

JOBVITE MASTER SUBSCRIPTION AGREEMENT

INCORPORATION INTO JOBVITE MASTER SUBSCRIPTION AGREEMENT

This Order (“**Order**”) is entered into on Feb 11, 2021 (the “**Order Effective Date**”) and is hereby made a part of that certain JOBVITE MASTER SUBSCRIPTION AGREEMENT entered into between the parties on Feb 11, 2018 "EFFECTIVE DATE", including any amendments thereto, (the “**Agreement**”). All terms and conditions within the Agreement apply to this Order. The term of this Order begins on the Order Effective Date and ends on the last day of any SUPPLIER Products or services ordered hereunder being provided, unless otherwise terminated earlier pursuant to the terms and conditions of the agreement.

Acceptance:

Acceptance:

Making Waves Academy "CLIENT"

JOBVITE, INC. "SUPPLIER"

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

CLIENT INFORMATION & GENERAL PAYMENT TERMS

Client Contact Name:	Damon Edwards	SUPPLIER Sales Rep:	Robert Zoderer
Email:	dedwards@mwacademy.org	Order Number:	Q-020767
Email Address for software electronic delivery:	dedwards@mwacademy.org	Phone:	5103335830
Billing Address:	4123 Lakeside Drive Richmond, CA , 94806	Billing Phone:	5103335830
Billing Contact:	Damon Edwards	Billing Fax:	
Billing Email:	dedwards@mwacademy.org	Currency:	USD
Payment Terms:	Net 30	Use Limit: Annual Job Volume	50
Invoice Frequency:	Annually	Use Limit: # of FT Employees:	125
Does Client Require a PO for Payment:	No	Client HRIS system:	N/A
Client ATS system and version:	Jobvite	Use Limit: # of Integrations (HRIS/ATS):	1

LEGACY

Product Term (Months):	12	Start Day of Product Term	Feb 11, 2021
		Last Day of Product Term	Feb 10, 2022

DESCRIPTION	Price per Year	One-Time Fees	EXTENDED PRICE
Hire	\$7,500.00	-	\$7,500.00
Total Net Price			\$7,500.00

TOTAL PRICE EXCLUDING TAXES: \$7,500.00

FEE PAYMENT SCHEDULE

DUE DATE (MM/DD/YY):	DESCRIPTION:	AMOUNT:
Mar 13, 2021	Subscription Fees for Feb 11, 2021 - Feb 10, 2022	\$7,500.00
TOTAL AMOUNT DUE EXCLUDING TAXES		\$7,500.00

This Master Subscription Agreement (this "Agreement") is effective Feb 11, 2021 (the "Effective Date")

BETWEEN

Jobvite, Inc., a corporation existing under the laws of Delaware, and having a place of business at 20 North Meridian Street, Suite 300, Indianapolis, IN 46204-3028 USA ("SUPPLIER")

AND

Making Waves Academy, a corporation existing under the laws of the State of California ("Client"), who may be contacted at its place of business as follows:

Address: 4123 Lakeside Drive

City, State, Zip Code: Richmond, CA, 94806

Attention: Damon Edwards

SUPPLIER and Client may be referred to individually as "**Party**" or collectively as "**Parties**". Other definitions are set forth in this Agreement including in Schedule A section 12 and in Schedule B section 1.

In consideration of the mutual covenants contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows: Schedules, Orders, and Precedence. This Agreement is comprised of this page and the Schedules attached, any Order that expressly references this Agreement and any executed Schedules that reference this Agreement. In the event of a conflict between any of the following with respect to this Agreement, the following order of precedence will apply: (1) this page; (2) the Order; (3) any Schedules that explicitly describe a priority of terms; (4) Schedule A – General Terms; and (5) any other Schedules; provided however, that the terms of a particular Order will control that Order only.

- A. **Order Procedure and Incorporation.** This Agreement does not by itself order or subscribe to any SUPPLIER Product. Client may subscribe to the SUPPLIER Product on a nonexclusive basis pursuant to the terms and conditions of this Agreement by way of a completed Order signed by the Parties hereto. Upon execution each Order will be incorporated into and become a part of this Agreement.
- B. **Client Purchase Orders.** If Client issues a purchase order in respect of this Agreement, Client acknowledges that such purchase order is solely for the convenience of Client’s purchasing system and does not in any way modify or add to this Agreement or the rights or obligations of SUPPLIER or Client.
- C. **Counterparts.** This Agreement may be executed in counterparts, each of which will be considered an original and all of which will constitute one and the same agreement. Receipt of an originally executed counterpart signature page by facsimile or an electronic reproduction of an originally executed counterpart signature page by electronic mail or by e-signing is effective upon execution and delivery of this Agreement.
- D. **Entire Agreement.** This Agreement constitutes the final agreement between the Parties. It is the complete and exclusive expression of the Parties’ agreement on the matters contained in this Agreement. All prior and contemporaneous negotiations and agreements between the Parties on the matters contained in this Agreement are expressly merged into and superseded by this Agreement.

EXECUTION. The Parties, by their duly authorized representatives, are signing this Agreement as of the Effective Date above.

Acceptance:
Making Waves Academy

Acceptance:
JOBVITE, INC.

(Signature)

(Signature)

(Printed Name)

(Printed Name)

(Title)

(Title)

Schedule A - General Terms

1. Fees, Taxes, Disputes, and Travel Costs

- 1.1. Client shall pay to SUPPLIER all fees and applicable taxes associated with the provision of the SUPPLIER Product to Client as set forth in this Agreement and the Order, in addition to any applicable fees incurred for transaction overages, Additional Professional Services, or purchases made through the SUPPLIER Product (collectively, “**Fees**”) regardless of Client’s utilization of the SUPPLIER Product. Client shall pay invoices by the later of: (1) 30 days after invoice receipt, or (2) the due date specified on the Order.
- 1.2. Should Client, acting reasonably, wish to dispute a specific charge on an invoice, Client shall deliver to SUPPLIER a written notice detailing the reasons for the dispute no later than 20 days after the due date of the invoice in question. SUPPLIER shall respond to the dispute within 15 days of receipt of the notice and the Parties shall in good faith endeavor to resolve the dispute within 30 days of SUPPLIER’s response. Any undisputed late payments are subject to a monthly service charge equal to the lesser of: 1.5% of the amount due, or the maximum amount allowed by law. Client shall pay all costs SUPPLIER incurs to collect any overdue, undisputed Fees, provided such costs occur after a request for payment, following the invoice due date, sent to Client in accordance with the terms of this Agreement.
- 1.3. **Taxes.** Fees do not include sales, use, or other taxes and Client shall pay all applicable foreign, federal, state, provincial, and local taxes pertaining to Client’s access to, use, or receipt of the SUPPLIER Product including any withholding taxes imposed by a jurisdiction other than Canada and the United States. Client is not obligated to pay any taxes from any jurisdiction related to SUPPLIER’s net income, capital, or assets.
- 1.4. **Travel Costs.** Fees do not include any travel and living costs incurred by SUPPLIER for any on-site Client implementation, training, consulting, or other services unless such costs are expressly included on the Order. Any travel will be pre-approved by Client and subject to Client’s internal travel policy if Client provides such policy to SUPPLIER prior to the travel occurring.

2. Rights to use the SUPPLIER Product.

- 2.1. **Subscription to Use Hosted Service.** Subject to Client’s compliance with the terms and conditions of this Agreement and the Order, SUPPLIER shall make the Hosted Service available on a subscription basis during the SUPPLIER Product Term specified in the Order for Client’s use on a worldwide, nonexclusive, nontransferable (except in connection with an assignment permitted by this Agreement), and revocable basis (the “**Subscription**”) to access the Hosted Service for the SUPPLIER Product indicated on the Order, and to display related content from the SUPPLIER Product solely for Client’s internal business operations which includes Client providing services for Client Affiliates. The Subscription does not include service bureau use, outsourcing, renting, or time-sharing the Hosted Service.
- 2.2. **License Grant for Optional Software.** Subject to Client’s compliance with the terms and conditions of this Agreement and the Order, SUPPLIER grants to Client and to Client Affiliates, during the SUPPLIER Product Term specified in the Order, a worldwide, personal, nonexclusive, nontransferable (except in connection with an assignment permitted by this Agreement), and revocable license (the “**License Grant**”) to use the Optional Software related to the SUPPLIER Product indicated on the Order, solely with Client’s Subscription. Client may make necessary additional copies of the Optional Software solely for emergency backup, disaster recovery, and archival purposes.
- 2.3. Client shall not sublicense the use of, or grant access to, the SUPPLIER Product to any third-parties other than Client’s employees and contractors performing services for the internal business operations of Client (“**Authorized Users**”). Client is responsible for the compliance of all Authorized Users with this Agreement. For the purposes of this Section only, Client shall include Client’s subsidiaries and affiliates.
- 2.4. **Restrictions.** All rights provided to Client under this Agreement in relation to the SUPPLIER Products are provided to Client on the condition that Client shall not, and shall not allow any third-party to, copy, modify, create a derivative work of, reverse engineer, reverse assemble, disassemble, or decompile the SUPPLIER Product, or any part thereof, or otherwise attempt to discover any source code, modify the SUPPLIER Product in any manner or form (except as expressly permitted by this Agreement and solely through the modification tools and means provided by SUPPLIER), or use unauthorized modified versions of the SUPPLIER Product, including for the purpose of building a similar or competitive product

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or service or for the purpose of obtaining unauthorized access to the SUPPLIER Product. Unless otherwise expressly indicated on an Order, Client is restricted from utilizing a SUPPLIER Product with more than one production connection to Client's ERP System.

