



## **JOBPARTNERS SERVICE AGREEMENT:**

BY CLICKING THE "I AGREE" CHECKBOX AS PART OF THE ORDERING PROCESS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF JOBPARTNERS'S ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY.

### **Welcome**

As part of the Service, JOBPARTNERS will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the JOBPARTNERS website incorporated by reference herein, including but not limited to JOBPARTNERS's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement.

In addition, we offer a 30-day free trial of our Service, limited to 1000 candidates in your talent pool, subject to the same conditions described hereto but with no further obligation.

### **Acceptance of SFDC Agreement**

The Service is provided through the use of salesforce.com ("SFDC") software and systems ("Platform") and therefore requires your acceptance of the terms of the SFDC agreement. By accepting these terms and conditions you are accepting the SFDC Service Agreement attached hereto.

You are advised that you are contracting solely with JOBPARTNERS and not with SFDC. Therefore, you acknowledge and accept that (a) in the event that JOPARTNERS ceases business and/or provision of the JOBPARTNERS' Solution, SFDC is under no obligation to provide the JOBPARTNERS' Services, to refund to you any fees paid by you to JOBPARTNERS, or to assume the relationship with JOBPARTNERS and (b) SFDC has no liability for the Service or for its continued availability. You understand and agree that SFDC (a) is a third party beneficiary to this Agreement; and (b) reserves the right to suspend and/or terminate your use of the SFDC Platform if you are in breach of the SFDC Service Agreement. In no case will any such termination give rise to any liability of SFDC to you for a refund or damages.

You agree that where you are exporting or transferring your Data outside SFDC's system that SFDC is not responsible for the privacy, security or integrity of that Data.

## **1. Privacy & Security; Disclosure**

JOBPARTNERS's privacy and security policies may be viewed at <http://www1.jobpartners.com/en/component/content/article/14>. JOBPARTNERS reserves the right to modify its privacy and security policies in its reasonable discretion from time to time. Individual users, when they initially log in, will be asked whether or not they wish to receive marketing and other non-critical Service-related communications from JOBPARTNERS from time to time. If Individual Users have initially opted in, they may opt out of receiving such communications at any time by changing their preference under Personal Setup. Note that because the Service is a hosted, online application, JOBPARTNERS occasionally may need to notify all users of the Service (whether or not they have opted out as described above) of important announcements regarding the operation of the Service. If you become a paying customer of the Service, you agree that JOBPARTNERS can disclose the fact that you are a paying customer and the fact that you are a user of the Service.

## **2. License Grant & Restrictions – Support**

JOBPARTNERS hereby grants you a non-exclusive, non-transferable, worldwide right to use the Service,

solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by JOBPARTNERS and its licensors.

You may not access the Service if you are a direct competitor of JOBPARTNERS, except with JOBPARTNERS's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service. User licenses cannot be shared or used by more than one individual User but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment or otherwise changed job status or function and no longer use the Service.

You may use the Service only for your internal business purposes and shall not: (i) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (ii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material harmful to children or violative of third party privacy rights; (iii) send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs; (iv) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (v) attempt to gain unauthorized access to the Service or its related systems or networks.

You understand and agree that you cannot use additional custom objects, and that your use of the SFDC Platform in connection with the Service is limited to the objects and functionalities included in the Service, and those functionalities of the Platform strictly necessary for the operation of the Service. Subscriptions to the Service cannot be joined with an existing SFDC Org. Where such a combination is required, you must procure the necessary subscriptions directly from SFDC to support, operate and run the Service. Should You wish to upgrade to full SFDC Force.com Edition subscriptions, such upgrade subscriptions shall be made available directly by SFDC.

## **Support**

All technical support for the Service shall be provided to you solely by JOBPARTNERS you agree that save under the circumstances described bellow you will not contact SFDC for any support and that SFC will not be obligated to provide any technical support for the Application to you. However, if you have elected to merge Your SFDC application suite or "Org" with the Service, SFDC will provide all technical support for the SFDC Service to You.

We shall provide to You basic support for the Purchased Services at no additional charge, and/or upgraded support if purchased separately and as indicated into your order form. Our support service is available from 9:00am to 6:00pm GMT every business day excluding UK Bank holidays.

