



1300 S. El Camino Real Suite 400 San Mateo CA 94022  
650-376-7200 (office) / 415-680-2479 (fax)

# Order Form

## Address Information:

Bill To: 4123 Lakeside Dr,  
Richmond 94806  
CA US

Billing Company Name: Making Waves Academy  
Billing Contact Name: Damon Edwards  
Billing Email Address: dedwards@mwacademy.org  
Payment Terms: Net 30  
Special Terms: Customer will be invoiced upon execution of this order form or 2/11/2020, whichever is later

Company Size: 125  
Term: 12 months

## Valid thru Date: 2/10/2020

Ship To: 4123 Lakeside Dr,  
Richmond 94806  
CA US

Billing Phone: 5103335830  
Billing Fax:  
Billing Language: English  
Invoice Frequency: Annual  
*Invoices sent via email. Contact [AR@jobvite.com](mailto:AR@jobvite.com) for billing inquiries.*

## Subscription Start Date: 2/11/2020

*If the Subscription Start Date listed above is prior to the Effective Date (Contract Execution Date), the Effective Date will be the Subscription Start Date.*

Note – All prices are in USD unless otherwise specified

Product Name	Quantity	Monthly Price	Total Price
Hire	125	USD \$596.00	\$7,152.00
Jobvite Refer	125	USD \$0.00	Included
<b>Total</b>			<b>\$7,152.00</b>

This Order Form is subject to the terms and conditions (below) of the Jobvite Terms & Conditions between the parties ("Agreement").

## The authorized representatives have executed this Order Form by their signatures below:

### Jobvite

By:

Printed:

Title:

Date:

### Customer

By:

Printed: Damon Edwards

Title: Sr IT Director

Date:



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## Terms and Conditions

1. **Order Forms.** These Terms and Conditions control the use of certain Jobvite, Inc. (“Jobvite”) products and services (“Products”) by the Customer shown on the Order Form executed by Jobvite and Customer and attached hereto. The agreement between the parties shall consist of the Order Form, these Terms & Conditions, and any Attachments referenced in the Order Form (collectively, the “Agreement”). Capitalized terms not otherwise defined in these Terms & Conditions shall have the meaning given to them in the Order Form and the Attachments.

2. **Products and Services.**

(a) **License.** Subject to the terms and conditions of the Agreement, including payment of all fees shown on the Order Form (“Fees”), Jobvite grants to Customer for the Term a non-exclusive, royalty-free, non-transferable (except as permitted herein), non-sublicensable right to access and use the Products during the Term in accordance with the restrictions set forth in the Agreement. Customer shall use the Products solely for Customer’s internal business purposes, and shall not rent, lease, license, sell, or offer for sale the Products, for timesharing or as a service bureau, or otherwise for the benefit of a third party.

(b) **Restrictions.** Customer will not, directly or indirectly: (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code of the Products (except as may be permitted by applicable law); (ii) copy, distribute, link, frame, mirror or otherwise make available any portion of the Products to any third party except as needed for their proper functioning; (iii) remove or alter any logos, trademarks, links, copyright or other notices, legends or markings from the Products or any related documentation (which shall include the POWERED BY JOBVITE logo and link on any Customer pages that contain data from, or access, the Products); (iv) attempt to bypass or tamper with the security, operation of the Products or any of the systems on which the Products are accessed; (v) attempt to access the accounts or data of any other customer.

