set out in the Order Form;

“**Customer Content**” means any Content provided, imported or uploaded to the Services by Customer or Users or on Customer’s behalf;

“**Data Processing Agreement**” means this [DPA](#) which is incorporated herein by reference, or if attached to the Agreement, the version attached to the Agreement instead;

“**Description**” means the description of the core SmartRecruiters Technology, add-ons, and features subscribed to on the Effective Date and attached to the Order Form;

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

“**Feedback**” means all comments and suggestions, whether written or oral, furnished by Customer or its Users to SmartRecruiters in connection with the Services;

“**Fees**” means the Subscription Fees, the Professional Services Fees and any other fees set out in an Order Form, Statement of Work, or other document signed by both Parties;

“**Force Majeure**” means an event, or a series of related events, that is outside the reasonable control of the Party affected including failures of the internet or any public telecommunications network, virus or other malicious

software attacks, disasters, explosions, fires, floods, riots, terrorist attacks and wars;

“**Individual**” means any individual, candidate, employee or referrer, who leverages their own data to assist in the sourcing of candidates or applies or is sourced as a potential applicant to jobs or companies hosted on the SmartRecruiters Technology;

“**Intellectual Property Rights**” or “**IPR**” means all intellectual property rights wherever in the world, whether registered or not registered, including: (a) all patent and patent applications; (b) trademarks, business names and logos (registered or not registered); (c) trade secrets; (d) copyrights; (e) proprietary and confidential information, ideas, inventions, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents; and (f) all other similar proprietary and confidential rights;

“**Order Form**” means the document evidencing Customer’s subscription purchase, and any additional orders signed by the Parties;

“**Personal Data**” means any Content or information related to an identified or identifiable Individual;

“**Professional Services**” means the professional services as set out in an Order Form or Statement of Work (as hereinafter defined);

“**Professional Services Fees**” means the fees for the Professional Services as set out in an Order Form or Statement of Work (as hereinafter defined);

“**Services**” means the Subscription Services, the Professional Services and any further Services mentioned in an Order Form or Statement of Work;

“**Service Level Agreement**” or “**SLA**” means the Service Level Agreement, available at <https://www.smartrecruiters.com/sla/>, which is incorporated 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.

“**SmartRecruiters**” means the SmartRecruiters company mentioned in the Order Form;

“**SmartRecruiters Content**” means any content, data, or recommendations that are provided by SmartRecruiters to Customer;

“**SmartRecruiters Technology**” means the website located [www.smartrecruiters.com](http://www.smartrecruiters.com) and any other URLs owned or operated by SmartRecruiters, the talent acquisition platform described in the Description, the Services and all Intellectual Property Rights in the Services, the SmartRecruiters Content and any of SmartRecruiters’ proprietary

technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, technologies, designs and other tangible or intangible technical material or information made available to Customer by SmartRecruiters in providing the Services;

“**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 Fees**” means the fees for the Subscription Services as set out in the Order Form(s);

“**Subscription Services**” means the usage (i.e. access, hosting, maintenance and support) of the core SmartRecruiters Technology and the add-on modules subscribed at the Effective Date;

“**Term**” means the Initial Term (as hereinafter defined) and any Renewal Terms (as hereinafter defined).

“**Third-party Add-on Services**” means the third-party add-on services described in Section 5 hereunder;

“**Travel Fees**” means all reasonable travel, accommodation and out-of-pocket expenses incurred in connection with the performance of the obligations under this Agreement. Travel Fees include any non-refundable travel fees payable to third parties by SmartRecruiters resulting from a cancellation or change requested by Customer; and

“**Users**” means Customer’s employees, contractors, consultants and representatives who are authorized by Customer to utilize the Services and who are provided with access to the Services by virtue of a password or the equivalent thereof. Users shall not be SmartRecruiters competitors.

## 2. Provision of the Services by SmartRecruiters; Use Conditions

- 2.1. Access; License.** Subject to the terms and conditions of this Agreement, SmartRecruiters shall provide Customer access to the Subscription Services via a subscription as specified in an Order Form signed by the Parties via the Internet for the Term. SmartRecruiters grants Customer a worldwide, non-exclusive, non-transferable right to access the Services to do the following solely for the internal purposes of locating and hiring potential employees for Customer: (i) access the features and functions of the Services subscribed to in an Order Form; and (ii) view, download, reproduce, and print job & Candidate Content made available to Customer through the Services.
- 2.2. Proprietary Rights.** This Agreement is a subscription agreement to SmartRecruiters’ Services. It is not a sale, or assignment and transfer, of any software or any other work product created by SmartRecruiters as