## **3. Your Responsibilities**

You are responsible for all activity occurring under your User accounts and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data. You shall: (i) notify JOBPARTNERS immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to JOBPARTNERS immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another JOBPARTNERS user or provide false identity information to gain access to or use the Service

You shall not (i) modify, copy or create derivative works based on the Service, reverse engineer or access the Service in order to build a competitive product or service, (ii) copy any ideas, features, functions or graphics of the Service.

## **4. Account Information and Data**

JOBPARTNERS does not own any data, information or material that you submit to the Service in the course of using the Service ("Customer Data"). You, not JOBPARTNERS, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and JOBPARTNERS shall not be responsible or liable for the deletion,

correction, destruction, damage, loss or failure to store any Customer Data. In the event this Agreement is terminated (other than by reason of your breach), JOBPARTNERS will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. JOBPARTNERS reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and JOBPARTNERS shall have no obligation to maintain or forward any Customer Data.

## **5. Intellectual Property Ownership**

JOBPARTNERS alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the JOBPARTNERS Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the JOBPARTNERS Technology or the Intellectual Property Rights owned by JOBPARTNERS. The JOBPARTNERS name, the JOBPARTNERS logo, and the product names associated with the Service are trademarks of JOBPARTNERS or third parties, and no right or license is granted to use them.

## **6. Third Party Interactions**

During use of the Service, you may enter into correspondence with, purchase goods and/or services from, or participate in promotions of advertisers or sponsors showing their goods and/or services through the Service. Any such activity, and any terms, conditions, warranties or representations associated with such activity, is solely between you and the applicable third-party. JOBPARTNERS and its licensors shall have no liability, obligation or responsibility for any such correspondence, purchase or promotion between you and any such third-party. JOBPARTNERS does not endorse any sites on the Internet that are linked through the Service. JOBPARTNERS provides these links to you only as a matter of convenience, and in no event shall JOBPARTNERS or its licensors be responsible for any content, products, or other materials on or available from such sites. JOBPARTNERS provides the Service to you pursuant to the terms and conditions of this Agreement. You recognize, however, that certain third-party providers of ancillary software, hardware or services may require your agreement to additional or different license or other terms prior to your use of or access to such software, hardware or services.

## **7. Charges and Payment of Fees**

You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be equal to the current number of total User licenses requested times the User license fee currently in effect. Payments must be made annually in advance unless otherwise mutually agreed upon in an Order Form. All payment obligations are noncancelable and all amounts paid are nonrefundable. You are responsible for paying for all User licenses ordered for the entire License Term, whether or not such User licenses are actively used. You must provide JOBPARTNERS with approved purchase order information as a condition to signing up for the Service. An authorized License Administrator may add licenses by executing an additional written Order Form. Added licenses will be subject to the following: (i) added licenses will be coterminous with the preexisting License Term (either Initial Term or renewal term); (ii) the license fee for the added licenses will be the then current, generally applicable license fee; and (iii) licenses added in the middle of a billing month will be charged in full for that billing month. JOBPARTNERS reserves the right to modify its fees and charges and to introduce new charges at any time, upon at least 30 days prior notice to you, which notice may be provided by e-mail. All pricing terms are confidential, and you agree not to disclose them to any third party.

## **8. Excess Data Storage Fees**

The maximum disk storage space provided to you at no additional charge is described in your order form. If the amount of disk storage required exceeds these limits, you will be charged the then-current storage fees. JOBPARTNERS will use reasonable efforts to notify you when the average storage used per license reaches approximately 90% of the maximum; however, any failure by JOBPARTNERS to so notify you shall not affect your responsibility for such additional storage charges. JOBPARTNERS reserves the right to

establish or modify its general practices and limits relating to storage of Customer Data.

## **9. Billing and Renewal**

JOBPARTNERS charges and collects in advance for use of the Service. JOBPARTNERS will automatically renew and issue an invoice to you each year on the subsequent anniversary or as otherwise mutually agreed upon. The renewal charge will be equal to the then-current number of total User licenses times the license fee in effect during the prior term, unless JOBPARTNERS has given you at least 40 days prior written notice of a fee increase, which shall be effective upon renewal and thereafter. Fees for other services will be charged on an as-quoted basis. JOBPARTNERS's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only taxes based solely on JOBPARTNERS's income.