- 2.5. **Product Logo.** Client may not remove any logos, trademarks, links, copyright, or other notices, legends or markings from SUPPLIER Product or Documentation including any "Powered by [SUPPLIER Brand] logo and link on any Client pages that contain data from, or access, the SUPPLIER Product.

3. **Terms of Service.** The following terms of service apply to this Agreement and any use of SUPPLIER Products:

- 3.1. **Hosting and Updates.** SUPPLIER shall host the Hosted Service and may modify the content, functionality, and user interface of the Hosted Service and the Optional Software ("Update") from time to time in its sole discretion and in accordance with this Agreement. SUPPLIER reserves the right at any time and from time to time to Update, temporarily or permanently, the SUPPLIER Product or any part thereof.
- 3.2. **Post Deployment Support and Availability.** Client will receive the Post Deployment Support and Availability described in Schedule B.
- 3.3. **Minimum System Requirements.** Client acknowledges that Internet access, equipment, and specified software and operating systems must meet the minimum system requirements set out for each of the SUPPLIER Products, as the same may be amended or replaced from time to time with 120 days' advance notice to Client (collectively, the "**Minimum System Requirements**"). Client shall ensure that the Minimum System Requirements are in place and acknowledges that a failure to meet the Minimum Systems Requirements may impair Client's successful use of the SUPPLIER Product and that SUPPLIER will not be responsible or liable for such impairment of use so caused.
- 3.4. **Passwords – Access – Notification.** Client shall not share any passwords, user names, access keys, and/or license keys (collectively, "**Passwords**") except with Authorized Users. Client is responsible for the confidentiality of all Passwords used by Client with the SUPPLIER Product. Client is responsible for all Electronic Communications, Client Data, and all other data of any kind contained within emails or otherwise entered electronically through the Hosted Service or under Client's account. Client acknowledges that SUPPLIER will act as though any Electronic Communication received under Client's passwords, user name, or account number has been sent by Client. Client and SUPPLIER shall notify the other Party as soon as reasonably possible if it becomes aware of any loss, theft, or unauthorized use of any Passwords.
- 3.5. **Transmission of Data.** If the SUPPLIER Product requires Electronic Communication over the Internet, Client acknowledges that such Electronic Communication may be accessed by unauthorized Parties when communicated across the Internet, network communications facilities, telephone, or other electronic means. Client further acknowledges that SUPPLIER will not be responsible or liable in any manner for any Electronic Communication or Client Data which are lost, altered, intercepted, or stored without authorization during the transmission of any data whatsoever across networks not owned or operated by SUPPLIER, unless such loss is caused by SUPPLIER's breach of this Agreement.
- 3.6. **Client Electronic Communications.** Client shall not send any unlawful, harassing, defamatory, indecent, threatening, or unlawful Electronic Communication using any SUPPLIER Product. Client shall not upload, post, reproduce, or distribute any information, software, or other material protected by copyright or any other intellectual property right (including rights of publicity and privacy) without first obtaining the permission of the owner of such rights. Client shall not in any way express or imply that any opinions contained in any Client Electronic Communication are endorsed by SUPPLIER. Client shall ensure that any use of the SUPPLIER Product by Client and Authorized Users is in accordance with the terms and conditions of this Agreement and the Order. Client shall comply with SUPPLIER's acceptable use policy with regards to any Electronic Communications.
- 3.7. **Links.** Certain SUPPLIER Products provide links to other internet World Wide Web sites or resources controlled by third-parties. Because SUPPLIER has no control over such sites and resources, Client acknowledges that SUPPLIER is not responsible for the availability of such external sites or resources and does not endorse and is not responsible or liable for any content, products, or other materials on, or available from, such sites or resources.
- 3.8. **SUPPLIER Proprietary Rights.** Client acknowledges that the SUPPLIER Product contains proprietary and confidential

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information that is protected by applicable intellectual property and other laws and that, as between the Parties, SUPPLIER is the sole owner of the SUPPLIER Product and the Operational Data. Except as expressly provided in this Agreement, the Subscription and License Grant do not convey any rights in the SUPPLIER Product, express or implied, or ownership in the SUPPLIER Product, or any intellectual property rights thereto. Any rights not expressly granted herein are reserved by SUPPLIER and its licensors.

- 3.9. **Client Proprietary Rights.** SUPPLIER acknowledges that, as between the Parties, Client is the sole owner of the Client Data. Subject to the terms and conditions of this Agreement, Client grants SUPPLIER a right (“**Use Right**”) to copy, store, record, transmit, display, reproduce, or otherwise use the Client Data to: (a) provide the SUPPLIER Product to Client or its Authorized Users; and (b) as necessary to monitor, operate, and improve the SUPPLIER Product.
- 3.10. **Restriction on Client Testing.** Unless specifically agreed to by SUPPLIER, Client shall not conduct security vulnerability scanning, application penetration testing, static analysis, stress testing or other such testing on the SUPPLIER Product or SUPPLIER’s hosting site. Any such activities by Client will be subject to suspension of Client’s account until such activity is stopped.
- 3.11. **Use Limits and Overages.**
- 3.11.1. If the Use Limit for a SUPPLIER Product relates to transactions (“**Transactions**”) (for example: resumes processed, job board postings, emails sent, etc.) in a particular period Client may be allowed to exceed the Use Limit in SUPPLIER’s sole discretion. In the event Client exceeds such Transaction limit for the particular period Client will be billed for a block of Transactions at the then current Fee for additional Transactions, or if no set Transaction block and related Fee is specified on the Order or Documentation, a number of transactions equal to 10% of the number of Transaction Use Limit set forth in the Order or Documentation (“**Transaction Overage Block**”) at the average price per Transaction that Client is paying for Transactions in that period. If Client exceeds the cumulative Use Limit plus purchased Transaction Overage Blocks, an additional Transaction Overage Block will be billed. Transaction Overage Blocks are only usable until the next annual anniversary of the Order Effective Date.
- 3.11.2. If the SUPPLIER Product Use Limit related to the number of users, then Client’s user accounts are for named users and are to be used by only the single Client employee or subcontractor assigned to the account. Client may reassign user accounts to different Client employees or subcontractors, but not so as to defeat the concept that the user account is for the use of a single individual and not to be shared.
- 3.12. **Product Dependencies.** As indicated in the Documentation, some product features and SUPPLIER Products require Client to also have ordered other product features, SUPPLIER Products, or utilize a third-party connection.
- 3.13. **Languages.**
- 3.13.1. SUPPLIER Products have varying capabilities related to languages other than English as specifically set forth in the Documentation.
- 3.13.2. Data sourced from applicants or other systems (SUPPLIER Products or third-party) is presented in SUPPLIER Products in its source language.
- 3.14. **Third-party Connections.**
- 3.14.1. **Certain** SUPPLIER Products allow Client to configure them to interact with third-parties. Client is responsible for any required third-party account setup or fees levied by such third-parties for using their services. SUPPLIER is only acting as an agent for Client in Client’s interactions with such third-parties through the SUPPLIER Product and is authorized by Client to utilize Client’s third-party account credentials as required to provide the third-party services or information through the SUPPLIER Product. Client shall provide SUPPLIER with any relevant terms and conditions from Client’s agreement with each third-party to allow SUPPLIER to comply with such agreement. Some third-parties restrict the ability of agents to access services that the third-party provides Client and may require Client to execute additional agreements to enable the SUPPLIER Product to interact with the third-party.
- 3.14.2. The SUPPLIER Product interacts with a third-party service through interfaces controlled by the third-party, therefore, SUPPLIER has no control as to the availability of the third-party interface or the use of the third-party service

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through the SUPPLIER Product. SUPPLIER is not responsible for the availability of a particular third-party service in the SUPPLIER Product, because each third-party controls access to its third-party service.

