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## Terms & Conditions

**Last modified:** 7th of September 2020

This document sets out the Terms and Conditions ("**Terms**") on which Recrutee will provide access to a recruitment solution to Subscriber and provide related Services.

### 0. Definitions

The definitions in these Terms can be used anywhere in the Agreement. If a Document has a separate definition, then that definition will apply in relation to that Document. Where the word "including" is used in this Agreement, it should be interpreted as "including, but not limited to". Definitions for terms will apply to both singular and plural uses of the terms. Titles of articles and sub-articles in the Agreement do not affect the interpretation of the Agreement.

**'Access Rights'**: Any personalized access rights for the SaaS that have been granted by the Subscriber, an End-User or on behalf of the Subscriber;

**'Administrator'**: An End-User with the greatest role that Subscriber can grant to a single End-User in the SaaS and designated in the SaaS as an administrator;

**'Affiliate'**: in respect of a Party, any entity that such Party Controls, is Controlled by or is under common Control with such Party (where 'Control' means the direct or indirect ownership of at least fifty percent (50%) of the ownership or voting rights);

**'Agreement'**: Any agreement between the Parties in relation to the provision of services to Subscriber, such as the agreement entered into when creating a Subscription;

**'Article'**: Any article including its sub-articles;

**'Business Day'**: Monday to Friday, except Christmas and New Year's Day;

**'Candidate'**: A candidate for a job position;

**'Company Account'**: A section of the SaaS designated in the SaaS as a company account and intended to confine the Subscriber Data held under a single Subscription, but also used for other purposes, such as grouping End-Users;

**'Customer'**: Subscriber;

**'Distribution Channels'**: Third-party services, job boards and/or other entities used by or in Recrutee's distribution network for Job Advertisements;

**'Document'**: Any part of the Agreement that can be seen as a single document, such as the Terms or a service level agreement;

**'Documentation'**: the user manuals, administration guides, product specifications and integration specifications that are placed at the Subscriber's disposal by Recrutee relating to the SaaS and or a Functionality;

**'Employee'**: Employee, contractor or volunteer;

**'End-Users'**: Anyone with Access Rights;

**'Functionality'**: a function or possibility of the SaaS that is described in the Agreement or the Documentation, whether further divided into sub functionalities and/or sub possibilities or not;

**'Job Advertisement'**: Announcements or promotions of job vacancies;

**'Non-Renewal Notice'**: A notice from any Party in relation to a Subscription that it does not wish for the Subscription Term in which the notice is given to be followed up by a new Subscription Term;

**'Non-Web Offers'**: Offers that aren't Web Offers (e.g. offers made by e-mail);

**'Party'**: Subscriber or Recrutee;

**'Premium Job Advertisement'**: Job Advertisement charged separately to any Subscriptions;

**'Recrutee'**: Depending on which is the contracting party, Recrutee Inc., a Delaware corporation, or Recrutee B.V., a private company with limited liability under the laws of the Netherlands with company number 63881829;

**'Recrutee Content'**: Any content made available by Recrutee through its Services and Site;

**'SaaS'**: The software-as-a-service for recruitment and/or talent acquisition that is provided to the

Subscriber under these Terms;

'**Service**': Any service provided by Recruitee under the Agreement;

'**Site**': [recruitee.com](https://recruitee.com) and [www.recruitee.com](https://www.recruitee.com);

'**Subscription**': A trial subscription or paid subscription for the SaaS, including the ancillary subscription-based Services;

'**Subscription Changes**': Downgrades, upgrades or changes of a Subscription agreed to by the Subscriber;

'**Subscription Term**': A period that the Subscription is committed to for, that may be preceded or followed by another such period;

'**Subscriber**': The person or legal entity that the Company Account is created for and entering into the Agreement or the successor/assignee of such a legal person;

'**Subscriber Content**': Resumes (or CV's), comments, notes, files and all other data associated with the process of hiring for a job position;

'**Subscriber Data**': any data stored by Recruitee on behalf of the Subscriber as part of the SaaS, excluding back-ups;

'**Support**': the provision of assistance and advice concerning the usage of Functionality;

'**Third Party Service Provider**': Third parties used by Recruitee to provide, support or facilitate the Services;

'**Web Offers**': Any offers that are made through the Site or through the SaaS, that are not designated as 'special' or 'custom' or designated with similar terms.

## 1. Access to the Services

**1.1 Availability** Recruitee will make commercially reasonable efforts to ensure that the SaaS is available twenty-four hours a day, seven days a week.

**1.2 Limits** Recruitee retains the right to create limits on use and storage with respect to the Services at any time with or without notice, including to ensure the stability, legality, availability, scalability, usability, commercial viability and responsiveness of the services provided by Recruitee to the Subscriber and to other customers of Recruitee.

**1.3 Subscriber Requirements** Subscriber warrants to Recruitee that if Subscriber is an individual, he or she is at least 18 years of age. Subscriber also warrants that Subscriber is legally permitted to use the Services, and takes full responsibility for the selection and use of the Services.

**1.4 Local Laws** Recruitee makes no claim that the Services may be lawfully used or that Recruitee Content may be uploaded or downloaded to and from the Services outside of the USA and the Netherlands. Access to Recruitee Content may not be legal by certain persons or in certain countries. If Subscriber uses the Services from outside the USA and the Netherlands, Subscriber does so at its own risk and Subscriber is responsible for compliance with the laws and regulations of its jurisdiction(s).

**1.5 Compatibility** Subscriber shall be responsible for obtaining and maintaining any equipment or ancillary services needed for Subscriber and any End-Users to connect to and use the Services, including modems, hardware, software, and long distance or local telephone service. Subscriber shall be responsible for ensuring that such equipment or ancillary services are compatible with the Services.

## 2. General Terms

**2.1 Subscriber Details** The Subscriber warrants that it has provided all details necessary to legally identify the Subscriber to Recruitee. Additionally the Subscriber will actively and accurately populate the SaaS with details relating to identification of the Subscriber and billing of the Subscriber and take reasonable measures to protect such details (including by maintaining the confidentiality of login credentials). The provision of credit card details is required if Subscriber opts for payments by credit card. There can be only one Subscriber under the Agreement.

**2.2 Subscriber's Responsibility** Subscriber is responsible for any and all Subscriber Content posted to Subscriber's SaaS and activity that occurs through or under Subscriber's SaaS.