You agree to provide JOBPARTNERS with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and License Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, JOBPARTNERS reserves the right to terminate your access to the Service in addition to any other legal remedies.

Unless JOBPARTNERS in its discretion determines otherwise: (i) entities with headquarters and a majority of users resident in the United States will be billed in U.S. dollars and subject to U.S. payment terms and pricing schemes ("U.S. Customers"); (ii) entities with headquarters and a majority of users resident in the UK will be billed in British Pounds and subject to UK payment terms and pricing schemes ("UK Customers"); and (iii) entities with headquarters and a majority of users resident in the Euro Zone will be billed in euro and subject to Euro payment terms and pricing schemes ("Euro zone Customers"); and (iv) all other entities will be billed in Euros and be subject to Euro payment terms and pricing schemes at the discretion of JOBPARTNERS.

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

## **10. Non-Payment and Suspension**

In addition to any other rights granted to JOBPARTNERS herein, JOBPARTNERS reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the interest equal to the rate set forth by Directive 2000/35/EC, whichever is the higher plus all expenses of collection. You will continue to be charged for User licenses during any period of suspension. If you or JOBPARTNERS initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that JOBPARTNERS may bill you for such unpaid fees.

JOBPARTNERS reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that JOBPARTNERS has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

## **11. Termination upon Expiration/Reduction in Number of Licenses**

This Agreement commences on the Effective Date. The Initial Term will be 12 months, commencing on the start date of the Order Form. Upon the expiration of the Initial Term, this Agreement will automatically renew for successive renewal terms equal in duration to the Initial Term at JOBPARTNERS's then current fees. Either party may terminate this Agreement or reduce the number of licenses, effective only upon the expiration of the then current License Term, by notifying the other party in writing at least thirty (30) business days prior to the then current Term. In the case of free trials, notifications provided through the Service indicating the remaining number of days in the free trial shall constitute notice of termination. In the event this Agreement is terminated (other than by reason of your breach), JOBPARTNERS will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. You agree and acknowledge that JOBPARTNERS has no obligation to retain the Customer Data, and may delete such Customer Data, more than 30 days after termination.

## **12. Termination for Cause**

Any breach of your payment obligations or unauthorized use of the JOBPARTNERS Technology or Service (including a material breach of the SFDC Service agreement attached hereto) will be deemed a material breach of this Agreement. JOBPARTNERS, in its sole discretion, may suspend and/or terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In addition, JOBPARTNERS may terminate a free account at any time in its sole discretion. You agree and acknowledge that JOBPARTNERS has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

## **13. Representations & Warranties**

Each party represents and warrants that it has the legal power and authority to enter into this Agreement. JOBPARTNERS represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online JOBPARTNERS help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

## **14. Mutual Indemnification**

You shall indemnify and hold JOBPARTNERS, its licensors (including SFDC) and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that JOBPARTNERS (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release JOBPARTNERS of all liability and such settlement does not affect JOBPARTNERS's business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

JOBPARTNERS shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.K. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by JOBPARTNERS of its representations or warranties; or (iii) a claim arising from breach of this Agreement by JOBPARTNERS; provided that you (a) promptly give written notice of the claim to JOBPARTNERS; (b) give JOBPARTNERS sole control of the defense and settlement of the claim (provided that JOBPARTNERS may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to JOBPARTNERS all available information and assistance; and (d) have not compromised or settled such claim. JOBPARTNERS shall have no indemnification obligation, and you shall indemnify JOBPARTNERS pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

## **15. Disclaimer of Warranties**

JOBPARTNERS AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. JOBPARTNERS AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS.

ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY JOBPARTNERS AND ITS LICENSORS.