3.14.3 The Order will indicate the number and type of third-party interfaces to be active for the SUPPLIER Product. Client may select the actual third-party interfaces that SUPPLIER provides support for from time to time, subject to any limits on the number of third-party interfaces indicated on the Order or the Documentation, and payment of any applicable interface activation fees. Client acknowledges that there is no guarantee that a particular third-party interface is, or will remain, available. Additional available third-party interfaces may be ordered by Client by way of an Order.

3.14.4. SUPPLIER's sole obligations to Client with respect to third-party interfaces is to make reasonable efforts to support and maintain existing third-party interfaces, to deliver Client's instructions to third-parties through such interfaces, and to obtain, on Client's behalf and request, data from third-parties through such interfaces. SUPPLIER has no obligation to Client regarding the completion by the third-party of Client's instructions delivered to the third-party through the SUPPLIER Product third-party interface.

3.15. Publicly Disclosed Information.

3.15.1. Client is solely responsible for providing the design, content, and the entry of content into websites that are displayed in a SUPPLIER Product.

3.15.2. Client acknowledges that SUPPLIER has no control over any content once it has been published, released, or posted in the public domain as requested or approved by Client, including the entry of content into the websites that are displayed in a SUPPLIER Product, and any content that is deleted from those websites may nevertheless still be available or referenced on the Internet due to Internet caching on the part of third-parties.

3.15.3. SUPPLIER has the right, but has no obligation, to remove any content it reasonably determines is unlawful, offensive, threatening, libelous, defamatory, pornographic, obscene, or otherwise objectionable, or violates a Party's or third-party's intellectual property rights from a SUPPLIER Product.

4. Confidential Information.

- 4.1. For purposes of this Agreement, confidential information ("**Confidential Information**") includes: (1) the terms of this Agreement; (2) Client Data; (3) the Documentation; (4) any Personal Information; and (5) any information that it would be reasonable for the receiving Party to consider at the time of disclosure as confidential. Each Party shall: (a) keep confidential all Confidential Information disclosed to it by the other Party; (b) ensure its Employees, Subcontractors, agents, and third-parties who have access to Confidential Information keep it confidential, and (c) protect the confidentiality thereof in the same manner as it protects the confidentiality of similar information and data of its own, but always exercising at least a reasonable degree of care in the protection of such Confidential Information.
- 4.2. Notwithstanding anything to the contrary herein, a Party has the right to disclose Confidential Information on a need-to-know basis to its Employees, Subcontractors, agents, and third-parties who have executed written agreements requiring them to (1) maintain such information in strict confidence and use it only to facilitate the performance of their services for the party in connection with the performance of this Agreement, and, (2) if a Subcontractor, agent or third-party, have an appropriate information security program in operation. A Party is responsible for the actions and disclosures of Employees, Subcontractors, agents, and third-parties to which it discloses Confidential Information. A list of Subcontractors that provide a material portion of the SUPPLIER Service or who have access to Client's Personal Information is available at <https://www.jobvite.com/terms-of-use/sub-processors/>.
- 4.3. Subject to Section 5, Confidential Information does not include information which the recipient can demonstrate: (i) is known publicly at the time of disclosure without the fault of the recipient; (ii) has become known publicly, without breach hereof by the recipient, subsequent to disclosure by the disclosing Party; (iii) the recipient becomes aware of from a third-party not bound by nondisclosure obligations to the disclosing Party and with the lawful right to disclose such information to the recipient; or (iv) the recipient independently develops without the use of or reference to the disclosing Party's Confidential Information.

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- 4.4. This Section 4 does not prohibit the disclosure of Confidential Information to the extent that such disclosure is required by law or order of a court or other governmental authority. Unless prohibited by law, each Party shall give the other Party prompt notice of the receipt of any subpoena or other request for such disclosure and reasonably cooperate with the Party seeking a protective order or other confidential treatment of any Confidential Information that it has disclosed to the recipient.
- 4.5. Following the termination of the last Order under this Agreement each Party shall (1) destroy any Confidential Information held of the other Party and, if requested by the disclosing Party, certify such destruction or (2) return any Confidential Information held of the other Party if requested by the disclosing Party within 30 days following such termination. Confidential Information contained in standard backups of the SUPPLIER Product will be deleted in the normal backup cycle that SUPPLIER follows, not to exceed 9 months following the end of the Term related to that SUPPLIER Product.

5. Personal Information

- 5.1. Confidential Information considered Personal Information under any relevant Data Security Laws applicable to Client and/or SUPPLIER will be subject to the higher standard of such Data Security Laws for Personal Information that are applicable to the recipient of such Personal Information. The recipient will act as a data processor of any Personal Information it receives and the discloser will act as a data controller. Client is responsible for all Data Security Law notices and consents related to Client's use of the SUPPLIER Product and the transfer to and processing by SUPPLIER of the Personal Information. SUPPLIER shall comply with all applicable Data Security Laws to the extent that such laws by their terms impose obligations directly upon SUPPLIER as a processor in connection with the use of the SUPPLIER Product specified in the Order. Each Party shall reasonably cooperate with the other Party to assist each Party to comply with the Data Security Laws applicable to it.
- 5.2. Client controls what Personal Information it elects to provide to SUPPLIER for processing in the SUPPLIER Products and SUPPLIER has no control over the nature, scope, origin of, or the means by which Client acquires such Personal Information. Client is solely responsible for determining the requirements of laws or regulations applicable to Client's business or Client's use of the SUPPLIER Products including obtaining all necessary consents, licenses, and approvals, or having a valid legal basis under Applicable Laws for the transfer of the Client Personal Information to SUPPLIER (including exporting of Personal Information to the physical jurisdiction where processing will occur) and the processing of such Personal Information by SUPPLIER.
- 5.3. **Location of Processing Personal Information.** The SUPPLIER Products process Personal Information in Canada and the United States and SUPPLIER Employees provide related services to Client (which may require accessing Client Personal Information) from Canada, the United States, the United Kingdom, and India.
- 5.4. **Duration of Processing Personal Information.** The SUPPLIER shall process the Client's Personal Information to the date 30 days following instructions from Client to delete such data or the end of the last Order in accordance with Section 4.5, including the retention of backups through SUPPLIER's normal backup cycle, not to exceed 12 months.
- 5.5. **Personal Information Subject to USA Data Security Laws.** Should a Party disclose Personal Information subject to Data Security Laws in the United States in accordance with this Agreement then the Parties acknowledge and agree that SUPPLIER is a Service Provider and receives Personal Information pursuant to the business purpose of providing the SUPPLIER Products to Client in accordance with this Agreement. For the avoidance of doubt, SUPPLIER shall not: (a) sell Client Personal Information; (b) retain, use, or disclose Client Personal Information for any purpose other than for the specific purpose of providing the SUPPLIER Product in accordance with this Agreement; (c) retain, use, or disclose Personal Information for a commercial purpose other than providing the SUPPLIER Product; or (d) retain, use, or disclose Client Personal Information outside of the direct business relationship between Client and SUPPLIER. SUPPLIER certifies that SUPPLIER understands the restrictions in this Section and will comply with them in accordance with the requirements of applicable U.S. Data Protection Laws, including the *California Consumer Privacy Act*.
- 5.6. **Personal Information Subject to EU Data Security Laws.** Should a Party disclose (or be required to disclose) Personal

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Information subject to the Data Security Laws of the European Union in accordance with this Agreement then the disclosing Party may request and the receiving Party will reasonably co-operate with, the execution of a *Data Protection Addendum* including the Standard Contractual Clauses for the transfer of Personal Information as approved from time to time for such transfers outside of the European Union by the applicable European legal authority and such other provisions as may be required to comply with the Data Security Laws of the European Union. In such circumstances, the receiving Party will ensure it has appropriate agreements and other provisions in effect consistent with the requirements of the Data Security Laws of the European Union, with any Subcontractors who may process such EU Personal Information on the receiving Party's behalf.