**2.3 Illegitimate Use** Any fraudulent, abusive, improper or unauthorized use of the Services or use in violation of the Agreement may be reason for Recruitee, as it deems appropriate, to suspend, terminate or cancel Subscriber's right to use the Services or to access the Site. One person or legal entity may not maintain more than one free Company Account. Subscriber may not resell or otherwise provide the Services to any third party as a private label, with the inclusion of a mark-up fee or otherwise without the express written consent of Recruitee. If approved by Recruitee in writing, multiple Company Accounts may fall under a single Subscription. Recruitee is

not liable for any loss or damage resulting from Subscriber's failure to comply with the obligations set out in this article, including the loss of control over a Company Account.

**2.4 Relationship to End-Users** For the sake of clarity and without prejudice to additional attribution to others, all use of Access Rights will be attributed to the Subscriber in the context of the Agreement. An End-User that is not the Subscriber does not derive any rights from these Terms.

### **3. Subscriber Content Storage, Retrieval and Transmission**

**3.1 Permitted Content** The SaaS may only be used by Subscriber to transmit and store Subscriber Content. Subscriber may not upload commercial advertisements to the Services that do not fall within the definition of Subscriber Content or use the Services to send spam.

**3.2 Excessive Use** If the usage under a Company Account of Subscriber is excessive and endangers the availability or stability of Recruitee's services for other customers of Recruitee, then Recruitee may suspend the respective Company Account.

### **4. Job Advertisements**

**4.1 General** Recruitee may offer to distribute Job Advertisements through various Distribution Channels. Recruitee may in its sole discretion charge additional fees for Job Advertisements. All fees for Job Advertisements will be communicated by Recruitee during the ordering process for Job Advertisements.

**4.2 Recruitee's Commitment** Recruitee will make commercially reasonable efforts to distribute Job Advertisements through Distribution Channels. However, Subscriber acknowledges and accepts that Recruitee does not control the Distribution Channels or communication networks, and that it cannot guarantee that Subscriber's Job Advertisements will actually be delivered over the Internet or via communication networks, be accepted by the relevant Distribution Channels, or be received and/or read by job applicants or potential job applicants. Recruitee may engage third parties as an intermediary for the distribution of Job Advertisements and such intermediaries are considered part of the Distribution Channels. Subscriber accepts that entities in the Distribution Channels have no obligation to use or display a Job Advertisement and may reject a Job Advertisement for any reason or no reason, regardless of whether Subscriber is on a paid Subscription, a trial or free Subscription, or even if Subscriber has paid for a Premium Job Advertisement. Subscriber agrees that Recruitee is not liable to Subscriber or any third party if Subscriber's Job Advertisement is rejected or not posted, and Subscriber will not be entitled to any refund for Job Advertisements not posted or distributed. Should Subscriber cancel a Premium Job Advertisement, Recruitee does not offer a refund. By submitting a Job Advertisement, Subscriber gives Recruitee permission to distribute that Job Advertisement in the Distribution Channels. Recruitee makes no guarantee as to the number or quality of Candidates that Subscriber will receive as a result of Subscriber's Job Advertisement. Subscriber is solely responsible for interviewing, performing background and reference checks on, verifying information provided by, and selecting an appropriate candidate.

**4.3 Responsibility for Job Advertisements** Subscriber's Job Advertisements must comply with any applicable laws and regulations including those relating to labour and employment, and anti-discrimination. Subscriber understands and agrees that Subscriber is solely responsible for any liability or claims arising out of publication of Job Advertisements or material which third parties can access through such Job Advertisements. Subscriber agrees to indemnify and hold Recruitee and its subsidiaries, and their respective officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of a breach of this article by Subscriber or a breach of the additional service policies of Distribution Channels. In certain cases, Distribution Channels may require that Subscriber agrees to additional service policies in order to allow Subscriber's Job Advertisement to be distributed on or via their services, and Subscriber hereby agrees to such additional service policies as they apply to the distribution of Subscriber's Job Advertisements. Subscriber is solely responsible for researching the policies of entities in the Distribution Channels. Subscriber agrees not to post or promote any Job Advertisements that: contain inaccurate, spammy, false, misleading or offensive information; contain hidden keywords, or; sell or promote services.

### **5. Quality of Service Support**

**5.1 Service Level** Recrutee will make commercially reasonable efforts to respond to all incoming Support requests within two Business Days.

**5.2 Disproportionate Use** Recrutee is only required to provide Support to End-Users in so far as Subscriber makes sure that requests for Support of End-Users are routed efficiently by the Subscriber and that Subscriber's End-Users do not disproportionately request Support. If Recrutee determines, in its sole discretion, that Subscriber's End-Users are disproportionately requesting Support, then Recrutee may require that the Subscriber appoints a single contact person for Support requests. Recrutee's Support team is available via support@recrutee.com.

**5.3 Onboarding and Training** Recrutee will make commercially reasonable efforts to provide any onboarding and training Services agreed to between the Parties.

**5.4 SLA for Lead Plans** The Service Level Addendum ('SLA') available on Recrutee's website (<https://recrutee.com/terms>) applies as an addendum to these Terms. The SLA will not apply to a Subscription if the Parties have duly executed another written service level agreement/addendum that is applicable to such a Subscription.

## 6. Warranty and Disclaimer

**6.1 Subscriber Representations, Warranties and Disclaimer** Subscriber represents and warrants that (a) the Subscriber has the right and capacity to enter into and be bound by the Agreement; (b) the Subscriber shall comply with all applicable laws and regulations in connection to the Subscriber Content and Subscriber's use of the Services; (c) the Subscriber is authorized to submit the Subscriber Content (d) the Subscriber agrees to abide by these Terms in connection to the Services and the Site as provided by Recrutee. Subscriber agrees to use the Services and the Site at Subscriber's own risk.

**6.2 Recrutee Warranties and Disclaimer** RECRUTEE USES THIRD PARTY SERVICE PROVIDERS AND DISTRIBUTION CHANNELS (SUCH AS NETWORK PROVIDER, DATA CENTERS, TELECOMMUNICATION PROVIDERS) TO MAKE THE SERVICES AND THE SITE AVAILABLE TO THE SUBSCRIBER. RECRUTEE WARRANTS THAT IT WILL MAKE ALL COMMERCIALY REASONABLE EFFORTS TO PROVIDE THE SUBSCRIBER WITH THE SERVICES IN ACCORDANCE WITH INDUSTRY STANDARDS, HOWEVER RECRUTEE DOES NOT WARRANT THAT ANY SERVICES SHALL BE FREE OF ERRORS OR INTERRUPTIONS AT ALL TIMES, NOR DOES RECRUTEE WARRANT THAT ANY ERRORS OR DEFECTS WILL BE CORRECTED. EXCEPT AS EXPRESSLY SET OUT HEREIN, TO THE MAXIMUM EXTENT PERMITTED BY LAW, RECRUTEE DOES NOT WARRANT THAT THE SERVICES ARE ACCURATE, COMPLETE OR FIT FOR A PARTICULAR PURPOSE AND DISCLAIMS ANY OTHER WARRANTY OR GUARANTEE, WHETHER EXPRESS, IMPLIED OR STATUTORY.