## **16. Internet Delays**

JOBPARTNERS'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. JOBPARTNERS IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

## **17. Limitation of Liability**

IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

## **18. Additional Rights**

Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

## **19. Local Laws and Export Control**

This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S. and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

JOBPARTNERS and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America, and/or the European Union, you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical

or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

## **20. Notice**

JOBPARTNERS may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in JOBPARTNERS's account information, or by written communication sent by first class mail or pre-paid post to your address on record in JOBPARTNERS's account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to JOBPARTNERS (such notice shall be deemed given when received by JOBPARTNERS) at any time by any of the following: letter sent by confirmed facsimile to JOBPARTNERS at the following fax number +44(0) 208 834 0404 (letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to JOBPARTNERS at the following address : Jobpartners UK Ltd, The triangle 4<sup>th</sup> floor, 5 Hammersmith Grove, W6 0LG, London, UK, addressed to the attention of the Finance department

## **21. Modification to Terms**

JOBPARTNERS reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.

## **22. Assignment; Change in Control**

This Agreement may not be assigned by you without the prior written approval of JOBPARTNERS but may be assigned without your consent by JOBPARTNERS to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of You that results or would result in a direct competitor of JOBPARTNERS directly or indirectly owning or controlling 50% or more of you shall entitle JOBPARTNERS to terminate this Agreement for cause immediately upon written notice.

## **23. General**

This Agreement shall be governed by the laws of England and Wales, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the courts of London, England. To the extent that the Service is accessed outside of the United Kingdom, the parties agree that the exclusive jurisdiction of the English courts shall apply provided however that either party may apply to any relevant jurisdiction to protect its Intellectual Property Rights and / or Confidential Information. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between You and JOBPARTNERS as a result of this agreement or use of the Service. The failure of JOBPARTNERS to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by JOBPARTNERS in writing. This Agreement, together with any applicable Order Form, comprises the entire agreement between you and JOBPARTNERS and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

## **24. Definitions**

As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means these terms of use, any Order Forms, and any materials available on the JOBPARTNERS website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by JOBPARTNERS from time to time in its sole discretion; "Content" means the audio and

visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the initial period during which you are obligated to pay for the Service equal to the billing frequency selected by you during the subscription process (e.g., if the billing frequency is quarterly, the Initial Term is the first quarter); "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "License Administrator(s)" means those Users designated by you who are authorized to purchase licenses by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "License Term(s)" means the period(s) during which a specified number of Users are licensed to use the Service pursuant to the Order Form(s); "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of licenses and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "; "JOBPARTNERS" means Jobpartners UK Ltd, a limited company having its headquarters at The triangle, 4<sup>th</sup> floor, 5 Hammersmith Grove, W6 0LG London, UK; "JOBPARTNERS Technology" means all of JOBPARTNERS's proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by JOBPARTNERS in providing the Service; "Service(s)" means the ActiveSuite Business Edition's online talent management platform, billing, data analysis, or other corporate ERP services identified during the ordering process, developed, operated, and maintained by JOBPARTNERS, accessible via <http://www.jobpartners.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by JOBPARTNERS, to which you are being granted access under this Agreement, including the JOBPARTNERS Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by JOBPARTNERS at your request).

## **Appendix 1 - SFDC Service Agreement**

**"AppExchange"** means the online directory of on-demand applications that work with the Service, located at <http://www.appexchange.com> or at any successor websites.

**"Reseller"** means Jobpartners.

**"Reseller Application"** means ActiveSuite Business Edition.

**"Platform"** means the online, Web-based platform service provided by SFDC to Reseller in connection with Reseller's provision of the Reseller Application to You.

**"SFDC Service"** means the online, Web-based application and platform service generally made available to the public via <http://www.salesforce.com> and/or other designated websites, including associated offline components but excluding AppExchange applications.

**"SFDC"** means salesforce.com.

**"Users"** means Your employees, representatives, consultants, contractors or agents who are authorized to use the Service subject to the terms of this SFDC Service Agreement as a result of a subscription to the Reseller Application having been purchased for such User, and have been supplied user identifications and passwords by You (or by Salesforce.com or Reseller at Your request).

**"You"** and **"Your"** means the customer entity which has contracted to purchase subscriptions to use the Reseller Application subject to the conditions of this SFDC Service Agreement, together with any other terms required by Reseller.

**"Your Data"** means all electronic data or information submitted by You as and to the extent it resides in the Service.