- 5.7. **Data Subject Requests.** SUPPLIER shall promptly forward any requests from data subjects (individuals) related to their Personal Information ("**Data Subject Request**") to Client and only respond to the Data Subject Request by directing the requestor to contact Client directly. To the extent that Client requires functionality that is not available in the SUPPLIER Product interface to comply with a Data Subject Request, SUPPLIER shall provide reasonable assistance to Client to enable Client to comply with applicable Data Security Laws.
- 5.8. **Security Breach Reporting.** In the event of a Security Breach involving the Personal Information of the other Party, the affected Party shall promptly inform the other Party of the fact of the Security Breach and co-operate with that Party in complying with its applicable Data Security Laws. The Party that suffered the Security Breach shall investigate the root cause of the Security Breach and implement such reasonable remediation to mitigate the extent of the Security Breach and prevent similar future Security Breaches, and provide information related to the Security Breach and its mitigation to the other Party.
- 5.9. if a Party is unable to meet its obligations in this Agreement related to Personal Information provided to it by the Disclosing Party, the Party shall promptly inform the Disclosing Party of that fact.

6. Security.

- 6.1. Each Party shall protect any Personal Information disclosed by the other Party by implementing appropriate administrative, physical, and technical safeguards in its business, systems, and the SUPPLIER Product to prevent Security Breaches from occurring that are at least as rigorous as accepted industry practices such as ISO/IEC 27001:2013 and ISO/IEC 27002:2013.
- 6.2. The SUPPLIER Product is only for use with data related to employment recruiting and marketing. Therefore, Client shall not provide SUPPLIER with access to health, payment card, or similarly sensitive personal information that imposes specific data security requirements for the processing of such data and SUPPLIER will have no obligation under this Agreement to provide such additional requirements.
- 6.3. SUPPLIER shall conduct background checks on its employees, (and require its Subcontractors to perform such background checks on their employees), who have access to Client Data. Subject to applicable laws, such background checks will include: identity verification, education verification, employment verification, criminal history, OFAC search, OIG/GSA search, and I9 verification (for US employees). Background checks will be performed on hiring and repeated on at least a 24-month basis.
- 6.4. SUPPLIER shall maintain a disaster recovery plan related to the Hosted Service and a business interruption recovery plan related to its business and shall test such plans at least annually. SUPPLIER shall provide Client with a copy of such plans, confirmation of annual testing and any major identified deficiencies from testing and related remediation plans on Client's request.
- 6.5. **Audits**
 - 6.5.1. Client may perform a security audit of SUPPLIER's security obligations under this Agreement up to once per year or more frequently if Client has such an obligation under applicable Data Security Laws. If a third party is to be used by Client to conduct such audit, the third party must be mutually agreed to by Client and SUPPLIER and must execute a reasonable written confidentiality agreement with SUPPLIER before conducting the audit. The audit must be conducted during regular business hours at the applicable SUPPLIER facility subject to SUPPLIER policies, and may not

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unreasonably interfere with SUPPLIER business activities.

6.5.2. To request an audit, Client must submit a detailed audit plan to SUPPLIER at least 2 weeks in advance of the proposed

audit date. The audit plan must describe the proposed scope, duration, and start date of the audit. SUPPLIER will review the audit plan and provide Client with any concerns or questions. SUPPLIER and Client will work cooperatively to agree on a final audit plan within 10 business days of the submission of the audit plan. If the requested audit scope is addressed in a SSAE 18 / ISAE3402 Type 2, ISO, NIST, PCI DSS, HIPAA or similar audit report performed by a qualified third-party auditor within the prior 12 months and there is confirmation there are no known material changes in the controls audited, Client agrees to accept those findings in lieu of requesting an audit of the controls covered by the report. The third-party audit report and findings are Confidential Information of SUPPLIER.

6.5.3. Client shall provide SUPPLIER any audit reports generated in connection with any audit performed under this section, unless prohibited by law. Client may use the audit reports solely for the purposes of meeting its regulatory audit requirements or confirming compliance with the requirements of this Agreement. The audit reports are Confidential Information of the Parties.

6.5.4. Any audits are at Client's expense; provided however, SUPPLIER shall bear the cost and expense of its own efforts to cooperate and support the audits.

7. Warranties.

- 7.1. **Authority.** Each Party represents and warrants that: (a) it has obtained all necessary approvals, consents and authorizations to enter into this Agreement; (b) the person executing this Agreement on its behalf has express authority to do so and to bind the Party; and (c) that the entity or individual name which it has provided on its own behalf for this Agreement is a true and accurate representation of its legal identity.
- 7.2. **Lawful Conduct.** Each Party represents and warrants that it has and will comply with all local, state, provincial, federal, and foreign laws, treaties, regulations, and conventions related to its use or provision of the SUPPLIER Product, as applicable, including those related to privacy, human rights, hiring practices, Electronic Communication, credit reporting, background checks, anti-spam legislation, anti-bribery, and the US Foreign Corrupt Practices Act ("FCPA").
- 7.3. **Warranty of Functionality.** During the SUPPLIER Product Term specified in the Order, SUPPLIER warrants to Client that the SUPPLIER Product will achieve in all material respects the functionality described in the Documentation and that such functionality will be maintained in all material respects in subsequent Updates to the SUPPLIER Product. SUPPLIER does not warrant that the SUPPLIER Product will be error-free. In the event that material functionality is reduced in an Update, Client's sole and exclusive remedy is that: (1) Client may within 60 days of the first instance of the reduction in material functionality request that SUPPLIER modify the SUPPLIER Product to achieve in all material respects the prior functionality described in the Documentation; and (2) if SUPPLIER does not restore such functionality within 60 days of receiving such request from Client, then Client may during the 30 days following the end of the 60 day period SUPPLIER had to restore functionality, terminate the Order with immediate effect as it relates to the SUPPLIER Product with reduced material functionality, and Client will receive a refund of Fees prepaid under this Agreement for the remaining but undelivered use of such SUPPLIER Product from the date of its initial notice to SUPPLIER of the reduced material functionality. SUPPLIER will have no obligation with respect to any warranty claim unless Client provides SUPPLIER with written notice of such claim within 60 days of the first instance of any material functionality problem.
- 7.4. **Non-Infringement Warranty.** SUPPLIER warrants it has the full power and authority to grant the Subscription and License Grant, and that the authorized use by Client of the SUPPLIER Product as described herein will not, as of the Effective Date, in any way constitute an infringement or other violation of any Canadian, United States, United Kingdom, or European Union Member country copyright, trade secret, patent, or other rights of any third-party.
- 7.5. **Services Warranty.** With respect to the Implementation Services and any Additional Professional Services Client purchases as specified in the Order, SUPPLIER warrants that: (1) SUPPLIER and each of its employees, consultants, and Subcontractors (if any) it uses to provide and perform the Implementation Services and Additional Professional Services

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under this Agreement has the necessary knowledge, skills, experience, qualifications, rights, and resources to provide and perform the same in accordance with this Agreement; and (2) the Implementation Services and Additional Professional Services will be performed for and delivered to Client in a good, diligent, and workmanlike manner in accordance with general industry standards.

- 7.6. **No Computer Viruses Warranty.** SUPPLIER warrants that the SUPPLIER Product is free of computer viruses, Trojan horses, worms, spyware, or other malicious code or components.
- 7.7. **Voiding of Warranties.** The warranty in Section 7.4 will be void as to the SUPPLIER Product where the non-compliance is caused by or to the extent related to Client's use of the SUPPLIER Product in conjunction with software or other products not included with the SUPPLIER Product or contemplated to be used with the SUPPLIER Product in the Documentation, or upon a use of the SUPPLIER Product in a manner not contemplated in the Documentation.

8. **Disclaimer of Warranties.** EXCEPT AS EXPRESSLY STATED IN SECTION 7, NEITHER PARTY MAKES ANY WARRANTY OR CONDITION OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND EACH PARTY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES AND CONDITIONS, INCLUDING ANY IMPLIED WARRANTY OR CONDITION OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. EACH PARTY ACKNOWLEDGES THAT IT HAS RELIED ON NO WARRANTIES OTHER THAN THE WARRANTIES EXPRESSLY SET FORTH IN SECTION 7.