(c) **Professional Services.** If Professional Services are specified on an Order Form then Jobvite shall use diligent efforts to complete such Professional Services in accordance with any specifications agreed upon by both parties or (in the case of activation, implementation or other standardized services) the specifications Jobvite provides to Customer, in either case as shown in a Statement of Work that accompanies or is subsequently appended to the relevant Order Form for such Professional Services. Customer acknowledges that Jobvite does not commit to a particular schedule for completion of Professional Services as they rely on input and assistance from Customer and other factors not in Customer’s control. Customer further acknowledges that the fees for Products are due pursuant to the relevant Order Form on which the Products are purchased, and payable whether or not Professional Services are completed. Professional Services must be used within twelve (12) months from the date of the applicable Order Form. Any Professional Services not used within this period will be automatically forfeited, with no further action required of either party, and Customer will not be entitled to a refund or credit toward additional or other services, for any unused portion of the fees paid for such forfeited Professional Services. If Jobvite and Customer agree to any travel, Jobvite will bill for actual travel and expenses separately. Travel and expense will be calculated according to Jobvite’s travel policy.

(d) **Support.** Jobvite will make the Products and Professional Services available at all times except during periods of scheduled maintenance. Jobvite will provide support for the Products and Professional Services as set forth in the Support and Service Level Agreement attached to the Agreement. During the Term, Jobvite, will ensure that the Products operate in accordance with the service levels set forth in the Support and Service Level Agreement. If the Products fail to operate in accordance with such service levels, Customer shall be entitled to the service credits by following the procedures set forth in the Support and Service Level Agreement.

3. **Data Security and Use of Information.**

(a) **Security Measures.** Jobvite will maintain industry standard security measures for the protection of Customer’s account against accidental or unauthorized access or use. Jobvite shall take all reasonable steps to prevent or correct any unauthorized access or intrusion into Customer’s account. Customer is responsible for notifying Jobvite of any unauthorized access to its account. Jobvite’s obligations as to the security of Customer’s account shall be limited to the extent Customer fails to notify Jobvite upon becoming aware of such unauthorized access, or through Customer’s failure to select secure passwords, change passwords frequently, or maintain the confidentiality of those passwords. Jobvite shall maintain Technology Errors and Omissions Liability insurance as set forth in Section 10 to protect it and Customer against liability for a failure of its security measures shall be to correct the circumstances that led to any such unauthorized access, prevent further intrusions, and use its best efforts to recover any information copied or removed from Customer’s account.

(b) **Use of Information.** Jobvite shall use any information that Customer provides through the Products or stores in Customer’s account (“Customer Information”) only for the following purposes: (i) to fulfill the requirements of this Agreement and operation of the Products, (ii) for statistical purposes that do not disclose or identify personal information or Customer in any manner, or (iii) to improve and enhance the Products and features that Jobvite offers. Jobvite shall not provide any Customer Information to any third party except to fulfill its obligations under this Agreement or as otherwise permitted by this Agreement. Jobvite may use various web hosts and related service providers in connection with offering and operating the Products (“Hosting Services”) and will ensure that all Hosting Services comply with the restrictions on security and use of information and confidentiality contained in this Agreement, and shall be responsible for any breach by those Hosting Services.

(c) **Privacy.** At all times during the Term and in its use of Customer Information, Jobvite (i) will comply with all applicable United States laws and regulations pertaining to privacy and data protection; (ii) will provide a level of security and privacy protection that meets the standards of the European Union Directive on Privacy; and (iii) will maintain certification and comply with the EU-US Privacy Shield Framework. Customer acknowledges that Jobvite will transfer and process all Customer Information to its (and its Hosting Services’) servers located in the United States. Customer: (i) grants Jobvite and its Hosting Services the right to transfer, process and use Customer Information for the purposes specified in Section



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3(b) above, (ii) will secure and maintain all consents necessary for these purposes; and (iii) will comply with any applicable privacy and data protection laws that apply if Customer is located in a jurisdiction outside the United States, or will provide the personal information of individuals domiciled outside the United States.

(d) Third Party Products. From time to time, Jobvite makes available through the Products links to third party activities, websites or services; Customer may elect to have those links active or inactive. If Customer chooses to allow its Users to access third party activities, websites or services through the Products, such access will be governed by the privacy and information policies applicable to such third party activities, websites or services.