### 1. **Use of Service.**

- (a) Each User subscription to the Reseller Application shall entitle one User to use the Service via the Reseller Application, subject to the terms of this SFDC Service Agreement, together with any other terms required by Reseller. User subscriptions cannot be shared or used by more than one User (but may be reassigned from time to time to new Users who are replacing former Users who have terminated employment with You or otherwise changed job status or function and no longer require use of the Service). For clarity, Your subscription to use the Platform hereunder does not include a subscription to use the SFDC Service or to use it in connection with applications other than the Reseller Application. If You wish to use the SFDC Service or any of its functionalities or services, to use another application other than the Reseller Application,

or to create or use additional custom objects beyond those which appear in the Reseller Application in the form that it has been provided to You by Your Reseller, visit [www.salesforce.com](http://www.salesforce.com) to contract directly with SFDC for such services. In the event Your access to the Reseller Application provides You with access to the SFDC Service generally or access to any SFDC Service functionality within it that is in excess to the functionality described in the Reseller Application's user guide, and You have not separately subscribed under a written contract with SFDC for such access, then You agree to not access and use such functionality, and You agree that Your use of such functionality, Your use of applications other than the Reseller Application, or Your creation or use of additional custom objects in the Reseller Application beyond that which appears in the Reseller Application in the form that it has been provided to You by your Reseller, would be a material breach of this Agreement.

- (b) Notwithstanding any access You may have to the Platform or the SFDC Service via the Reseller Application, Reseller is the sole provider of the Reseller Application and You are entering into a contractual relationship solely with Reseller. In the event that Reseller ceases operations or otherwise ceases or fails to provide the Reseller Application, SFDC has no obligation to provide the Reseller Application or to refund You any fees paid by You to Reseller.
- (c) You (i) are responsible for all activities occurring under Your User accounts; (ii) are responsible for the content of all Your Data; (iii) shall use commercially reasonable efforts to prevent unauthorized access to, or use of, the Platform and the SFDC Service, and shall notify Reseller or [Salesforce.com](http://Salesforce.com) promptly of any such unauthorized use You become aware of; and (iv) shall comply with all applicable local, state, federal and foreign laws and regulations in using the Platform and the SFDC Service.
- (d) You shall use the Platform and the SFDC Service solely for Your internal business purposes and shall not: (i) license, sublicense, sell, resell, rent, lease, transfer, assign, distribute, time share or otherwise commercially exploit or make the Platform or the SFDC Service available to any third party, other than to Users or as otherwise contemplated by this SFDC Service Agreement; (ii) send spam or otherwise duplicative or unsolicited messages in violation of applicable laws; (iii) send or store infringing, obscene, threatening, libelous, or otherwise unlawful or tortious material, including material that is harmful to children or violates third party privacy rights; (iv) send or store viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs; (v) interfere with or disrupt the integrity or performance of the Platform or the SFDC Service or the data contained therein; or (vi) attempt to gain unauthorized access to the Platform or the SFDC Service or its related systems or networks.
- (e) You shall not (i) modify, copy or create derivative works based on the Platform or the SFDC Service; (ii) frame or mirror any content forming part of the Platform or the SFDC Service, other than on Your own intranets or otherwise for Your own internal business purposes; (iii) reverse engineer the Platform or the SFDC Service; or (iv) access the Platform or the SFDC Service in order to (A) build a competitive product or service, or (B) copy any ideas, features, functions or graphics of the Platform or the SFDC Service.

2. **Third-Party Providers.** Reseller and other third-party providers, some of which may be listed on pages within SFDC's website and including providers of AppExchange applications, offer products and services related to the Platform, the SFDC Service, and/or the Reseller Application, including implementation, customization and other consulting services related to customers' use of the Platform and/or the SFDC Service, and applications (both offline and online) that interoperate with the Platform, SFDC Service, and/or the Reseller Application, such as by exchanging data with the Platform, the SFDC Service, and/or the Reseller Application, or by offering additional functionality within the user interface of the Platform, the SFDC Service, and/or the Reseller Application through use of the Platform and/or SFDC Service's application programming interface. SFDC does not warrant any such third-party providers or any of their products or services, including but not limited to the Reseller Application or any other product or service of Reseller, whether or not such products or services are designated by SFDC as "certified," "validated" or otherwise. Any exchange of data or other interaction between You and a third-party provider, including but not limited to the Reseller Application, and any purchase by