9. **Limitation of Liability**

- 9.1. **Limitation of Types of Damages.** IN NO EVENT WILL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR INCIDENTAL, CONSEQUENTIAL, PUNITIVE, SPECIAL, EXEMPLARY, OR INDIRECT DAMAGES OF ANY TYPE OR KIND, INCLUDING LOSS OF CLIENT DATA, REVENUE, PROFITS, USE, OR OTHER ECONOMIC ADVANTAGE, ARISING FROM ANY BREACH OF WARRANTY, BREACH OF CONTRACT, NEGLIGENCE, OR ANY OTHER LEGAL CAUSE OF ACTION ARISING OUT OF OR RELATED TO THIS AGREEMENT OR ANY OF THE TRANSACTIONS IT CONTEMPLATES.
- 9.2. **Limitation on Amount of Damages.** The maximum liability of either Party to the other Party arising out of or related to this Agreement or any of the transactions it contemplates, other than as a result of the willful misconduct or gross negligence of a Party, whether such liability arises from a claim based on breach or repudiation of contract, breach of warranty, tort, or otherwise, will in no case exceed the equivalent of 24 months in Fees related to the applicable SUPPLIER Product as of the time of the event giving rise to such liability. The essential purpose of this provision is to limit the potential liability of the Parties arising out of or related to this Agreement or any of the transactions it contemplates.
- 9.3. **Indemnity Obligations Excluded.** The limitation of liability set forth in this Section 9 does not apply to either Party's indemnity obligations set forth in Section 10 below.

10. **Indemnification**

- 10.1. **Infringement.** SUPPLIER shall defend Client from and against any claim, demand, suit, action, or proceeding brought by a third-party (a "**Third-party Claim**") against Client and indemnify and hold Client harmless from any costs, liabilities, losses, and expenses, including reasonable attorneys' fees and legal costs (collectively, "**Losses**") awarded by a court or incurred pursuant to this Section in connection with a Third-party Claim which arises out of or results from the infringement of a Canadian, United States, United Kingdom, or European Union Member Country copyright, patent, or misappropriation of a trade secret relating to the SUPPLIER Product, provided that: (1) Client promptly, gives SUPPLIER notice of the Third-party Claim; (2) Client gives SUPPLIER sole control of the defense and related settlement negotiations; (3) Client promptly provides SUPPLIER with all reasonably available information and assistance necessary to perform SUPPLIER's obligations under this Section 10.1 (at SUPPLIER's cost); and (4) the Third-party Claim does not result from: (a) the use of the SUPPLIER Product in conjunction with software or other products not included with the SUPPLIER Product or contemplated to be used with the SUPPLIER Product in the Documentation; or (b) use of the SUPPLIER Product in a manner not contemplated in the Documentation. If the SUPPLIER Product is held to infringe any intellectual property right, SUPPLIER may, in its sole discretion and at its own expense: (i) procure a license that will protect Client against such Third-party Claim without cost to Client; (ii) replace the SUPPLIER Product with non-infringing SUPPLIER Product with equivalent functionality; or (iii) terminate this Agreement. Provided SUPPLIER complies with this Section,

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Client will have no other remedy against SUPPLIER related to the subject matter of this section, with the sole exception of terminating this Agreement. Upon any such termination of this Agreement, SUPPLIER shall provide Client a refund of the Fees prepaid under this Agreement for the remaining but undelivered use of such SUPPLIER Product following the date of the termination.

- 10.2. **Disclosure of Client Data.** SUPPLIER shall defend Client and indemnify and hold Client harmless against any Losses awarded by a court or incurred pursuant to this Section in connection with (i) a Third-party Claim alleging a breach of confidentiality or applicable Data Security Laws, or (ii) a legal obligation under applicable Data Security Laws, either of which arises out of or results from SUPPLIER's negligence or willful misconduct: (a) in disclosing or preventing unauthorized access to Client Data; or (b) that breaches a Data Security Law, provided Client: (1) promptly gives SUPPLIER notice of any such Third-party Claim; (2) gives SUPPLIER sole control of the defense and related settlement negotiations; and (3) promptly provides SUPPLIER with all reasonably available information and assistance necessary to perform SUPPLIER's obligations under this Section 10.2 (at SUPPLIER's cost). Provided SUPPLIER complies with this Section 10.2, Client will have no other remedy against SUPPLIER related to the subject matter of this section, with the sole exception of terminating this Agreement; upon any such termination of this Agreement, SUPPLIER shall provide Client a refund of the Fees prepaid under this Agreement for the remaining but undelivered use of such SUPPLIER Product following the date of the termination.
- 10.3. **Client's Indemnity Obligations.** Client shall defend SUPPLIER and indemnify and hold SUPPLIER harmless against any Losses awarded by a court or incurred pursuant to this Section arising out of or related to a Third-party Claim against SUPPLIER: (1) alleging that the Client Data, or any use thereof, infringes the legal or intellectual property rights of any third-party including any rights related to the transfer to or processing of Client Personal Information by SUPPLIER in accordance with this Agreement; (2) alleging that Client's use of the SUPPLIER Product has breached any hiring or anti-discrimination laws; (3) if the Third-party Claim results from the use of the SUPPLIER Product in conjunction with software or other products not included with the SUPPLIER Product or contemplated to be used with the SUPPLIER Product in the Documentation; or (4) upon a use of the SUPPLIER Product in a manner not contemplated in the Documentation, provided that SUPPLIER: (i) promptly, provides Client notice of the Third-party Claim; (ii) gives Client sole control of the defense and related settlement negotiations; and (iii) promptly provides Client with all reasonably available information and assistance necessary to perform Client's obligations under this Section 10.3 (at Client's cost). Provided Client complies with this Section 10.3, SUPPLIER will have no further remedy against Client related to the subject matter of this section.

11. Suspension – Termination.

- 11.1. **Suspension for Immediate or Ongoing Harm.** SUPPLIER reserves the right to temporarily suspend Client's access to or use of the Hosted Service, with reasonably contemporaneous telephonic notice to Client, if SUPPLIER reasonably concludes that Client's use of the Hosted Service is causing immediate or ongoing harm to SUPPLIER or others by causing a disruption of the Hosted Service (e.g. a denial of service attack through a Client career portal). In the event SUPPLIER suspends Client's access to the Hosted Service, SUPPLIER and Client shall use reasonable efforts to resolve the issues causing the suspension of the Hosted Service. SUPPLIER will not be liable to Client for any suspension described in this Section.
- 11.2. **Suspension for Delinquent Account.** SUPPLIER reserves the right to suspend Client's use of the SUPPLIER Product and any related License Grant if Client fails to pay any undisputed invoice after it is due and SUPPLIER has provided Client, following the due date of the invoice, at least 10 days' advance written notice of the suspension and the invoice remains unpaid. Any disputed amounts must be disputed in accordance with Section 1.2.
- 11.3. **In the Event of Material Breach.** Either Party may terminate this Agreement and all Order hereunder upon 30 days' written notice to the other Party in the event of a material breach of any provision of this Agreement by the other Party and where the breaching Party fails to cure such breach within the 30 day notice period. If this Agreement is terminated

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as a result of a breach on SUPPLIER's part, SUPPLIER shall provide Client a refund of the Fees prepaid under this Agreement for the remaining but undelivered use of such SUPPLIER Product following the date of the termination. If this Agreement is terminated as a result of a breach on Client's part, then Client is responsible for all Fees to SUPPLIER that would have occurred under the Order then in effect. A Party shall make any payments required under this Section within 30 days of the termination. In addition, upon a termination pursuant to this Section, all rights to use the SUPPLIER Product and any related License Grants will cease immediately.