4. Confidentiality. All content, information, material and data that a party to this Agreement (“Discloser”) provides to the other party (“Recipient”) shall be deemed the property and confidential information of the Discloser (“Confidential Information”). Jobvite’s Confidential Information shall include, without limitation, the Products, the Fees and fee structure, this Agreement, the systems, software and technology used to implement the Products, identities of its customers and the persons that submit resumes to Jobvite through those customers, and (as between the parties) all information and other materials submitted to the Products by other customers and their employees or users, or independently through third party tools or pages not created and operated on behalf of Customer. Customer’s Confidential Information shall include, without limitation, the fact that it is a Jobvite customer, the Customer Information, and (as between the parties) information submitted by users through pages that Jobvite creates or operates pursuant to this Agreement on behalf of Customer. Each party shall retain all rights and ownership of its Confidential Information to the extent such ownership is not contrary to applicable laws or regulations. Recipient shall only use Discloser’s Confidential Information for the purposes permitted in this Agreement, shall not disclose Confidential Information to any third party, and shall cease all such use upon termination of the Agreement. Each party acknowledges that the other party collects resumes and other information about individuals through multiple sources and entities, that such information may duplicate information provided by one party to the other hereunder, and that a party is not obligated to treat such duplicate information as confidential information of the other party. Further, each party acknowledges that it will not be a violation of this Agreement for a party to disclose, delete or amend personal information submitted by individuals and Confidential Information generally to comply with applicable employment, privacy and information handling laws.

5. Fees, Payment Terms and Billing. Customer will pay Jobvite the Fees as set forth on the Order Form. Fees are invoiced in advance in accordance with the schedule on the Order Form. Fees will be invoiced in accordance with the schedule on the applicable Order Form. Jobvite shall issue the first invoice on or after the Effective Date of this Agreement, and Customer shall pay all Fees within thirty (30) days of receipt of Jobvite’s invoice. Customer shall be responsible for and pay all sales, use, value added or other taxes, except for taxes based on Jobvite’s income, which amounts are understood to be in addition to the Fees. Unless otherwise set forth on an Order Form: (i) all Fees are payable in United States dollars and are non-cancelable and non-refundable (except in the event of termination for Jobvite’s material breach in accordance with Section 6(c) below); and (ii) all fees for Professional Services are payable in United States dollars either in accordance with the payment schedule set forth in the relevant Order Form, or Statement of Work. Unpaid amounts payments may be assessed a late fee of 1.5% per month, or the maximum rate permitted by law, whichever is less. Jobvite may suspend access to Products, if Customer fails to make any payments when due; Customer will continue to be responsible for all Fees for the entire Term during such suspension. Fees are subject to re-valuation and re-assessment based on volume of usage: for Products where fees are based on the total number of Customer employees, if the number of Customer employees increases by more than ten percent (10%) due to an extraordinary event such as an acquisition; for Products where fees are based on the number of recruiter seats, the number of seats shown in each Order Form and any new seats added during the applicable Term. Unless stated otherwise in the Order Form, Fees are fixed for the Initial Term, and will renew at the then-current list prices unless the parties negotiate different renewal prices.

6. Term and Termination.

(a) Term; Renewal. This Agreement will commence on the Effective Date and continue for as long as an Order Form has an active Term, or unless otherwise terminated as set forth herein. Renewal Terms of twelve (12) months will start upon the end of the previous Term (Initial or Renewal as applicable) until either party gives written notice of its intent not to renew at least thirty (30) days prior to the end of the then-current Term, or the Agreement is terminated as set forth herein

(b) Termination for Cause; Suspension of Products. Either party may terminate this Agreement for a material breach that is not cured within thirty (30) days of notice of such breach. Jobvite may also elect to suspend access to the Products or terminate this Agreement without notice if (i) Customer fails to comply with Section 2 of this Agreement, or (ii) Customer’s activities interfere with the proper operation of the Products or could adversely affect Jobvite’s systems, or (iii) Customer offers a similar or competing service, or (iv) Customer fails to pay Fees when due after given notice of breach. Jobvite will endeavor to give notice of such activities prior to suspension, provided, however, that if the activities threaten immediate harm to Jobvite’s systems, other customers or data or security integrity Jobvite may take such steps as it deems necessary to protect those interests. Access to the Products will be restored as soon as the activity ceases.