You of any product or service offered by such third-party provider, including but not limited to the Reseller Application, is solely between You and such third-party provider. In addition, from time to time, certain additional functionality (not defined as part of the Platform or SFDC Service) may be offered by SFDC or Reseller to You, for an additional fee, on a pass-through or OEM basis pursuant to terms specified by the licensor and agreed to by You in connection with a separate purchase by You of such additional functionality. Your use of any such additional functionality shall be governed by such terms, which shall prevail in the event of any inconsistency with the terms of this SFDC Service Agreement.

3. **Proprietary Rights.** Subject to the limited rights expressly granted hereunder, SFDC reserves all rights, title and interest in and to the Platform and the SFDC Service, including all related intellectual property rights. No rights are granted to You hereunder other than as expressly set forth in this SFDC Service Agreement. The Platform and the SFDC Service is deemed SFDC confidential information, and You will not use it or disclose it to any third party except as permitted in this SFDC Service Agreement.
4. **Compelled Disclosure.** If either You or SFDC is compelled by law to disclose confidential information of the other party, it shall provide the other party with prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the other party's cost, if the other party wishes to contest the disclosure.
5. **Suggestions.** You agree that SFDC shall have a royalty-free, worldwide, transferable, sublicenseable, irrevocable, perpetual license to use or incorporate into any SFDC products or services any suggestions, enhancement requests, recommendations or other feedback provided by You or Your Users relating to the operation of the Platform and/or the SFDC Service.
6. **Termination.** Your use of the Platform and the SFDC Service may be immediately terminated and/or suspended upon notice due to (a) a breach of the terms of this SFDC Service Agreement by You or any User, (b) the termination or expiration of Reseller's agreement with SFDC pursuant to which Reseller is providing the Platform as part of the Reseller Application to You, and/or (c) a breach by Reseller of its obligations to SFDC with respect to the subscriptions it is providing to You in connection with this SFDC Service Agreement.
7. **Subscriptions Non-Cancelable.** Subscriptions for the Platform and the SFDC Service are non-cancelable during a subscription term, unless otherwise specified in Your agreement with Reseller.
8. **Data Storage.** The Platform and SFDC Service includes a certain cumulative amount of storage per User subscription for no additional charge. Contact Your Reseller for additional information. Additional storage may be available for purchase from the Reseller.
9. **No Warranty.** SALESFORCE.COM MAKES NO WARRANTIES OF ANY KIND, INCLUDING BUT NOT LIMITED TO WITH RESPECT TO THE PLATFORM, THE SFDC SERVICE, AND/OR THE RESELLER APPLICATION, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE. TO THE MAXIMUM EXTENT PERMITTED BY LAW, SALESFORCE.COM DISCLAIMS ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, WITH RESPECT TO RESELLER APPLICATION AND THE SERVICE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS.
10. **No Liability.** IN NO EVENT SHALL SFDC HAVE ANY LIABILITY TO YOU OR ANY USER FOR ANY DAMAGES WHATSOEVER, INCLUDING BUT NOT LIMITED TO DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE, OR CONSEQUENTIAL DAMAGES, OR DAMAGES BASED ON LOST PROFITS, HOWEVER CAUSED AND, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, WHETHER OR NOT YOU HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
11. **Further Contact.** SFDC may contact You regarding new SFDC service features and offerings.

12. **Google Programs and Services.** Platform or SFDC Service features that interoperate with Google programs and services depend on the continuing availability of applicable Google application programming interfaces ("APIs") and programs for use with the Platform and the SFDC Service. If Google Inc. ceases to make such APIs and/or programs available on reasonable terms to SFDC, SFDC may cease providing such features without entitling You or Reseller to any refund, credit, or other compensation.
  
13. **Third Party Beneficiary.** SFDC shall be a third party beneficiary to the agreement between You and Reseller solely as it relates to this SFDC Service Agreement.