**6.3 Third Party Interaction** Recrutee may display or provide links or other interaction, including interoperation and integration, with third party websites, third party services and third party advertising banners on the Site and through the Services ('Third Party Interaction'). In particular, the Services may also provide the Subscriber with the opportunity to connect and publish Subscriber's information and/or data through third parties such as postings to social and business networking sites. Use of any Third Party Interaction shall be at the risk of the Subscriber and third parties may require Subscriber to agree to additional terms and conditions for the use of such Third Party Interaction. Recrutee may, at its sole discretion, with or without notice and at any time, disable any Third Party Interaction. Recrutee cannot be held liable or responsible for Third Party Interaction including the quality, contents, terms of use and availability.

**6.4 Custom Services** Subscriber understands and agrees that the services provided by Recrutee to its customers may share the same underlying software, hardware and infrastructure and are intended for provision to many customers in a scalable manner. The Services will not be customized and/or tailored for Subscriber, unless, and in so far as, explicitly agreed to by the Parties.

## 7. Limitation of Liability

Subscriber expressly understands and agrees that Recrutee is not liable for damages and/or losses resulting from: (i) the use or the inability to use the Services; (ii) the cost of procurement of substitute goods and services resulting from any goods, data, information or services purchased or obtained or messages received or transactions entered into through or from the Services; (iii) statements or conduct of any third party on the Services. RECRUTEE SHALL NEVER BE LIABLE FOR INDIRECT OR CONSEQUENTIAL DAMAGES, INCLUDING LOST PROFITS, THE RECRUITING OR NOT RECRUITING OF PARTICULAR INDIVIDUALS AND/OR LOSSES OF SUBSCRIBER AND/OR THIRD PARTIES. RECRUTEE'S TOTAL LIABILITY ARISING OUT OF OR RELATED TO THE AGREEMENT WILL NOT EXCEED THE FEES (CALCULATED PRO RATA) FOR THE CONTINUED

PROVISION FOR SIX MONTHS OF ANY SAAS PROVIDED BY RECRUITEE TO SUBSCRIBER UNDER THE AGREEMENT IMMEDIATELY PRIOR TO THE FIRST OCCURRENCE GIVING RISE TO SUBSCRIBER'S CLAIM(S) AGAINST RECRUITEE ('LIABILITY CAP'). THE LIABILITY CAP APPLIES TO: (I) ANY DAMAGES; (II) ALL CLAIMS IN THE AGGREGATE, INCLUDING BREACH OF CONTRACT, BREACH OF WARRANTY, INDEMNITY, NEGLIGENCE, STRICT LIABILITY, MISREPRESENTATIONS, AND OTHER TORTS. The limitations as set out in this article will not apply in so far as liability cannot be limited under applicable laws and regulations, such as in the case of deliberate recklessness, fraud, or malintent of Recrutee. The limitations specified in this article will apply even if any limited remedy specified in the Agreement is found to have failed of its essential purpose. Any limitations agreed upon under this article will also apply to the liability of Recrutee's directors, officers, employees, contractors, agents and members.

## **8. Indemnification**

Subscriber agrees to indemnify and hold harmless Recrutee, its contractors, and licensors, and their respective directors, officers, employees, members, shareholders and agents from and against any and all third party claims, liabilities, losses, actions, causes of action, demands, reasonable costs and expenses, including but not limited to reasonable attorneys' fees, arising out of: (i) infringement of any intellectual property rights by Subscriber Content or Subscriber Data, or (ii) the use of Third Party Interaction by Subscriber. Recrutee agrees to indemnify and hold harmless Subscriber and Subscriber's contractors, directors, officers, employees, members, shareholders and agents from and against any and all third party claims liabilities, losses, actions, causes of action, demands, reasonable costs and expenses, including but not limited to reasonable attorneys' fees, arising out of infringement of any intellectual property by the Services of Recrutee. Any indemnification by Recrutee or Subscriber ('Indemnifying Party') is subject to (i) the other Party's ('Indemnified Party') prompt notification of such claim, (ii) Indemnifying Party's right to take sole conduct of the claim, (iii) no settlement may be entered into by the Indemnifying Party, without the express written consent of the Indemnified Party (such consent is not to be unreasonably withheld), and (iv) Indemnified Party's obligation to provide reasonable cooperation to Indemnifying Party's defense of the claim. The terms and conditions specified in this article will survive termination or expiration of the Agreement.

## **9. Modification of Services**

Recrutee reserves the right to make changes to the Services at any time in an effort to improve the Services in part or as a whole. If a change may have significant negative consequences for Subscriber's existing use of the Services as described in the Documentation of the Services, the change will be announced if possible. Changes in relation to any Distribution Channels for Job Advertisements can be made at any time, with no prior announcement and at Recrutee's convenience.

## **10. Third Party Service Providers**

SUBSCRIBER UNDERSTANDS THAT RECRUITEE USES THIRD PARTY SERVICE PROVIDERS TO OPERATE THE SERVICES. RECRUITEE DOES NOT WARRANT THAT INFORMATION OR DATA INCLUDING, BUT NOT LIMITED TO, PRICES AND RATINGS PROVIDED THROUGH THE SITE AND THE SERVICES WILL BE RELIABLE AND ACCURATE WHERE SUCH INFORMATION IS PROVIDED BY OR BY MEANS OF A THIRD PARTY SERVICE PROVIDER.

## **11. Payments, Renewals, Refunds and Subscription Changes**

**11.1 Trials** Use of a Subscription is free during Subscriber's free trial period which is 18 days by default, unless the Parties agree otherwise or the Subscriber enters into a paid Subscription.

**11.2 Payments** A valid credit card is required for paying fees, unless explicitly agreed otherwise or other payment methods are explicitly offered by Recrutee for specific fees. Recrutee may automatically charge fees for Services to credit cards entered into Recrutee's SaaS. All fees for a Subscription can be fully charged and are due 30 (thirty) calendar days in advance of each Subscription Term, unless specified otherwise by Recrutee in the Agreement. Recrutee may suspend Subscriptions if any fees for a Subscription are overdue. Fees for all Services other than Subscriptions are immediately charged and due when the order is completed. Recrutee may at



each renewal of a Subscription increase its applicable fees, rates and prices for the Subscription with up to 5% in relation to the previous Subscription Term.