- 11.4. **Expiry of Agreement When No Active Orders.** This Agreement will naturally terminate when there have been no Orders with remaining performance obligations (such as a Subscription Term) active under it for a 6 month period.
- 11.5. **On Termination or Expiration of a SUPPLIER Product Term.** Upon the termination or expiration of a SUPPLIER Product Term, Client will have no rights to continue use of such SUPPLIER Product and any related Subscription and License Grants will cease immediately and Client shall: (1) immediately cease to use the SUPPLIER Product; and, if applicable, (2) delete the Optional Software from Client's servers no later than 30 days after such termination or expiration. Following the termination or expiration of a SUPPLIER Product Term, SUPPLIER may immediately deactivate Client's account related to such SUPPLIER Product. Client Data will be retained for at least 30 days and will be deleted from SUPPLIER's servers within 60 days after such termination or expiration in accordance with Section 4.5. Client may request by written notice provided prior to 30 days following the termination or expiration of a SUPPLIER Product Term a copy of Client Data related to the SUPPLIER Product, in an industry standard format.
- 11.6. **Confidential Information Following Termination.** Following the termination or expiry of this Agreement each Party shall comply with Section 4.5 including destroying or returning Confidential Information.
12. **Definitions.** The following definitions apply to this Agreement (in addition to the other defined terms specified elsewhere in this agreement):
- 12.1. **"Additional Professional Services"** means any additional services that Client purchases beyond the scope of the Implementation Services and which are specified in the Order.
- 12.2. **"Affiliate"** means any entity that is controlled by a Party or by the party which controls, or ultimately controls, a Party, including the controlling parties. A Party is responsible for the actions and omissions of its Affiliates as if the Party itself did the action or omission.
- 12.3. **"Client Data"** means data provided to SUPPLIER by Client for processing by the SUPPLIER Product including the results of such processing both during implementing and/or normal use of the SUPPLIER Product. Client Data does not include Operational Data.
- 12.4. **"Data Security Laws"** means all privacy, security, data protection, direct marketing, consumer protection and workplace privacy laws, rules and regulations of any jurisdiction that relate to the collection, use, or disclosure of Personal Information that are specifically applicable to the Party's actions under this Agreement.
- 12.5. **"Documentation"** means the implementation guides, user guides, interface guides, Minimum System Requirements, help files, and other documentation that describe the installation, configuration, requirements, use, and limits of the SUPPLIER Product.
- 12.6. **"Electronic Communication"** means any transfer of signs, signals, text images, sounds, data, or intelligence of any nature transmitted in whole or in part electronically.
- 12.7. **"Employee"** means an individual who is (a) directly an employee of a Party, (b) individuals who are 'leased employees' of third parties providing service to a Party, and (c) individuals who are engaged as subcontractors where, in all cases, the individuals are subject to the same direction and control of the Party including compliance with a Party's policies and security procedures. An Employee is not a Subcontractor.
- 12.8. **"ERP System"** means Client's enterprise resource planning system, human resource information system, or applicant tracking system, as applicable, as indicated on an Order to which the Hosted Service or Optional Software is interfaced, as applicable.
- 12.9. **"Hosted Service"** means the hosted service subscribed to by Client under this Agreement and as indicated on the Order.

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- 12.10. **“Implementation Services”** means the services specified in an Order to initially implement the Hosted Service and Optional Software so that it functions in accordance with the Documentation.
- 12.11. **“Including,”** whether or not capitalized, means “including, but not limited to.”
- 12.12. **“Operational Data”** means data that is generated from Client’s use of the SUPPLIER Product, including the processing of Client Data, that does not identify Client or any specific individual, including aggregate statistical information.
- 12.13. **“Optional Software”** means any software provided to Client in object form to allow Client to better use or interface its ERP System to the Hosted Service subscribed to by Client under this Agreement and as indicated on the Order; for example mobile device applications, browser addins, and ERP System interfaces that must be installed at the Client site (ie for Peoplesoft). Optional Software does not include the software operating the Hosted Service.
- 12.14. **“Order”** means SUPPLIER’s order form evidencing the subscription of a SUPPLIER Product, Implementation Services, and any Additional Professional Services and any subsequent order forms submitted online or in written form, specifying, among other things, the SUPPLIER Product subscribed for, other services contracted for, applicable fees, SUPPLIER Product Term, billing period, and other charges as agreed to between the Parties.
- 12.15. **“Personal Information”** means any information, about an identifiable, natural person including information where there is a serious possibility that the individual could be identified by using that information, alone or in combination with other information.
- 12.16. **“Security Breach”** means a compromise in the security, confidentiality, or integrity of Personal Information for which the Party has a duty of confidentiality to maintain under this Agreement.
- 12.17. **“Subcontractor”** means a third-party that is performing services for a Party related to this Agreement which is not an Employee and which is not subject to the direct control of a Party. It does not include third-parties that do not have access to Client Data. Having access to Client Data does not include access to encrypted data if the entity does not have access to the related encryption key.
- 12.18. **“Term”** means the term of this Agreement, which commences on the Effective Date above and ends on either: (1) the last day of the last SUPPLIER Product Term on the Order; or (2) the date this Agreement is otherwise terminated in accordance with the terms and conditions herein.
- 12.19. **“SUPPLIER Product”** means, collectively, the Hosted Service, Optional Software, and any Additional Professional Services.
- 12.20. **“SUPPLIER Product Term”** means the period specified on an Order for which Client subscribes for a specific SUPPLIER Product.
- 12.21. **“Use Limit”** means a limit on Client’s use of a SUPPLIER Product specified in the Documentation (as they may be changed from time to time) or on the Order. The limit may be transactional in a period (usually a year) such as number of resumes processed, job postings, emails sent, etc., or it may be use related such as the number of users, number of career sites, number of third-party connections, number of talent networks, etc., or it may be quality related such as sent email reputation, resolving of email complaints, etc. The Use Limit specified on an Order will override any Use Limit specified in the Documentation.

13. General.

- 13.1. **Time of the Essence.** Unless expressly stated otherwise herein, time is of the essence for the purpose of the performance of each Party’s obligations under this Agreement and the Order; provided that neither Party shall be responsible for any delay to the extent caused by the other Party.
- 13.2. **Choice Law - Designation of Forum - Waiver of Jury Trial.** Except where governed by the applicable federal laws of the United States, the laws of the State of California (without giving effect to any conflicts of laws principles in either case) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including its interpretation, construction, performance, and enforcement. Any Party bringing a legal action or proceeding against any other Party arising out of or relating to this Agreement shall bring such legal action or proceeding in the courts of San Francisco, California. Each Party waives, to the fullest extent permitted by law: (1) any objection which it may now or later

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have to the laying of venue of any legal action or proceeding arising out of or relating to this Agreement brought in any court in San Francisco, California; and (2) any claim that any action or proceeding brought in any such court has been brought in an inconvenient forum. Each Party, to the extent permitted by law, knowingly, voluntarily, and intentionally waives its right to a trial by jury in any action or other legal proceeding arising out of or relating to this Agreement and the transactions it contemplates; this waiver applies to any action or legal proceeding, whether sounding in contract, tort, or otherwise. In the event of any legal action or proceeding between the Parties hereto, the prevailing Party will be entitled to an award of reasonable attorney fees and costs. The *International Sale of Goods Act* and the *United Nations Convention on Contracts for the International Sale of Goods* have no application to this Agreement.

- 13.3. **Trademark Information.** The trademarks and service marks of each Party will not be used in any manner without the other Party's prior written consent. Notwithstanding the foregoing, SUPPLIER has the right to name Client as a user of the SUPPLIER Product.
- 13.4. **Notices.** Except as otherwise provided in this Agreement, the Parties shall provide all notices required under this Agreement related to (a) notices of default and right to cure, if applicable; (b) notices intended to amend the Agreement; and (c) notices of termination, in writing and such notices will be deemed given when delivered by hand or courier, facsimile, electronic transmission, or five days after mailing, postage prepaid, by certified mail, return receipt requested. All other notices may also be delivered by electronic mail, and will be deemed given upon personal electronic reply acknowledging receipt. The address for notices in the case of Client is as appears on page 1 of this Agreement; and in the case of SUPPLIER, to: Jobvite, Inc., Attention: Corporate Secretary, 300 – 20 North Meridian Street, Indianapolis, IN 46204 (email: corporate.secretary@Jobvite-inc.com). In all cases in this Agreement where an address, telephone number, email address, or Internet web page is specified, the same may be changed at any time by a Party notifying the other Party in accordance with this Section 13.4.
- 13.5. **Assignment and Delegation – Successors and Assigns.** Neither Party may assign any of its rights nor delegate any performance under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld. Notwithstanding the foregoing, such consent is not required to assign: (1) to the successor of all or substantially all of either Party's business or assets; or (2) for SUPPLIER to make an assignment or delegation to a subsidiary or affiliate that provides the SUPPLIER Product to Client. Any purported assignment of rights or delegation of performance in violation of this Section is void. This Agreement binds and benefits the Parties' respective successors and permitted assigns.
- 13.6. **Force Majeure.** Neither Party will be liable for any failure or delay in performance under this Agreement (other than for a delay in the payment of money due and payable hereunder) to the extent such failure or delay is caused by conditions beyond the reasonable control of and not the fault of the nonperforming Party, including Acts of God, earthquakes, floods, fire, hurricanes, unusually extreme or severe weather, wars, insurrections, terrorism, riots, labor stoppage, criminal acts of third-parties (collectively, a "**Force Majeure Event**"), provided that the nonperforming Party gives the other Party prompt written notice, with full details following the occurrence of the cause relied upon. Any dates by which performance obligations are scheduled to be met will be extended for a period of time equal to the time lost due to any Force Majeure Event.
- 13.7. **Independent Parties.** Nothing in this Agreement is intended to create a joint venture, partnership, agency (not including the narrow agency exception provided for in Section 3.14.1), or employment relationship between the Parties. Neither Party by virtue of this Agreement has any right, power, or authority to act or create any obligation, express or implied, on behalf of the other Party.
- 13.8. **Rights and Remedies Cumulative.** The rights and remedies set forth in this Agreement are not intended to be exhaustive and the exercise by either Party of any right or remedy does not preclude the exercise of any other rights or remedies that may now or subsequently exist in law or in equity or by statute or otherwise.