part of Professional Services and nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from one Party to another. SmartRecruiters Technology is the exclusive property of SmartRecruiters or its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Services or the SmartRecruiters Technology, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the SmartRecruiters Technology. All rights not expressly granted to Customer, are reserved to SmartRecruiters. Because this is a subscription agreement, ownership of all work product, developments, inventions, technology or materials provided by SmartRecruiters under this Agreement will be solely owned by SmartRecruiters. Any know-how such as procedures, methodologies, processes used for the performance of the Services shall be, and remains, the sole ownership of SmartRecruiters.

**2.3. Feedback.** SmartRecruiters, in its sole discretion, may utilize the Feedback furnished by either Customer or the Users to SmartRecruiters in connection with the Services provided SmartRecruiters does not reference 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.

**2.4. Patentable Inventions.** For any inventions or others made within the frame of this Agreement and linked to SmartRecruiters' Technology and/or Services which are patentable, or which can be registered otherwise, only SmartRecruiters shall be entitled to undertake the respective registrations in its own name.

**2.5. Use Guidelines.** Customer shall use reasonable efforts to make all Users aware of the provisions of this Section 2. SmartRecruiters may suspend access for any User who violates this Agreement, provided that such violation is not cured in accordance with Section 4.2.

**2.5.1. Restrictions.** Customer agrees Customer will not:

- Permit any third party to access and/or use the Services, other than the Users authorized under the Agreement or except for application programming interface access granted by a third party;
- Rent, lease, loan, or sell access to the Services to any third party;
- Interfere with, disrupt, alter, translate, or modify the Services or any part thereof, or create an undue burden on the Services or the networks or services connected to the Services;
- Reverse engineer, decompile, disassemble or otherwise attempt to obtain or perceive the source code from which any software component of the Services 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;
- Access the Services to build or create a derivative, competitive, or similar product or service, or copy any ideas, features, functions or graphics of the Services;
- Introduce software or automated agents or scripts to the Services so as to produce multiple

accounts, generate automated searches, requests and queries, or to strip or mine data from the Services,

- Store any illegal content or content which violates applicable law, or material rights of third parties in the Services,
- Attempt to access any of the Services by any means other than through the interface that is provided by SmartRecruiters
- Engage in any activity that interferes with or disrupts the Services or infringes on SmartRecruiters' and/or its third-party vendors' brand or Intellectual Property Rights. Customer will use the Services and all Candidate Content in conformance with all applicable laws.

**2.5.2. Unauthorized Use.** Customer shall ensure that each username and password issued to a User will be used only by that User. Customer is responsible for making commercially reasonable efforts to maintain the confidentiality of all 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.

**2.5.3. Purpose Restrictions.** Customer agrees not to use, or encourage or permit others to use, the Services to: (a) stalk and/or harass someone; (b) harm minors in any way; (c) impersonate any person or entity, or falsely state or otherwise misrepresent Customer's affiliation with a person or entity; (d) forge headers or otherwise manipulate identifiers to disguise the origin of any Content posted on or transmitted through the Services; (e) use the Services or Content such that it will mislead a third party into believing that he or she is interacting directly with SmartRecruiters or the Services; (f) engage in any chain letters contests, junk email, pyramid schemes, spamming, surveys or other duplicative or unsolicited messages (commercial or otherwise); (g) harvest, collect, gather or assemble information or data regarding other users without their consent; or (h) 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.

**2.5.4. Virus Scanning.** Customer shall scan Customer Content (e.g. resumes uploaded by Customer to the Services) and other content for viruses and other harmful components before storing them on the server using standard virus protection programs.