(c) Events on Termination. Upon termination of this Agreement for any reason: (i) each party will promptly cease all use and return or destroy the other’s Confidential Information, (ii) Customer will cease use of the Products. Customer acknowledges that fees for Products for fixed terms of use were discounted based on Customer paying the full amounts for the Term, and therefore upon termination of this Agreement due to Customer’s breach Customer shall pay in full all unpaid Fees for Products and Professional Services for the remainder of the Term. Upon termination of this Agreement due to Jobvite’s breach, or by Jobvite pursuant to Section 9, Jobvite will refund *pro rata* any prepaid, unused fees for Products. As long as Customer has paid all fees owed at termination, at Customer’s request within thirty (30) days of termination Jobvite will make available a copy of the Customer Information. After thirty (30) days, Jobvite will remove all access to Customer Information and it will be marked for deletion subject to



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routine backup and archival procedures and requirements of applicable law. Sections 3, 4, 7 through 10 and all accrued rights to payments shall survive termination of this Agreement.

### 7. Warranties and Disclaimers.

(a) Mutual Warranties. Each of the parties represents and warrants that: (i) it has the authority to enter into this Agreement and grant any rights and consents granted hereunder; (ii) it will fulfill its obligations in a professional and workmanlike manner, and will not use the other party's products, services, information, data or other materials in violation of any applicable law; ; and (iii) it will at all times during and after the Term of this Agreement comply with its data security and privacy obligations in accordance with Section 3 of this Agreement.

(b) Jobvite Warranties. Jobvite represents and warrants that (i) it has the right to provide the Products to Customer, (ii) the Products will not infringe or misappropriate any intellectual property or proprietary right of a third party.

(c) Customer Warranties. Customer represents and warrants that its use of the Products will comply with all applicable laws and regulations governing employment and hiring practices.

(d) EXCEPT FOR THE FOREGOING, JOBVITE PROVIDES THE PRODUCTS "AS IS," AND WITHOUT ANY WARRANTY OF ANY KIND, EXPRESS OR IMPLIED. JOBVITE EXPRESSLY DISCLAIMS ALL OTHER WARRANTIES, INCLUDING, WITHOUT LIMITATION, IMPLIED WARRANTIES OF MERCHANTABILITY, AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, RELIABILITY, RESULTS, OR THAT CUSTOMER'S USE OF THE PRODUCTS WILL RESULT IN COMPLIANCE WITH EMPLOYMENT LAWS AND HIRING PRACTICES.

8. Limitation of Liability. NEITHER PARTY SHALL BE LIABLE HEREUNDER TO THE OTHER UNDER ANY THEORY, WHETHER IN CONTRACT, TORT, STRICT LIABILITY OR OTHERWISE, FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, OR LOST DATA OR PROFITS, WHETHER OR NOT FORESEEABLE, AND A PARTY'S MAXIMUM LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT SHALL NOT EXCEED THE AMOUNTS PAID OR PAYABLE TO JOBVITE BY CUSTOMER HEREUNDER IN THE TWELVE-MONTH PERIOD IMMEDIATELY PRIOR TO THE EVENT GIVING RISE TO SUCH LIABILITY, EXCLUDING CLAIMS ARISING FROM ACTIVE OR WILLFUL NEGLIGENCE OF EITHER PARTY .

### 9. Indemnification.

(a) Each party ("indemnifying party") shall defend, indemnify and hold harmless the other party ("indemnified party") and its officers, directors, employees and agents from and against all third-party claims, losses and damages, including, without limitation, costs of remediation, fines, and reasonable attorneys' fees incurred ("Claims"), arising from its negligence, willful misconduct, and/or breach of its warranties and representations under Section 7 of this Agreement.