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- 13.9. **Amendments – Waiver.** Any amendment to this Agreement must be in writing and signed by both Parties. No provision, right, power, or privilege in this Agreement may be waived, except pursuant to a writing executed by the Party against whom the waiver is sought to be enforced.
- 13.10. **Severability.** If any provision of this Agreement is held to be illegal, invalid, or unenforceable, in whole or in part, such provision will be ineffective to the extent of such illegality, invalidity, or unenforceability without invalidating the remainder of such provision or the remainder of this Agreement.
- 13.11. **Headings.** The section headings used in this Agreement are for convenience of reference only and do not affect the interpretation or construction of this Agreement.
- 13.12. **Construction.** This Agreement will be construed as if drafted by both Parties and will not be strictly construed against either Party.
- 13.13. **Survival.** After termination or expiration of this Agreement, all provisions relating to payment will survive until completion of the required payments. In addition, provisions of this Agreement, which by their express terms or context impose continuing obligations on the Parties will survive the termination or expiration of this Agreement.

Schedule B - Post Deployment Support and Availability

1. **Definitions.** In this Schedule there are the following definitions in addition to those in the Agreement:

- 1.1. **“Available”** means that the Hosted Services are functioning and connected to the internet at the point where the SUPPLIER hosting site interfaces with the internet. Not being Available does not include general internet disruptions, disruptions in Client’s connection to the internet, or *force majeure* events.
- 1.2. **“Availability Percentage”** means the calculation taking (1) the number of minutes the Hosted Services was Available in a given month and (2) the total number of minutes in a given month less the number of minutes it was not Available in Scheduled Maintenance Windows and Force Majeure Events, and dividing the first number by the second number. This is calculated for each SUPPLIER Product separately.
- 1.3. **“Business Day”** means Sunday through Friday, excluding the following holidays: New Year’s Day, Good Friday, Memorial Day (USA), Labor Day, Thanksgiving Day (Canada) /Columbus Day (USA), Thanksgiving Day (USA), Christmas Day, and Boxing Day (Canada).
- 1.4. **“Business Hours”** means 6:00PM ET Sunday to 9:00PM ET Friday every Business Day.
- 1.5. **“Case”** is an occurrence of a Client Support Request logged with SUPPLIER.
- 1.6. **“Client Support Request”** is a Post Deployment request originating with the Client for support in one of a number of areas, listed as follows:
 - 1.6.1. **“Administrative Support Request”** is a request for assistance with the management of Client’s account with SUPPLIER, examples for clarity being modifications to account setup at SUPPLIER, the handling of questions concerning invoicing and billing, or the management of Named Support Contacts.
 - 1.6.2. **“Developer Support Request”** is a request for assistance arising from Client developers and technical staff that require assistance in integrating, configuring, or maintaining the SUPPLIER Products.
 - 1.6.3. **“Error Support Request”** is the reporting by Client of a possible non-conformity or defect in a SUPPLIER Product that is being used in the Client production environment.
 - 1.6.4. **“End User Support Request”** is a question or issue encountered by the end user of a SUPPLIER Product, including Client employees and third-party users (such as candidates and other web site visitors)
- 1.7. **“Client Support Services”** means the services delivered by the SUPPLIER Client Support Team related to a Case.
- 1.8. **“ET”** is Eastern Standard Time or Eastern Daylight Savings Time as applicable;
- 1.9. **“Named Support Contact”** are individuals nominated by Client as approved to submit a Case to SUPPLIER.
- 1.10. **“Post Deployment”** means the time following the first use of the SUPPLIER Product by Client in a production environment for normal business purposes.
- 1.11. **“Scheduled Maintenance Windows”** means the three-hour periods commencing at 11 p.m. ET Wednesday and Friday nights and the 5 hour period commencing at 11 p.m. ET Saturday night.
- 1.12. **“Support Email Address”** is an email address to which Client Support Requests can be submitted, and is currently jobvitecares@jobvite-inc.com.
- 1.13. **“Support Telephone”** is 1-855-315-4473 (US/CAN), +44-800-0868-665 (UK), or +1-541-229-1265 for making Client Support Requests during Business Hours.
- 1.14. **“Support Web Site”** is a website containing service information and allowing submission of Client Support Requests obtained from the ‘Support’ link at www.jobvite.com.

2. SUPPLIER Product Availability

- 2.1. **SUPPLIER Product Availability Commitment.** During the SUPPLIER Product Term SUPPLIER commits that the Hosted Service related to a SUPPLIER Product will achieve an Availability Percentage of 99.5%
- 2.2. **Internet Disruption** Client acknowledges that SUPPLIER does not and cannot control the transmission of data between the data center containing the Hosted Service and Client over the internet public circuit. At times, actions or inaction of third-parties can impair or disrupt Client’s or SUPPLIER’s connections to the internet public circuit (or portions thereof); accordingly, SUPPLIER has no liability or obligation to Client resulting from or related to such events.

Schedule B - Post Deployment Support and Availability

- 2.3. **Notification of Maintenance.** SUPPLIER shall make reasonable efforts to notify Client at least 7 days in advance of all regularly scheduled maintenance sessions where SUPPLIER anticipates a disruption of the Hosted Service. SUPPLIER shall make reasonable efforts to notify Client in advance of emergency maintenance sessions. Notice is provided by SUPPLIER to Client either through online notices in the SUPPLIER Product, on the SUPPLIER web site, or through communication from the SUPPLIER Account Manager.
- 2.4. **Monitoring.** SUPPLIER uses a variety of solutions to monitor the various Hosting Services that generate reports regarding the Availability of the Hosted Service. SUPPLIER shall provide summary Availability information to Client by way of periodic reporting which may include on-line web pages.
- 2.5. **Service Credit.** If in a given Post Deployment calendar month the SUPPLIER Product Availability Commitment is not met, then Client’s sole and exclusive remedy will be (i) to receive a service credit equal to the Service Credit Percentage as shown in the following table times the monthly subscription Fee for (annual Fee divided by 12) the particular SUPPLIER Product affected; and (ii) the termination right in Section 2.9.

Availability Percentage Achieved = X		Service Credit Percentage
If X is >=99.5%	then	0%
If X is >=98.5% and <99.5%	then	15%
If X is >=95% and <98.5%	then	30%
If X is >=90% and <95%	then	40%
If X is <90%	then	50%

- 2.6. Any service credit is expressly conditional upon Client providing SUPPLIER with written notice of such failure by the 20th day of the month following such service level failure. Client is not eligible for a service credit under this Section if Client has undisputed, unpaid invoices that are more than 30 days past their due dates at the end of the month the SUPPLIER Product Availability Commitment is not met.
- 2.7. Any service credit will be applied to any current or future Fees Client is obligated for under this Agreement. Should this Agreement expire or be terminated any outstanding service credits will be paid to Client in cash within 30 days of the expiry or termination of this Agreement.
- 2.8. If multiple SUPPLIER Products are purchased under an Order for a single Fee, the total Fee shall be allocated equally to each SUPPLIER Product for the purposes of calculating a monthly subscription Fee for a particular SUPPLIER Product.
- 2.9. **Repeating Issues.** If the Hosted Service fails to meet the SUPPLIER Product Availability Commitment in three of five consecutive months Client may, during the 30 days following such occurrence, provide SUPPLIER with up to 90 days’ notice of termination of the Agreement and SUPPLIER shall provide Client a refund of the Fees prepaid under this Agreement for the remaining but undelivered use of such SUPPLIER Product following the date of the termination.