### 3. Fees, Invoicing, and Payment

- 3.1. **Fees; Payment.** Customer shall pay SmartRecruiters all Fees set forth in the Agreement. Unless otherwise specified in an Order Form, Subscription Fees shall be invoiced annually in advance at each anniversary date. The first invoice shall be issued on the Start Date. All Fees shall be paid within thirty (30) days from the date of the invoice. Except as expressly set forth herein, all Fees are non-refundable once paid to SmartRecruiters (including upon any termination or suspension of this Agreement).
- 3.2. **Late Payments; Collections.** 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. Customer is responsible for all of SmartRecruiters' reasonable expenses if SmartRecruiters uses collection agencies, attorneys, or courts of law to obtain payment from Customer. Subscription Fees cannot be decreased during the Term.
- 3.3. **Professional Services Fees.** Professional Services Fees are provided on either a fixed fee basis or a time and materials basis as set out in an Order Form or Statement of Work.
  - 3.3.1 Professional Services provided on a fixed fee basis in accordance with the package subscribed to in an Order Form shall be invoiced upfront on the Start Date. Once the fixed fee Professional Services Fees defined in the Order Form are consumed, upon written notice to Customer, and subject to Customer's approval, SmartRecruiters will invoice additional Professional Fees on a time and materials basis as defined in the purchased Package.
  - 3.3.2 Professional Services provided on a time and materials basis shall be invoiced monthly in arrears. Professional Services provided on a time and materials basis are based on an estimate and SmartRecruiters cannot guarantee the Professional Services will be completed for that amount. If the estimated Professional Services amount is exceeded, upon written notice to Customer, and subject to Customer's approval, SmartRecruiters shall invoice Customer under the same rates and terms.
- 3.4. **Travel Fees.** Upon prior notice to Customer, Travel Fees shall be invoiced monthly in arrears together with a 5% standard administration fee. On request SmartRecruiters will provide Customer with relevant receipts above \$25. Upon Customer's request, SmartRecruiters can provide its travel policy
- 3.5. **FTE Increases.** Customer must ensure that a valid Order Form properly covers its use of the Services at all times. If the number of Customer's full-time equivalent employees (each, an "FTE") exceeds the amount specified in the Order Form, Customer is responsible for promptly upgrading Customer's subscription and paying any additional Subscription Fees accordingly. SmartRecruiters monitors the number of Customer's FTEs using publicly available information and shall invoice for any increase in the original number of FTEs specified in the Order Form(s) upon the next annual period.

- 3.6. **Credit Card.** If Customer has specified a credit card or direct withdrawal from a bank account as an applicable payment mechanism under this Agreement, Customer authorizes SmartRecruiters to charge the credit card or debit the bank account provided to SmartRecruiters for all undisputed Fees incurred under this Agreement.
- 3.7. **Renewal Fee Increases.** At each renewal term SmartRecruiters may increase any portion of the Fees, provided that such increase does not exceed seven percent (7%) of the Fees paid for the comparable period during the immediately preceding term. Furthermore, if the number of Customer's FTEs exceeds the amount specified in the Order Form, SmartRecruiters shall increase the Fees to reflect the additional number of Customer's FTEs, and the per-unit pricing mentioned in the Order Form shall be increased by the same above-mentioned percentage (i.e. seven (7) % maximum).
- 3.8. **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 and 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 and as long as an Order Form is in effect under this Agreement. Except as otherwise specified in the Order Form, the Agreement will automatically renew for additional periods equal to the expiring term (each, a "**Renewal Term**"), unless either Party gives the other notice of nonrenewal at least thirty (30) days before the end of the relevant 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 material breach within thirty (30) days after receiving written notice thereof. 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 (7) days' prior written notice (email being sufficient). Each Party may also terminate this Agreement if the other Party becomes the subject of a voluntary petition in bankruptcy, any voluntary proceeding relating to insolvency or liquidation or any other proceeding relating to insolvency or liquidation.
- 4.3. **Effect of Termination.** Upon termination or expiration of this Agreement for any reason: (a) all rights and subscriptions granted to Customer under this Agreement will terminate; (b) Customer will immediately cease all use of, and lose access to the Services; (c) all Fees owed by Customer will become immediately due and payable; (d) SmartRecruiters may delete any of Customer's content held by SmartRecruiters within thirty (30) days after the date of termination, and (e) if such termination is due to breach of the Agreement by SmartRecruiters, then SmartRecruiters shall promptly refund to Customer all prepaid unearned

Subscription Fees.

- 4.4. Data Return.** Upon written request by Customer within 30 days from effective date of termination or expiration of this Agreement, SmartRecruiters will leave - with no charge - 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/>. Upon expiration of the 30-day period mentioned above in this section, Customer agrees and acknowledges that no access to Customer's public API will be granted to Customer any further, and SmartRecruiters shall remove Customer's access and delete its data. Customer agrees and acknowledges that SmartRecruiters will delete all Customer and Candidate Content at any time on or after the thirty-first (31st) day following termination or expiration of this Agreement.
- 4.5. Suspension.** If reasonably necessary to protect the Candidate Content and/or Customer Content if there is a threat to the Services' Security, SmartRecruiters has the right, in addition to any of its other rights or remedies, to immediately suspend Customer's or any User's access to the Services without liability to Customer until such breach is cured, as applicable. If there is a suspension for the purpose of protecting Candidate Content or Customer Content from unauthorized third-party access, SmartRecruiters shall provide notification in advance to Customer, and upon mutual agreement with Customer, SmartRecruiters may suspend the Services. SmartRecruiters will commit to re-activate the Services as quickly as possible assuming the access issues are resolved. Notwithstanding the foregoing, any suspension is subject to the SLA.