(b) If Jobvite believes that any portion of the Product may be subject to a Claim under Section 7(b) of this Agreement, then in addition to the foregoing indemnity Jobvite shall, at its sole option and expense: (A) procure for Customer the right to continue using the affected Products; (B) modify or replace the infringing Products to allow for continued use, or if these alternatives are not commercially reasonable terminate this Agreement.

(c) As a condition to being indemnified under this Section, the indemnified party shall: (i) promptly notify the indemnifying party of the Claim; (ii) allow the indemnifying party sole control of the defense and settlement of the Claim; and (iii) provide assistance, at the indemnifying party's expense, in defending or settling the Claim. The indemnified party may participate at its own expense in the defense of a Claim with counsel of its own choosing. The indemnifying party will not enter into a settlement that requires the indemnified party to admit liability or pay damages with the indemnified party's consent.

### 10. Insurance.

a) Jobvite, at its own cost and expense, shall procure and maintain, policies of insurance for the following types of coverage:

(i) Workers' Compensation Insurance. Jobvite shall procure and maintain, during the term of this Agreement, Workers' Compensation Insurance, as required by California law, on all of its employees engaged in work related to the performance of this Agreement and Employer's Liability insurance with limits of not less than \$1,000,000 per accident or disease.

(ii) General Liability Insurance. Jobvite shall procure and maintain, during the term of this Agreement, which shall be written on an occurrence form, with not less than the following General Liability Insurance coverage: \$1,000,000 each occurrence, \$2,000,000 aggregate. Jobvite's General Liability Insurance shall be endorsed to name the Charter School, and its district authorizer as additionally insured.

(iii) Technology Errors and Omissions Liability. Jobvite shall obtain and maintain throughout the duration of the contract technology errors and omissions liability coverage with limits of \$1,000,000 per occurrence/loss. The policy shall at a minimum cover professional misconduct or lack of the requisite skill required for the performance of services defined in the contract and shall also provide coverage to protect itself and Customer from for the following risks:

a Liability arising from theft, dissemination, and/or use of confidential information, including but not limited to, bank and credit card account information or personally identifiable information, such as name, address, social security numbers, protected health information, security codes, access codes, passwords, or personal identification numbers (PINs) stored or transmitted in electronic form, and shall include coverage for privacy notification costs, credit monitoring and regulatory fines & fees arising from such theft, dissemination and/or use



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- of confidential information.
- b Network security liability arising from the unauthorized access to, use of, or tampering with computers or computer systems, including hacker attacks.
- c Liability arising from the introduction of a computer virus into, or otherwise causing damage to the District's or third person's computer, computer system, network, or similar computer related property and the data, software, and programs thereon.
- d Liability arising from the failure of the technology product(s) required under the contract to properly perform the function(s) intended.