3. Issues not Covered by Post Deployment Support.

- 3.1. The following available services are not included by Post Deployment Support:
 - 3.1.1. End User Support Requests.
 - 3.1.2. Client integrations and related programing in or issues with the configuration of the Client’s ERP or HR Information System (ie iCIMS, Peoplesoft, iRec, Oracle, Taleo, SuccessFactors, Workday, Infor, etc.) or other third-party software (other than changes to the ERP software by the ERP manufacturer which render the integration to the SUPPLIER Product unusable) except at an additional fee to be agreed upon through a new Order.
 - 3.1.3. Talent Generation Program Consulting.
 - 3.1.4. Training Services except at an additional fee to be agreed upon through a new Order.
 - 3.1.5. Any disruption of the internet between the Hosted Service and the Client.
 - 3.1.6. Any configuration changes made to Client software that disrupts the connection between the SUPPLIER Integrator

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and the Client software.

3.1.7. Provision of any content to the SUPPLIER Products.

3.1.8. Interconnections between SUPPLIER Products and third-party services (for example job boards) and the results of requests made of third-party services through SUPPLIER Products.

4. Client Support Services Procedure.

- 4.1. **Authorized Parties to Make Client Support Requests.** Client shall provide SUPPLIER with the contact information of Named Support Contacts who shall be responsible to make Client Support Requests. SUPPLIER shall provide Client Support Services to Client through the Named Support Contacts.
- 4.2. Named Support Contacts shall send Client Support Requests to the Support Email Address, called in to the Support Telephone, or logged in the Support Web Site.
- 4.3. The Support Web Site can be used to access support hours, support contact information, and to log support requests.
- 4.4. **Administrator and Developer Support Requests.** Administrator Support Requests and Developer Support Requests that are sent to the Support Email Address, called in to the Support Telephone, or logged in the Support Web Site received during Business Hours will be replied to within 4 Business Hours. If received after Business Hours they will be replied to by 12 noon ET on the next Business Day.
- 4.5. **Error Support Requests.** Error Support Requests create Cases that are responded to in accordance with the Severity Level that is assigned to them.
- 4.6. **Initial Assignment of Severity Level.** The Client may initially provide input as to the Severity Level of an Error Support Request. If no Severity Level is initially provided by Client the Severity Level will be deemed to be Level 4. The Client shall provide sufficient information to allow SUPPLIER to establish the symptoms, software version environment, involved data and steps required to reproduce the problem.
- 4.7. **Setting of Severity Level.** The initial Severity level assigned is subject to review by the assessing SUPPLIER Support Specialist. Severity Level is finalized by the SUPPLIER Support Specialist when the Error Support Request is made by interaction between the Client and the SUPPLIER Support Specialist, such as by telephone. The Severity Level shall be set in a reasonable manner by SUPPLIER, guided by the Severity Level description below. Should SUPPLIER find that Client is consistently inflating the Severity Level of Error Support Case from what is reasonable, including prior workarounds or resolutions having been provided to Client by SUPPLIER for such Errors, SUPPLIER shall in an Account Review process develop with Client a means to resolve this issue so that the limited resources are available for resolving true Severity 1 and 2 issues.
- 4.8. **Verification of Error Support Case.** SUPPLIER must be able to reproduce the reported event underlying the Error Support Case. Client shall co-operate with SUPPLIER in reproducing and investigating the circumstances leading to the reported event. Should the reported event be unable to be reproduced by SUPPLIER and Client the Error Support Case will be closed and SUPPLIER shall notify Client of such closing.
- 4.9. **Misidentified Error Support Requests.** Error Support Requests that are misidentified and actually Administrator or Developer Support Requests will be re-designated appropriately. Error Support Requests that are out of scope shall be closed by SUPPLIER.
- 4.10. **Revision of Severity Level.** SUPPLIER may on investigation reasonably change the Severity Level of an Error Support Case following review and investigation of the reported event to match the Severity Level description below and shall notify Client of such change.
- 4.11. **Client update communications.** SUPPLIER shall make reasonable efforts to communicate with the Client with the frequency described under "Service Levels in Business Hours".
- 4.12. **Client obligations to assist Resolution of an Error Support Case.** Client must make available to SUPPLIER information and Client technical support staff as reasonably required by SUPPLIER to diagnose, identify, resolve, and confirm resolution of an Error Support Case. The resolution targets are specifically dependent on Client fulfilling this obligation.
- 4.13. **Client requested escalation procedures.** Client may, should SUPPLIER fail to follow the communication targets or if Client

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has other reasonable concerns about a Case, escalate a Case to Client’s Technical Account Manager or the SUPPLIER Vice President responsible for Client Service.

5. Error Support Service Levels

Severity	Description	Initial Response		Communication Frequency	Resolution	
		Target	SUPPLIER Expectation	Target	Target	SUPPLIER Expectation
Level 1	Any Error Support Case wherein the use of an SUPPLIER Product or any major function for its intended purpose is prevented	Immediate (required Client to submit case by telephone)	2 hours	At least once every 1 business hour unless Client owns next steps	Continuous work to resolve as soon as commercially reasonable	24 hours following verification of the Error by SUPPLIER. A workaround may be provided to achieve this goal. If a workaround is provided, a permanent solution will be provided in 60 days.
Level 2	Any Error Support Case wherein the use of an SUPPLIER Product or any major function for its intended purpose is seriously impaired, but not prevented	1 hour	4 hours	At least once every 4 business hours unless Client owns next steps	24 hours following verification of the Error by SUPPLIER.	96 hours following verification of the Error by SUPPLIER. A workaround may be provided to achieve this goal. If a workaround is provided, a permanent solution will be provided in 90 days.
Level 3	Any Error Support case wherein the use of an SUPPLIER Product, in whole or in part, for its intended purpose, suffers a minor impairment	4 business hours	1 business day	At least once every 1 business week unless Client owns next steps. Communication will stop once Resolution is scheduled into a specific release date.	4 months	N/A
Level 4	Any Error Support Case wherein and SUPPLIER Product, in whole or in part, is affected in a trivial or cosmetic manner.	1 business day	3 business days	On request from Client	12 months however Error is reviewed during the SUPPLIER Product Development Process to set its priority for resolution and discussed with Client at service review meetings along with all other service request items.	N/A

5.1. Examples of Severity Level 1 Errors are:

- 5.1.1. All Client end users unable to log into the SUPPLIER Product;
- 5.1.2. All Candidates unable to complete job application process in the SUPPLIER Product;
- 5.1.3. The Hosted Service is unavailable.

5.2. Examples of Severity Level 2 Errors are:

- 5.2.1. Newly created jobs do not appear in a career site website in the appropriate timeframe;
- 5.2.2. Diversity questions do not appear as designed in an application process;
- 5.2.3. Video interviewing function is not available;
- 5.2.4. Boolean searching is not available in the SUPPLIER Product;
- 5.2.5. Social media is not available as designed in the SUPPLIER Product;
- 5.2.6. Unable to change the job list in a career site website
- 5.2.7. Approval routing for a job is not functioning;

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- 5.2.8. Unable to edit multiple candidate records.
- 5.3. Examples of Severity Level 3 Errors are:
 - 5.3.1. A supported browser version is no longer functional in a SUPPLIER Product however other browsers are functional;
 - 5.3.2. Unable to change specific data elements in a career site website;
 - 5.3.3. Recruiters unable to manually upload candidates to the SUPPLIER Product;
 - 5.3.4. Unable to edit a single candidate record.
- 5.4. Examples of Severity Level 4 Errors are:
 - 5.4.1. Singular Spelling error in an administrative menu;
 - 5.4.2. Web page not rendered perfectly however usable;
 - 5.4.3. Scrolling issues in pages but does not compromise any usability requirements;
- 5.5. **SUPPLIER Product Characteristics that are not Errors.** The SUPPLIER Products include attributes that are not Errors as defined above. They include: resume data extraction and identification errors related to a single resume; non-availability of third-party connected services (third-party does not include subcontractors to SUPPLIER) as a result of changes to interfaces made by such third-parties (for such issues, SUPPLIER shall make reasonable efforts to resolve the issue caused by the third-party with the third-party's co-operation) or service interruptions under the control of such third-parties; non-availability of Client systems and applications under the control of Client or Client's suppliers, changes and modifications by the third party to its application programming interface resulting in diminished functionality of the integration to the SUPPLIER Product; and functionality that is not part of the documented functionality of the SUPPLIER Product; non-notified changes related to patches to operating system environments or ATS software (not including changes to ATS configuration, fields, or other items affecting the SUPPLIER Product's integration to the ATS) (Client is expected to log a Developer Support Request 7 days in advance of the change so that it may be reviewed by SUPPLIER; 24 hours in advance if the change is a critical security patch).