## 5. Integrations; Third-party Add-on Services; Marketplace

- 5.1 Purchased Integrations.** An Order Form may include integrations to third-party services. SmartRecruiters shall make all reasonable efforts to ensure the successful operation of these integrations. However, because an integration to any third-party service is dependent upon the technical setup of third-party systems, which are not under SmartRecruiters' control, SmartRecruiters shall not be liable for any failures relating to the integration resulting from a Customer's or a third-party's acts or omissions.
- 5.2 Marketplace.** The Subscription Services are pre-integrated with a number of Third-party Add-on Services, similar to an app-store, that are optional for Customer to purchase. These Third-party Add-on Services are provided by third party vendors, not SmartRecruiters. Therefore, these third-party vendors are not a SmartRecruiters' subcontractor or sub-processor. When Customer purchases such Third-party Add-on Services through SmartRecruiters Technology, the terms and conditions of those third-party vendors, including the data protection terms apply to Customer. Because the relationship between Customer and a Third-party Add-on Service is independent of Customer and SmartRecruiters, Customer agrees that SmartRecruiters (i) is not responsible for the content and the operation of any Third-party Add-on Services,

and (ii) has no liability whatsoever to Customer. Customer is urged to review any Third-party Add-on Service's terms and conditions before purchasing or otherwise accessing any such Third-party Add-on Services. Such Third-party Add-on Services' terms and conditions, and not this Agreement, will govern Customer's use of such Third-party Add-on Services. SmartRecruiters cannot, and does not take any responsibility for, nor makes any representation or warranty on behalf of, such Third-party Add-on Services vendor.

If a third-party vendor ceases to make their service, any data, or functions therein available for interoperation with the Subscription Services on reasonable terms, SmartRecruiters may cease providing those features without entitling Customer to any refund, credit, or other compensation (except for a refund of third-party services purchased in the situation where Customer has pre-bought Third-party Add-on Services that are no longer available).

Customer acknowledges that any prepaid but unused Third-party Add-on Services purchased on the SmartRecruiters Technology will expire 1-year from the date of purchase of the Third-party Add-on Services. In addition, Customer agrees and acknowledges that the third-party vendor may change or amend its guidelines, or functionality, and/or the Subscription Services' interface at any time, and SmartRecruiters will not be liable to the extent any resulting issue is outside SmartRecruiters' reasonable control. Per Customer's written request, SmartRecruiters may act on Customer's behalf to procure Third-party Add-on services.

- 5.4 Job Distribution; 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.
- 5.5 Exchange of Data.** Any exchange of data between Customer and any Third-party Add-on Services vendor (including job boards and aggregators) is solely between Customer and the Third-party Add-on Services vendor. SmartRecruiters is not responsible for any disclosure, modification or deletion of Customer's data resulting from access by such Third-party Add-on Services vendor.

## 6. Customer Content

- 6.1. Customer License Grant.** Customer grants SmartRecruiters a non-exclusive, worldwide, royalty-free and fully paid license to: (a) use, reformat, display, modify and create derivative works of the Customer Content solely for the purpose of and to the extent necessary to provide the Services hereunder to Customer (including, where applicable, sharing and providing Customer Content with candidates & employees); and (b) use Customer's trademarks, service marks, and logos to provide the Services to Customer and the candidates in accordance with the Agreement (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. SmartRecruiters further acknowledges that Customer retains the right to use the Customer Content for any purpose at Customer's sole discretion.
- 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, sublicensable 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 Customer, including any personally identifiable information. The automated capabilities are used to facilitate the recruitment process; however, any conclusive 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 Users to connect to, access, and use the 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 Services.