### 11. General.

- (a) Marketing. Jobvite may use Customer's name and logo to identify Customer as a customer of Jobvite's on Jobvite's website and as a part of a list of Jobvite customers in corporate, promotional and marketing literature.
- (b) Export Control. Customer shall only use the Products in compliance with local laws and regulations, and will not export or re-export the Products in violation of any United States or other applicable export laws and regulations.
- (c) Relationship of Parties. The parties to this Agreement are independent contractors and no agency, partnership, joint venture, employment or similar relationship exists between them. Neither party has the authority to bind the other or to incur any obligation on its behalf.
- (d) Assignment. Neither party will transfer or assign this Agreement or any of the rights hereunder without the prior written approval of the other party, which shall not be withheld unreasonably, and any such assignment or transfer will be void. Notwithstanding the foregoing, a party may transfer this Agreement in its entirety in the event of an acquisition, merger or other event involving a change of control without consent as long as prompt notice of such event is given, and a party may assign any rights to payment hereunder. Customer acknowledges that the Fees may be subject to recalculation as set forth in Section 5, above, upon any permitted assignment of this Agreement.
- (e) Notices. Notices required hereunder shall be effective if delivered by email or facsimile (effective upon transmission, as evidenced by transmission reports), by courier or delivery service (effective upon receipt), or by first class United States mail, return receipt requested (effective upon receipt), and shall be sent to the addresses shown in the Order Form or as updated by notice.
- (f) Force Majeure. Neither party shall be responsible for a failure or delay of performance caused by any event outside of its reasonable control.
- (g) Governing Law and Jurisdiction. This Agreement is governed by the laws of the United States and the State of California, excepting its conflict of law's provisions. In the event of a dispute arising out of or relating to this Agreement, the exclusive venue and jurisdiction shall be the courts of San Francisco, California.
- (h) Entire Agreement; Waiver; Severability; Amendment. This Agreement, along with the Order Form, is the complete agreement between the parties for the Products and supersedes all prior or contemporaneous agreements, representations or arrangements, oral or written. If any provision or term is found to be invalid or unenforceable, the remaining provisions will remain effective. The Agreement and any of its terms or provisions may not be modified or waived except in a writing signed or accepted by both parties. Terms on form purchase orders will not modify the Agreement. Handwritten changes to the Agreement or the Order Form must be initialed by the other party to be effective.



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## Service Level And Support Agreement

### SUPPORT & MAINTENANCE:

Help desk telephone, email and chat support is available to Customer 24x5 starting at 6:00 pm Pacific Time on Sundays to 6:00pm Pacific Time on Fridays, excluding Jobvite holidays. Customer agrees to send all issues to the channels outlined at <http://support.jobvite.com> The following table represents Jobvite's support service level agreements and priority definitions:

Priority	Definition	Initial Response and Update Times
P1	<b>Urgent:</b> The software on the production system is down (crashes) or is not operational for all customers.	Initial response to designated CUSTOMER CONTACT within 1 hour of case submission to Customer Success (support). The designated CUSTOMER CONTACT will be updated twice daily on progress. Actions will commence within 1 hour on all licensor business days.
P2	<b>Critical:</b> The software on the production system is operational but has a major functional loss that impedes transactions from being completed for multiple customers.	Initial response to designated CUSTOMER CONTACT within 4 hours of case submission to Customer Success (support) during regular support hours. The designated CUSTOMER CONTACT will be updated daily on progress. Actions will commence within 4 hours of notification on all licensor business days.
P3	<b>Important:</b> The software on the production system has a functional loss that does not impede transactions from being completed, but affects performance or user quality; or a suitable workaround can be employed; or the functionality is not immediately necessary; or the test system ("test drive") has major functional loss which impedes business transactions from being completed.	Initial response to designated CUSTOMER CONTACT within 1 business day of case submission to Customer Success (support). The designated CUSTOMER CONTACT will be updated weekly on progress. Actions will commence within 2 days of notification on all licensor business days.
P4	<b>Minor:</b> The software has a cosmetic or grammatical error that does not affect performance or stability of the system, or the customer has a question regarding the use of the product.	Initial response within 2 business day of case submission to Customer Success (support). The designated CUSTOMER CONTACT will be updated on an as needed basis. All questions on product use will be updated within 48 hours of case submission to Customer Success.
P5	<b>Enhancement:</b> Requests for new features/functionality that does not exist in the product will be reviewed by product management/development and included in future releases if broadly applicable to our customer base.	Enhancement requests are logged and submitted to product management. The designated CUSTOMER CONTACT will be updated on an as needed/appropriate basis.

Customer acknowledges that Jobvite will schedule a system maintenance period every Saturday beginning at 10:00 pm Pacific Time and lasting up to three (3) hours. Jobvite may occasionally have to interrupt services outside of this time period, including for purposes of upgrades and maintenance to the Software and/or System, in which case Jobvite will use all reasonable efforts to announce the scheduled downtime via e-mail to Customer's designated e-mail address two (2) business days in advance.