**11.3 Duration and Renewal** Subscriptions are by default entered into for monthly or yearly Subscription Terms and renewed for the duration of the previous Subscription Term, unless explicitly specified otherwise in the Agreement. If the previous Subscription Term is more than 1 (one) year then the renewal Subscription Term will be 1 (one) year, unless explicitly specified otherwise in the Agreement. Subscriptions will be automatically renewed, unless a Party gives a Non-Renewal Notice 30 (thirty) calendar days in advance or a Business Day in advance in case of a Subscription with a monthly Subscription Term. A Non-Renewal Notice given by Subscriber will not affect renewals that have already been committed to by Subscriber. Any calculation of fees for renewals of Subscriptions will be based on fees excluding discounts.

**11.4 Subscription Changes (Web Offers)** Subscription Changes for Subscriptions based on Web Offers paid by credit card will take effect immediately. In case of Subscription Changes related to Web Offers the start-date and end-date of the then-current Subscription Term will not be affected, unless the Subscription Change relates to the duration of the Subscription Term(s). If a Subscription Change relates to the duration of the Subscription Term(s) of a Subscription based on a Web Offer paid by credit card, then a new Subscription Term will commence immediately. Subscriber will not be refunded or credited in case of Subscription Changes. However, if fees have been paid by credit card for Subscriptions based on Web Offers, then in case of Subscription Changes the fees corresponding (calculated pro rata) to the part of an already paid for Subscription Term that lies in the future will be credited towards fees for future provision of Subscriptions.

**11.5 Taxes and Currencies** All fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and Subscriber shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes on the income of Recrutee. All fees are either in United States dollars ('USD'), Euro ('EUR') or Pound sterling ('GBP').

## 12. Termination and Suspension

**12.1 General** Termination of Services, and thereby also the Agreement in so far as it is connected to such Services, can take place in multiple ways. Subscriber can terminate the Services at any time at its convenience with immediate effect by notifying Recrutee. In case of such a termination (without prejudice to other terminations such as for breach): Subscriber will not be compensated for any damages arising out of the termination nor will any fees be refunded or credited and any fees for Subscription Terms (including renewals) that have been committed to will be due immediately (if not already). Recrutee, in its sole discretion, has the right to at any time and without prior notice suspend or terminate Subscriber's Services and refuse any and all current or future use of the Services in case of a breach of the Agreement. Each Party may immediately terminate the Agreement if the other Party has been granted provisional suspension of payment or is declared bankrupt.

**12.2 Data Export and Deletion of Data** In case of termination of Services the Subscriber may download or request Subscriber Content held by Recrutee as part of the terminated Services through the API of the SaaS within 30 (thirty) calendar days after termination. However, in case of termination of the Services by Recrutee due to Subscriber's breach of the Terms, Subscriber's access to Subscriber Content is forfeited. Recrutee may delete all Subscriber Content held by Recrutee as part of terminated Services 30 (thirty) calendar days after termination.

**12.3 Legal Restrictions and Sanctions** Recrutee may at any time, without prior notice, terminate the Services if Recrutee is prohibited from providing the Services to Subscriber by a) the laws and regulations applicable to Recrutee or b) any of Recrutee's business partners or service providers due to governmental economic sanctions against any country or state.

## 13. Intellectual Property and Content

**13.1 IP-rights and Licenses** As between Recrutee and Subscriber, Subscriber will be the owner of all intellectual property rights to Subscriber Content. No intellectual property rights will be transferred in the context of this Agreement. All licenses granted to Subscriber in the context of this Agreement are worldwide, non-exclusive and limited in line with the limitations of the Services. No license for intellectual property rights is granted by Recrutee where this is not necessary for the legitimate use of the Services by Subscriber. Any licenses provided by Recrutee under this Agreement will end when this Agreement or the respective Services are terminated. The Subscriber grants Recrutee a license to use Subscriber Content for the purpose of the provisioning of the Services and to improve the Services. Use of Subscriber Content by Recrutee to improve

the Services will only be done after Recruitee has created a copy of Subscriber Content that has undergone a process of anonymizing, aggregating and/or diminishing to a point that it can no longer reasonably be considered confidential information nor personal data.

**13.2 Restricted Content** Subscriber agrees that it will not use the Services to process or store any content that (a) infringes, violates or otherwise interferes with any copyright or trademark of Recruitee or a third party, (b) is libelous, defamatory, obscene, pornographic, abusive, indecent, threatening, harassing, hateful, offensive or otherwise violates any law or right of any third party, (c) contains a virus, trojan horse, worm, time bomb or other computer programming routine or engine that is intended to damage, detrimentally interfere with, surreptitiously intercept or expropriate any system, data or information. If requested by Recruitee the Subscriber warrants that it will remove any Subscriber Content that is in violation of this article or the Agreement promptly after notification of the Subscriber by Recruitee. Recruitee reserves the right to remove any Subscriber Content from the Services that it, in its sole discretion, considers to be in breach of this article or the Agreement. All resume documents uploaded to Subscriber's Company Account(s) by Subscriber, an End-User, Candidate or an applicant, may be retrieved by Subscriber through the user interface of the SaaS, unless the resume documents were removed by the Subscriber.

**13.3 Confidentiality** Recruitee will make commercially reasonable efforts to respect the confidentiality of Subscriber Content that is disclosed to Recruitee exclusively through the SaaS, if the SaaS, as it was designed and intended, prevents the disclosure of such Subscriber Content to third parties. For example, confidentiality is required in principle in relation to Candidate data, but not required in relation to content published by the Subscriber on a public website as part of the Services (hereinafter: 'Careers Site'). Subscriber will use the SaaS in line with best security practices. Such practices include maintaining the confidentiality of any login or access credentials.

## 14. Promotions and Marketing

**14.1 Careers Site** Recruitee may offer Subscriber a Careers Site. This Careers Site is intended, among other things, to provide the public with a list of job opportunities, and therefore Subscriber's usage of the Careers Site is not intended to be private. Job opportunities published on the Careers Site will be distributed to the job boards of Indeed. The Subscriber agrees to the terms and conditions of Indeed in connection to the distribution of such job opportunities to Indeed (<https://www.indeed.com/legal>). Subscriber can opt-out to such distribution to Indeed and the terms and conditions of Indeed by notifying Recruitee.