## 7. Representations and Warranties

- 7.1. **Mutual Warranties.** Each Party represents and warrants that it (i) has legal rights and authority to enter into this Agreement and to perform the obligations herein, (ii) shall comply with all applicable laws and regulations (including any export laws and regulations and customs regulations) related to this Agreement.
- 7.2. **SmartRecruiters Warranties.** SmartRecruiters represents and warrants that it (i) has all rights to license the Services to Customer and it has and will maintain all necessary third-party licenses necessary for the performance of the Services, and (ii) during the Term of this Agreement, it will: (a) provide the Services substantially in accordance with the Agreement; and (b) implement and maintain backup, security and business continuity measures, in accordance with industry practices.
- 7.3. **Customer Warranties.** Customer represents and warrants that it (i) shall own all right, title and interest in and to all of the necessary Customer content, copyrights, and IPR required for it to comply with its obligations under this Agreement, and (ii) will not use the Services for any purpose that is unlawful, or prohibited by this Agreement.
- 7.4. **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT, AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE 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 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 SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE, OR THAT THE SERVICES WILL MEET CUSTOMER’S PARTICULAR REQUIREMENTS OR EXPECTATIONS.

## 8. Confidentiality

- 8.1. **Use.** 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 at the time 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 with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing party without restriction.

- 8.3. Permitted Disclosures.** Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (a) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (2) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

## 9. Data Protection

- 9.1. Compliance with Law; DPA.** Each Party shall comply with its obligations under applicable Data Protection regulations regarding its activities under this Agreement. To the extent that is requested by the Data Protection legislation, the terms of the DPA shall apply and the Parties agree to comply with the terms.
- 9.2. Processor; Controller.** Customer (as data controller) is responsible for assessing data collection legitimacy, processing, and use for the protection of Individual's rights. To the extent that SmartRecruiters (as data processor) processes Personal Data disclosed by Customer, SmartRecruiters will act only on instructions from Customer regarding processing of that personal data.
- 9.3. Individual Accounts.** Notwithstanding the foregoing, each Individual has the option to set up a personal account. With this personal account, the Individual controls and is able to coordinate different application profiles and application processes for different job offerings of Customer and other companies. The collection, processing, and use of data for creating and using this personal account is not done for Customer. Instead, it is done for the Individual and SmartRecruiters, and is therefore not regulated by this Agreement. Customer agrees Individuals own and control certain Personal Data, and SmartRecruiters' use thereof, and may have certain rights in such Personal Data (as opposed to Customer or SmartRecruiters having such rights), notwithstanding anything to the contrary in 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 Services provided by SmartRecruiters 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’ Services, and the relevant categories and components, are available at: <https://www.smartrecruiters.com/terms-and-conditions/FOSS/>. 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. Liability

- 12.1. DAMAGE EXCLUSIONS.** TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL, PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES, PERSONAL OR PROPERTY DAMAGE 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.
- 12.2. Liability Exclusions.** Nothing in this Agreement will limit or exclude (i) any liability for death or personal injury resulting from negligence, (ii) any liability from fraud or fraudulent misrepresentation, or (iii) any liabilities in any way that is not permitted or may not be excluded under applicable law.
- 12.3. Financial Cap.** 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.
- 12.4. Reasonableness.** The Parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The Parties acknowledge that the Fees have been set and this Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties.

- 12.5. Statute of Limitations.** Any damage claims or claims in reimbursement of expenses regardless of the legal grounds, shall become statute-barred no later than one year (i) after the discovery of the circumstances giving rise to the claim or (ii) from the effective date of the termination or expiration of this Agreement.

## 13. Indemnification

- 13.1. SmartRecruiters Indemnity.** Subject to section 13.4, SmartRecruiters will defend at its expense any suit brought against Customer, and will pay any final written settlement or final decision SmartRecruiters makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Services misappropriated any trade secret recognized under the Uniform Trade Secrets Act or infringes any United States copyright, patent, or other intellectual property right.
- 13.2. IP Infringement Remedy.** If any portion of the Services 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 Services; (b) replace the Services with non-infringing Services which do not materially impair the functionality of the Services; (c) modify the Services so that it becomes non-infringing; or (d) terminate the Services and refund any Fees actually paid by Customer to SmartRecruiters for the remainder of the subscription Term then in effect, and upon such termination, Customer will immediately cease all use of the Services. This subsection states Customer's sole and exclusive remedy for intellectual property infringement claims and actions.
- 13.3. Exclusions; Customer Indemnity.** Notwithstanding the foregoing, SmartRecruiters shall have no obligation under this section or otherwise with respect to any infringement claim based upon: (i) any use of the Services not in accordance with this Agreement or the Description, (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 Services, 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**"). Subject to section 13.4, 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.
- 13.4. 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 notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; (c) the indemnified party shall cooperate with the indemnifying party to

facilitate the settlement or defense of any claim or suit; (d) the indemnified party shall not make 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 shall use its reasonable endeavors to mitigate its and the indemnifying party losses, liability, costs and expenses in respect of the claim.