The Support provided under this Agreement does not include services for the following matters:

- (i) any problem resulting from the misuse, improper use, alteration, or damage of the Software;
- (ii) any problem caused by modifications in any version of the Software not made or authorized by Jobvite;
- (iii) any problem resulting from Customer combining or merging the Software with any hardware or software not supplied by Jobvite and not identified by Jobvite as compatible with the Software or Systems; or
- (iv) any problem that is not reproducible by Jobvite due to customers environment.



## Service Level And Support Agreement

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### SERVICE LEVEL STANDARDS:

#### 1. Definitions.

"Force Majeure Event" means (i) compliance with any act, order, demand or request of any government or governmental authority, agency or instrumentality; (ii) labor disputes, difficulties or work stoppages or slowdowns of any kind; (iii) hurricane, earthquake, flood and other natural disasters or fires; (iv) war, rebellion, act of terrorism, or civil disorder; (v) act or omission of any telecommunication or services provider; (vi) any other cause beyond Jobvite's reasonable control.

"Maintenance Outage" means a planned or unplanned maintenance period, including, without limitation, any maintenance downtime or maintenance outage, not to exceed an aggregate of ten (10) hours in any calendar month. "Service" means the service provided by Jobvite to host, manage and make available through the Internet the Software.

"Service" means the service provided by Jobvite to host, manage and make available through the Internet the Software.

"Service Outage" means any time when the Service is inoperable or unavailable due to or caused by reasons reasonably within Jobvite's control, excluding specifically the following reasons: (i) Customer's own telecommunications or Internet service providers; (ii) a Force Majeure Event; (iii) any systemic Internet failures; or (iv) any failure in Customer's own hardware, software or network connection.

"Total Hours of Operation" shall be twenty-four (24) hours per day, three hundred sixty-five (365) days per year, excluding any time for Maintenance Outages.

#### 2. Availability of Services.

Jobvite warrants that the Services will be available at least 99.9% of the time measured monthly, using the following formula:

$$\text{Uptime} = \frac{\text{Total Hours of Operation} \textit{ minus } \text{Service Outages}}{\text{Total Hours of Operation}}$$

#### 3. Sole Remedies for Failure to Meet the Uptime Service Level Commitment.

For each calendar month in which Jobvite has Uptime of:

(a) less than 99.9% but above 95%, Jobvite shall upon Customer's request made within thirty (30) days of the end of the calendar month, provide Customer with a written plan for improving Jobvite's Uptime to attain the 99.9% Uptime and Jobvite shall promptly implement such plan;

(b) between 95% and 90%, Jobvite shall, upon Customer's request made within thirty (30) days of the end of that calendar month, provide Customer with a service credit in an amount equal to \$500 and the action plan under subpart (a) above; or

(c) less than 90%, Jobvite shall, upon Customer's request made within thirty (30) days of the end of that calendar month, provide Customer with a service credit in an amount equal to \$1000 and the action plan under subpart (a) above. Customer may also terminate this Agreement upon thirty (30) days' written notice (which notice must be given within sixty (60) days of the end of the calendar month in which the Uptime was less than 90%).

Customer shall not exercise the rights in this Section 3 without a reasonable basis or belief that the applicable Uptime commitment was not satisfied. If Customer believes that Jobvite has failed to achieve an Uptime commitment in any given month, Jobvite shall, promptly following Customer's request, promptly provide a report that contains true and correct information detailing Jobvite's actual Uptime performance. **THIS SECTION 3 SETS FORTH CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND JOBVITE'S ENTIRE LIABILITY, FOR ANY FAILURE TO MEET THE UPTIME COMMITMENT.**

#### 4. Maintenance Outages.

Jobvite will provide Customer with written notification via e-mail for each planned Maintenance Outage outside of the normal maintenance hours at least one (1) business day in advance whenever practicable of the occurrence of any such outage.

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