**14.2 Recruitee Branding** Subscriber agrees that a "powered by Recruitee" or "Hiring with Recruitee" graphic or text link can be included in the Services. Recruitee will facilitate that such graphics or links can be disabled or hidden by an End-User for the Careers Site and e-mails. Unless expressly prohibited by Subscriber in writing by notifying Recruitee, Recruitee may use Subscriber's company names, logos and trademarks to mention Subscriber's usage of the Services in press releases, interviews, promotional materials, sales sheets, presentations, websites and other self-promotional channels.

**14.3 Promotions and Discounts** Any promotions or discounts are valid only for Services to which the promotion or discount was originally applied; subsequent upgrades or add-on Services are not guaranteed any promotions or discounts.

## 15. Privacy

**15.1 Privacy Policy** Subscriber and End-User will regularly check Recruitee's privacy policy, which governs the use of personal data on the Site and in connection with the Service, and to which Subscriber and End-User to be bound as a condition of these Terms and use of the Site and Services. Changes regarding privacy will be communicated to End-Users through Recruitee's privacy policy.

**15.2 Data Processing Addendum** The Data Processing Addendum ('DPA') available on Recruitee's website (<https://recruitee.com/terms>) applies as an addendum to these Terms. The DPA will not apply to a Subscription if the Parties have duly executed another written data processing agreement/addendum that is applicable to such a Subscription.

## 16. Electronic Delivery Policy

Subscriber agrees that Recruitee may provide Subscriber required notices as referred to in the Agreement and other information concerning the Services electronically, including by communicating to any End-User with an Administrator role on the e-mail address associated with his account or through notifications to such an End-User in the SaaS. Recruitee is not responsible

for e-mails to Subscriber or End-User "bouncing" or being rejected and other delivery failures that cannot be attributed to Recrutee. Notices by Subscriber will be given by postal mail, registered letter or by any means that Recrutee explicitly designates for specific notices.

## **17. Contracting Party, Governing Law and Disputes**

**17.1 Contracting Party** Unless otherwise agreed, Recrutee B.V. will be the contracting party.

**17.2 If Contracting Party is Recrutee B.V.** If Recrutee B.V. is the contracting party, then this Agreement or Subscriber's use of the Services shall be governed by the laws of the Netherlands, without regard to any conflict of laws principles. In that case any legal proceedings related to this Agreement and the Services provided by Recrutee B.V. shall solely be settled by the competent court of Amsterdam, the Netherlands.

**17.3 If Contracting Party is Recrutee Inc.** If Recrutee Inc. is the contracting party, then this Agreement and Subscriber's use of the Services shall be governed by the laws of the State of New York, USA, without regard to any conflict of laws principles. In that case any legal proceedings related to this Agreement or Subscriber's use of the Services, shall solely be settled in the competent court of New York, New York, USA.

## **18. Miscellaneous**

**18.1 Modifications of the Terms** These Terms may be modified by Recrutee in its sole discretion from time to time. Any modification will be announced by publishing the new version of the Terms on Recrutee's website (<https://recrutee.com/terms>). Modifications will enter into effect at the beginning of any subsequent Subscription Terms or when Subscription Changes take place. Such modifications will only apply to a subsequent Subscription Term in so far as they are published at least 40 days before the respective Subscription Term starts. Recrutee may explicitly indicate that foregoing modifications will enter into effect earlier, in such case Subscriber may terminate a Subscription immediately and receive a refund of pre-paid fees for the terminated portion of a pre-paid Subscription Term. Modifications to the Terms apply to any and all earlier versions of these Terms including Documents that were based on such versions.

**18.2 Entire Agreement** The entire Agreement will only consist of these Terms, offers made by Recrutee in writing, documents signed by Recrutee or terms, conditions & offers explicitly agreed to by an authorized representative of Recrutee in writing. The Agreement supersedes any and all prior or contemporaneous understandings or agreements, written or oral, regarding the subject matter thereof. Unless agreed otherwise between the Parties, in case of separate service level agreements or data-processing agreements between the Parties relating to the Services, those agreements will be added to these Terms as addenda.

**18.3 Survival** For the sake of clarity, after termination the Agreement will remain in effect with regard to intellectual property, due payments, disclaimers, limitations of liability and any other subject matter that requires survival due to its nature and/or purpose.

**18.4 Trials** Recrutee reserves the right to terminate a free trial Subscription at any point in time for any or no reason.

**18.5 Acceptance of Orders and Subscription Changes** Any acceptance of an order made through the Site or the SaaS can be retracted by Recrutee within 2 Business Days, giving the Subscriber a right to a refund in relation to that specific order. Recrutee's consent with Subscription Changes in relation to Subscriptions based on Non-Web Offers can only take place by non-automated means, including a personalized e-mail.

**18.6 Waivers** The failure of either Party to exercise in any respect any right provided for under the Agreement shall not be deemed a waiver of any further rights under the Agreement.

**18.7 Force Majeure** Recrutee shall not be liable for any failure to perform its obligations under the Agreement where such failure results from any cause beyond Recrutee's reasonable control, including mechanical, electronic or communications failure or degradation.

**18.8 Severability** If any provision of the Agreement is found to be unenforceable or invalid, that provision shall be limited or eliminated to the minimum extent necessary so that the Agreement shall otherwise remain in full force and effect and enforceable.

**18.9 Assignments and Use by Third Parties** Recrutee is offering the Services solely for use or benefit of the Subscriber and its Affiliates and not for the use or benefit of any other parties. Additionally, this Agreement will bind and inure to the benefit of each Party's permitted successors and assigns. Neither Party may assign this Agreement without the advance written consent of the other Party, except that either Party may assign this Agreement in connection with a merger, reorganization, acquisition or other transfer of all or substantially all of such Party's assets or



voting securities. In case of an assignment of the Agreement the Subscriber will notify Recrutee 30 days in advance and comply with other obligations in the Agreement.

**18.10 Independent Contractors** No agency, partnership, joint venture, or employment is created as a result of the Agreement.

**18.11 Translations** Recrutee might make versions of the Agreement available in languages other than English. If Recrutee does, the English version of the Agreement will govern the relationship of the Parties and the translated version is provided for convenience only and will not be interpreted to modify the English version of the Agreement.

Questions about the Agreement should be sent to support@recrutee.com.