- 13.5. Exclusive Remedy.** This Section 13 states the exclusive right and remedy for any type of claim described in this section.

## 14. Professional Services

- 14.1. Provision.** Customer may request SmartRecruiters provide Professional Services to assist with the implementation, training, and integration of Subscription Services as described in either the package in the Order Form or SOW. SmartRecruiters shall perform the Professional Services in a manner consistent with industry standards applicable to the provision thereof. Customer understands that providing the Subscription and Professional Services requires the good faith cooperation of Customer, and Customer shall collaborate and provide SmartRecruiters with sufficient resources, materials and other information that is required to execute the respective Professional Services. Any delays solely caused by Customer or changes in project scope may result in additional Professional Services Fees.
- 14.2. Daily Rates.** Daily rates correspond to an eight (8) hour workday. Travel time is charged at half time.
- 14.3. Acceptance; Rejection.** Unless otherwise set forth in a SOW, upon SmartRecruiters completing all activities described in a SOW, including delivery to Customer of any materials listed in a SOW, and Customer accepting such activities and materials via a written notice to SmartRecruiters without unreasonable objections, the Professional Services shall be deemed complete and accepted by Customer. If: (i) SmartRecruiters does not receive a response from Customer within two days of notifying Customer in writing that delivery is complete, the Professional Services will be deemed complete and accepted by Customer, or (ii) Customer is using the Services in a live environment, the Professional Services shall be deemed complete and accepted by Customer. To be effective, any objections by Customer must specifically describe SmartRecruiters' material failures to comply with the SOW. In response to Customer's material objections, SmartRecruiters shall revise and/or re-deliver the applicable Professional Services. Upon curing Customer's material objections, the acceptance process in this Section 14.3 shall repeat.

## 15. Miscellaneous

- 15.1. Interpretation.** Unless otherwise specified herein: (i) the word "including" means "including but not limited to"; and (ii) any reference to days will mean calendar days. For the avoidance of doubt the word

“ensure” as used in this Agreement does not constitute a guarantee, but (only) a contractual obligation.

- 15.2. Survival.** The sections “Fees and Payment”, “Representations and Warranties”, “Confidentiality”, “Indemnification”, “Liability”, “Miscellaneous” and any intellectual property related provisions shall survive any termination or expiration of this Agreement.
- 15.3. Subcontracting.** Notwithstanding the foregoing, except for subcontractors processing Personal Data, SmartRecruiters may subcontract any of its obligations under this Agreement. SmartRecruiters shall remain responsible to Customer for the performance of subcontracted obligations.
- 15.4. Assignment.** Neither Party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other Party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. However, either Party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party provided that the assignee is not a competitor of the other Party. This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.
- 15.5. Entire Agreement; Priority.** This Agreement, including any Order Form(s) and the documents referred to in it, constitutes the entire agreement between Customer and SmartRecruiters and governs Customer’s use of the 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 Services. If there is any conflict among the following documents, the order of precedence shall be (i) the Order Form(s), (ii) the DPA (if applicable), (iii) the MSA, (iv) the SLA, (v) the fixed package as set forth in an Order Form or SOW and (vi) the Description.
- 15.6. Severability.** If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.
- 15.7. Governing Law; Jurisdiction.** 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. The Parties agree to submit to the exclusive jurisdiction of the courts of the State of Delaware to resolve any legal matter arising from this Agreement.
- 15.8. Waiver.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.
- 15.9. Force Majeure.** Any delay in the performance of any duties or obligations of either Party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by any Force Majeure event, provided that such Party uses reasonable efforts, under the circumstances, to notify

the other Party of the cause of such delay and to resume performance as soon as possible.

- 15.10. Amendments.** Any modification or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties.
- 15.11. Publicity.** Given the public nature of the relationship between the Parties, SmartRecruiters may refer to Customer on its customer's list, press releases, marketing materials, and on its website. Both Parties may agree to write a Hiring Success case study. Customer will not unreasonably withhold or delay its consent. Any press releases or public announcements shall be approved by Customer. Customer will not unreasonably withhold or delay its consent.
- 15.12. 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 Services 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 users acquire the Services with only those rights set forth herein.
- 15.13. 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, and will represent to any third party that it has, any authority to act on behalf of the other Party.
- 15.14. 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). Customer is responsible for updating Customer's data to provide SmartRecruiters with Customer's most current email address.