## Data Processing Addendum (DPA)

**Last modified:** 15th of March 2021

### 0. Definitions

Unless otherwise defined herein, all capitalised terms in this DPA shall have the meaning given to them in the Terms. The following terms shall have the following meanings in this DPA:

**'Applicable Data Protection Law':** any applicable laws and regulations of the European Union, the member states of the European Union and the United Kingdom protecting the fundamental rights and freedoms of individuals, and in particular the right to privacy with respect to the Processing of Personal Data, including, but not restricted to the GDPR and the UK GDPR, as such laws and regulations are amended, extended and re-enacted from time to time;

**'CCPA':** California Consumer Privacy Act 2018;

**'GDPR':** Regulation (EU) 2016/679 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (General Data Protection Regulation);

**'Controller', 'Data Subject', 'Personal Data', 'Process/Processing', 'Processor', and 'Supervisory Authority':** shall have the same meaning as in the GDPR;

**'Security Breach':** a breach of security leading to the accidental or unlawful destruction, loss, alteration, unauthorised disclosure of, or access to, Personal Data transmitted, stored or otherwise Processed;

**'Standard Contractual Clauses':** any standard data protection clauses adopted or approved by the European Commission or another competent authority in accordance with Applicable Data Protection Law;

**'Sub-processor':** a Processor that has been engaged by Recrutee to perform specific Processing activities on behalf of the Subscriber;

**'Terms':** the Recrutee Terms & Conditions that the Parties have agreed to be applicable as made available in/on <https://recrutee.com/terms> (defined on the webpage as Terms);

**'Third Country':** any country outside of the European Economic Area ("EEA");

**'UK GDPR':** the GDPR as incorporated into the law of the United Kingdom under the UK European Union (Withdrawal) Act 2018 and amended by the Data Protection, Privacy and Electronic Communications (Amendments etc) (EU Exit) Regulations 2019.

### 1. General

1.1 This DPA is an addendum to the Terms and applies only in relation to any Processing of Personal Data by Recrutee as a Processor on behalf of the Subscriber as Controller as described in DPA Appendix 1. This DPA may be modified by Recrutee under the same terms and conditions that apply to modifications to the Terms.

- 1.2 The following documents form an integral part of this DPA: (i) this document and (ii) any document attached to this DPA that is labelled as a 'DPA Appendix'. Any reference to the DPA shall be deemed to include a reference to said documents.
- 1.3 In the event of any inconsistency arising between the provisions of this DPA and the Terms, the provisions of this DPA shall prevail, unless explicitly mentioned otherwise in this DPA.
- 1.4 For the sake of clarity, this DPA will apply to any Processing of Personal Data by Recrutee as Processor on behalf of the Subscriber as Controller as part of the Services under the Agreement, unless Parties have explicitly made other contractual arrangements relating to said Processing of Personal Data.

## **2. Processing of Personal Data**

- 2.1 Recrutee shall Process Personal Data on Subscriber's behalf in accordance with the instructions of the Subscriber provided through the use of the Services and as set out in DPA Appendix 1. The details of the Processing of Personal Data are specified in DPA Appendix 1.
- 2.2 Subscriber shall ensure that Recrutee may lawfully Process the Personal Data on Subscriber's behalf in accordance with this DPA for the performance of the Agreement. Where required under Applicable Data Protection Law, Subscriber shall ensure that the Data Subjects have given their consent for the Processing and have been informed.
- 2.3 Subscriber's instructions for the Processing of Personal Data shall comply with Applicable Data Protection Law. If Recrutee believes that any instruction of Subscriber infringes Applicable Data Protection Law, it will inform Subscriber without delay. Recrutee shall be entitled to suspend performance on such instruction until Subscriber confirms or modifies such instruction. Recrutee is not required to actively investigate whether instructions from the Subscriber are compliant with the Applicable Data Protection Law.
- 2.4 Recrutee may be legally required under applicable laws and regulations to disclose Personal Data that it Processes to third parties such as authorities. If this is the case, Subscriber will be informed by Recrutee insofar as permitted by applicable laws and regulations.

## **3. Security & Confidentiality**

- 3.1 Recrutee will implement and maintain appropriate technical and organisational measures to protect the Personal Data against destruction, loss or unauthorized access or other forms of unauthorized or unlawful Processing of Personal Data. These measures will ensure a level of security appropriate to the risks presented by the Processing and the nature of the Personal Data to be protected having regard to the state of the art and the cost of their implementation. These measures include, but are not limited to, the measures listed in DPA Appendix 2. Subscriber understands and agrees that these measures are subject to change and development and Recrutee is therefore expressly allowed to implement alternative measures.
- 3.2 Subscriber has the sole responsibility to ensure that End-Users use the Services in line with best security practices and in accordance with Applicable Data Protection Law. Such practices include but are not restricted to maintaining the confidentiality of any login or access credentials.
- 3.3 Recrutee shall ensure that personnel authorised to Process Personal Data have committed themselves to confidentiality or are under an appropriate statutory obligation of confidentiality.

## **4. Third Country Data Transfers**

- 4.1 If Recrutee is Recrutee B.V., then Recrutee will not transfer Personal Data to any Third Country, unless Recrutee has obtained the prior written consent of the Subscriber.
- 4.2 If Recrutee is Recrutee Inc., then Recrutee does not require the consent of the Subscriber to transfer Personal Data to any Third Country.
- 4.3 The Subscriber agrees that in case no appropriate adequacy decision or any other appropriate

data transfer mechanism applies for transfer of Personal Data to a Third Country and such transfer requires such a decision or mechanism under Applicable Data Protection Law, Recrutee will enter into Standard Contractual Clauses. Subscriber hereby expressly authorizes Recrutee to enter into Standard Contractual Clauses, (also) on its behalf as far as necessary, and commissions Recrutee to enforce these Standard Contractual Clauses on the Subscriber's behalf where appropriate.

- 4.4 Nothing in this DPA will be construed to prevail over any conflicting clause of any Standard Contractual Clauses that have been entered into by Recrutee including Standard Contractual Clauses entered into on behalf of the Subscriber.

## **5. Rights of Data Subjects**

- 5.1 Subscriber will inform Data Subjects that it is the Controller and how Data Subjects may contact the Subscriber with requests. Recrutee will not be that contact point. Recrutee shall make an effort, to the extent legally permitted, to immediately notify Subscriber, if it receives a request from a Data Subject for access to, inspection, data portability, correction (rectification) or deletion (erasure) of Data Subject's Personal Data. Recrutee shall not respond to any such requests of Data Subjects without Subscriber's prior written consent.
- 5.2 Recrutee shall provide Subscriber with cooperation and assistance to allow Data Subjects to exercise any rights they might have under Applicable Data Protection Law, such as access, correction, deletion and/or data portability. Recrutee will provide such cooperation and assistance only on Subscriber's request and only in so far as Subscriber cannot meet his obligations under Applicable Data Protection Law without Recrutee's cooperation and assistance.

## **6. Data Breach Notification**

- 6.1 Recrutee shall, to the extent permitted by law, notify Subscriber without undue delay of a Security Breach with regard to the Personal Data Processed on behalf of the Subscriber under this DPA.
- 6.2 Such notification shall include at least: (a) a description of the nature of the Security Breach, including where possible, information that assists the Subscriber in determining the categories of and approximate number of Data Subjects concerned and the categories and approximate number of Personal Data records concerned; (b) information available to Recrutee that assists the Subscriber in determining the likely consequences of the Security Breach; and (c) a description of the measures taken or proposed to be taken by Recrutee to address the security breach, including, where appropriate, measures to mitigate its possible adverse effects.
- 6.3 Subscriber is solely responsible for complying with any Security Breach notification obligations applicable to Subscriber. The performance of Recrutee's obligation to report or respond to a Security Breach under this article is not an acknowledgement by Recrutee of any fault or liability with regard to the Security Breach.

## **7. Sub-processors**

- 7.1 Recrutee may use Sub-processors to provide certain parts of the Services on Subscriber's behalf. The Subscriber hereby gives a general written authorisation to Recrutee to engage any Sub-processor for the Processing of Personal Data. Recrutee may only engage a Sub-processor if it has imposed, in writing, the necessary responsibilities and obligations on the Sub-processor as required by article 28 GDPR. Recrutee may remove or appoint other suitable and reliable Sub-processors at its own discretion in accordance with this article. Recrutee will give at least six weeks prior notice of any changes to the list of Sub-processors. The Subscriber can object to a Sub-processor by using its termination rights under the Agreement. If Subscriber does not terminate the Agreement within this timeframe, Subscriber is deemed to accept the respective Sub-processor. Where the Sub-processor fails to fulfil its data protection obligations, Recrutee shall remain similarly liable to Subscriber for the performance of its obligations under this DPA.

## **8. Information & Audits**

- 8.1 If Subscriber reasonably concludes that an audit or inspection of technical and organisational measures at Recrutee's premises is necessary to monitor the compliance with this DPA in an individual case, Subscriber shall have the right to carry out such an audit or inspection provided such audit or inspection will be conducted (i) during regular business hours, and (ii) without interfering with Recrutee's business operations, (iii) upon prior notice of at least 30 days in advance and further consultation with Recrutee, (iv) all subject to (if not covered already by the Agreement) the execution of a confidentiality undertaking, and (v) at most once a year. Subscriber will bear its own expenses and compensate Recrutee for the cost with regard to any internal resources required to conduct the audit. Such audit or inspection shall be carried out by the Subscriber or an inspection authority composed of independent persons in possession of the required professional qualifications, selected by the Subscriber. Subscriber will furnish immediately after the verification or inspection to Recrutee a copy of the report of such audit.
- 8.2 Subscriber agrees that it will cooperate, together with Recrutee, with Supervisory Authorities. Recrutee will reasonably allow for and contribute to audits and inspections, conducted by Supervisory Authorities. Subscriber will notify Recrutee immediately of any planned audits and inspections by Supervisory Authorities.
- 8.3 Recrutee shall provide, upon written request, any such information and assistance the Subscriber may require for compliance with the Applicable Data Protection Law including to perform data protection impact assessments. Recrutee will provide such information and assistance only in so far as Subscriber cannot meet its obligations under the Applicable Data Protection Law without Recrutee's information and assistance.
- 8.4 Recrutee may require Subscriber to sign a reasonable confidentiality agreement before complying with its obligations under this article.

## **9. Return of Personal Data**

- 9.1 Upon termination of any Service, Subscriber's right to access or use the respective Service immediately ceases, and Recrutee shall have no obligation to maintain any associated Personal Data. The Parties agree that Recrutee shall in such event at the choice of the Subscriber either return all Personal Data to the Subscriber or shall destroy/delete all the Personal Data, unless prohibited from doing so by any applicable laws and regulations. If Subscriber doesn't make such a choice, then Recrutee may delete Personal Data 30 days after the termination of the Service. The return of Personal Data by Recrutee may take place by allowing the Subscriber access to the Personal Data through Recrutee's API.
- 9.2 Recrutee will, upon request of Subscriber and after the termination of the Service, declare in writing towards Subscriber that all copies of Personal Data have been permanently destroyed or returned to Subscriber.

## **10. CCPA Compliance**

- 10.1 Recrutee understands that any personal information it receives under this DPA will be processed by Recrutee in its role as a service provider as that term is defined under the CCPA.
- 10.2 Recrutee is hereby prohibited from: (1) selling personal information it receives under this DPA; and (2) collecting, retaining, using, or disclosing such personal information for any purpose other than processing it as set out in this DPA.

# **DPA Appendix 1: Details of the Processing of Personal Data**

## **Nature and Purpose of the Processing**

Subscriber agrees to use the Services only for recruitment and/or talent acquisition purposes. Recrutee shall on behalf of Subscriber Process Personal Data as part of the Services and pursuant to the Agreement.

## **Data Subjects**

The aforementioned Processing of Personal Data will relate to the following Data Subjects:

- Subscriber's applicants, potential applicants, candidates and potential candidates (hereinafter collectively referred to as: '*Candidates*');
- Visitors of the Subscriber's careers website provided as part of Services (hereinafter referred to as: '*Visitors*');
- Anyone who visits Subscriber's referral site, only if the referral site is provided as part of Services, or makes a referral for a Candidate through the Services (hereinafter referred to as: '*Referrers*').

## **Categories of Personal Data**

Recruitee shall on behalf of Subscriber Process the following categories of Personal Data relating to Candidates:

- Contact details, including names
- Resumes
- E-mail communications
- Address
- Work history
- Motivation letter and other documents provided for an application
- Information regarding Candidates gathered through integrations between the Services and services of third parties on request of the Subscriber or end-users
- Notes about Candidates
- Ratings of Candidates
- and other Personal Data relating to Candidates that is processed as part of the Services. For the sake of clarity, Personal Data that relates to Candidates and simultaneously to other Data Subjects will be considered to be processed on behalf of the Subscriber (e.g. email from a user to a Candidate).

Recruitee shall on behalf of Subscriber Process the following categories of Personal Data relating to Visitors:

- Traffic source
- HTTP requests and responses
- Cookies
- Date and time of usage
- and other Personal Data relating to Visitors that is processed as part of the Services.

Recruitee shall on behalf of Subscriber Process the following categories of Personal Data relating to Referrers:

- Contact details, including names
- HTTP requests and responses
- Cookies
- Date and time of usage
- Social and business connections
- E-mail address and password
- Referrals, including the status and associated rewards
- E-mail communications
- and other Personal Data relating to Referrers that is processed as part of the Services. For the sake of clarity, Personal Data that relates to Referrers and simultaneously to other Data Subjects will be considered to be processed on behalf of the Subscriber (e.g. email from a user to a Referrer).

Recruitee shall only Process the aforementioned Personal Data insofar as it falls under the Services, except when Personal Data has been anonymized and is used to improve the Services. The Subscriber or End-Users may provide Recruittee with additional instructions regarding the Processing of Personal Data through their use of and within the limits of the Services. For example an end-user may choose in the SaaS to delete Personal Data relating to a Candidate. Subscriber is obliged to make sure that any instructions it gives including, but not limited to, those given on its behalf are compliant with applicable laws and regulations including, but not limited to, the GDPR.



## DPA Appendix 2: Technical and Organisational Measures

The following is a non-exhaustive list of technical and organisational security measures taken and implemented by Recrutee:

**Quality Assurance:** Recrutee has processes in place for quality assurance of the SaaS. Such processes include automated testing and pre-deployment manual testing of features and bug fixes.

**Code review:** All new code for the SaaS is reviewed by at least one senior developer before it's released to a production environment. The review includes a check for the use of secure coding practices.

**HTTPS:** Encryption is used for all transfer of personal data by the SaaS over the web.

**Storage of passwords:** All passwords for the SaaS are stored using an industry standard hashing algorithm.

**Penetration testing:** A specialized third party penetration tester will regularly test the security of the SaaS provided under the Agreement.

**Back-ups:** All Personal Data in the SaaS is backed up daily or continuously in increments.

**Access control:** Employees only receive access rights to Personal Data in the SaaS in so far as such rights are required for their role. Access rights will be revoked when they no longer need it.

**Secure data centers:** The SaaS will only be hosted in data centers that have a high level of security and availability, such as ISO 27001 certified data centers.

**DDOS protection:** Recrutee will have measures in place for the SaaS to protect its servers from Layer 4 (and below) (D)DOS attacks.

**Firewall:** The SaaS infrastructure will be protected by one or more firewalls.

## DPA Appendix 3: Sub-processors

The Subscriber agrees that Recrutee engages the parties listed below as Sub-processors:

<b>Google Cloud Platform</b>	
Entity names:	Google Ireland Limited and its sub-processors ( <a href="https://cloud.google.com/terms/subprocessors">https://cloud.google.com/terms/subprocessors</a> )
Data processing location:	Frankfurt, Germany (google: europe-west3)
Other details:	Main infrastructure is hosted at Google Cloud Platform.

<b>Ziggeo</b>	
Entity names:	Ziggeo, Inc. and its sub-processors
Data processing location:	Ireland (aws: eu-west-1)

<b>Amazon Web Services</b>	
Entity names:	Amazon Web Services EMEA SARL and its sub-processors
Data processing location:	Frankfurt, Germany (aws: eu-central-1)

<b>Recrutee</b>	
Entity names:	Recrutee Sp. Z o.o., Recrutee B.V. and affiliated companies (except Recrutee Inc.)
Data processing location:	The Netherlands and Poland

Other details:	These are the entities other than the contracting (Recruitee) entity used to provide the Services.
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<b>Textkernel</b>	
Entity names:	Textkernel B.V. and its sub-processors
Data processing location:	Amsterdam, the Netherlands

<b>Mailgun</b>	
Entity names:	Mailgun Technologies, Inc. and its sub-processors
Data processing location:	Frankfurt, Germany (aws: eu-central-1)

## Service Level Addendum (for Lead plans)

**Last modified:** 7th of September 2020

### 0. Definitions

**'Available' / 'Availability':** the time during which the SaaS or a Functionality is accessible by Customer for live, real-time processing and data exchange at a reasonably acceptable speed;

**'Downtime':** time during which the SaaS is not Available;

### 1. Applicability of this SLA

**1.1 General** This SLA is an addendum to the terms and conditions agreed to between Subscriber and Recrutee, also defined in said document as 'Terms', as set out on:

<https://recrutee.com/terms>. This SLA sets out terms and conditions relating to service levels in addition to the Terms, but only in so far as Subscriber is on a Subscription for the SaaS that is designated as a 'Lead' plan. This SLA may be modified by Recrutee under the same terms and conditions that apply to modifications to the Terms.

**1.2 Inconsistencies** In case of any inconsistencies between this SLA and the Terms, this SLA will prevail. If the Parties have entered into a data processing agreement relating to the processing of personal data ('DPA') in relation to a Subscription, then the DPA will prevail over this SLA in relation to such a Subscription. This SLA will not apply to a Subscription if the Parties have duly executed a separate written service level agreement/addendum that is applicable to such a Subscription.

### 2. Availability

**2.1 Availability warranty** Recrutee warrants a minimum Availability of 99.5% per quarter for the majority of the Functionalities of the SaaS ('Availability Warranty').

**2.2 Exclusions** A Functionality of the SaaS is considered to be Available in so far as Downtime results from or can be attributed to:

- The Subscriber using or opting-in for features designated by Recrutee as alpha or beta;
- Factors outside of Recrutee's reasonable control;
- Violation of the Terms or this SLA by the Subscriber;
- Use of Functionality by the Subscriber in a manner for which it was not designed or intended;
- Downtime that was planned by Recrutee and announced in advance.

**2.3 Credits** If Recrutee does not meet the Availability Warranty set out in this article, then Recrutee will credit towards future invoices for Services provided by Recrutee, on Subscriber's

request, 10% of the quarterly fee for the SaaS in so far as such fee has been paid for the one quarter period that Recrutee did not meet the requirements of the warranty ('Availability Warranty Credit'). A failure to meet the requirements of the Availability Warranty will not result in any other liability or Subscriber entitlement/right than the Availability Warranty Credit nor will it entitle the Subscriber to a refund.

**2.4 Calculations** For the purposes of this article a quarter is every consecutive 3-month period after the start of the Subscription for the SaaS. The quarterly fee for the SaaS will be calculated pro rata from the Subscription fee of the SaaS. Recrutee's administration is leading for the calculation of the Availability, but Subscriber has access to review the most recent performance on: <https://status.recrutee.com>. Recrutee may implement or make use of a different performance monitoring tool in its sole discretion and will notify Subscriber of such a change.

### **3. Back-ups and recovery**

Recrutee will at least on a daily basis make back-ups of Subscriber Data and make commercially reasonable efforts to restore Subscriber Data, free of any additional charge, in case of data loss that is attributable to Recrutee.