

Terms of Use

Criteria Corp

Terms and Conditions of Use

Posted/Revised: January 01, 2020

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Effective: January 1, 2020

(For the December 2018 version of these Terms and Conditions of Use, [click here](#)).

Welcome to the website of Criteria Corp, a [California] corporation with web based pre-employment testing subscription applications and services. Criteria Corp, together with its affiliate entities (collectively, “**Criteria**”) offer this site, related services, and applications to you (the “**Customer**”) for use subject to your compliance with these Terms and Conditions of Use (“**Agreement**”), and reserves the right to limit or terminate your use if you fail to comply with this Agreement. Please take the time to review this Agreement carefully. Criteria may revise this Agreement at any time by updating this posting as indicated in Section 13.10.

ACCEPTANCE OF TERMS AND CONDITIONS

BY USING THIS WEBSITE, CHECKING THE “ACCEPTED AND AGREED,” COMPLETING THE ORDER WEBPAGE, SIGNING A PAPER ORDER REFERENCING THIS AGREEMENT, OR DOWNLOADING, ACCESSING, OR USING THE SERVICE, YOU EXPRESSLY (A) ACKNOWLEDGE THAT YOU HAVE READ THIS AGREEMENT IN ITS ENTIRETY; (B) IF CUSTOMER IS A COMPANY, THE PERSON ACCEPTING AND AGREEING TO THIS

AGREEMENT IS AUTHORIZED BY CUSTOMER TO ENTER INTO THIS AGREEMENT FOR CUSTOMER; AND (C) AGREE TO BE BOUND BY ALL OF THE TERMS AND CONDITIONS OF THIS AGREEMENT AND BE HELD LIABLE FOR ANY NONCOMPLIANCE WITH THIS AGREEMENT. IF YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, PLEASE EXIT THE WEBSITE AND DO NOT DOWNLOAD, INSTALL, ACCESS, OR USE ANY SERVICE.

1. **Definitions.** The following capitalized terms shall have the following meanings whenever used in this Agreement.

1.1 **"ATS"** refers to an applicant tracking system or any similar computer system used to manage data related to job applicants.

1.2 **"AUP"** refers to Criteria's acceptable use policy currently posted at [AUP](#).

1.3 **"Customer Data"** refers to data in electronic form input or collected through the Service by or from Customer, including without limitation by or from Customer's Users or TestTakers.

1.4 **"Employee"** refers to any person within Customer's organization, including full-time employees, part-time employees, interns, volunteers, and individual independent contractors.

1.5 **"Optional Data"** refers to demographic information requested by the Service under the heading "Optional," which TestTakers are not required to provide.

1.6 **"Order"** refers to Customer's order for the Service (a) submitted via the Service online ordering system, email from Customer, fax from Customer, or otherwise, and (b) accepted by Criteria, as recorded by the Service's computer systems.

1.7 **"PII"** refers to Customer Data that can be used to identify or contact a person, including without limitation such information provided by TestTakers.

1.8 **"Privacy Policy"** refers to Criteria's privacy policy currently posted at [Privacy Policy](#).

1.9 **"Service"** refers to Criteria's web-based pre-employment testing subscription service, including HireSelect® (a web-based version), as well as Criteria's related customer service and technical support.

1.10 **"Term"** is defined in Section 12.1 below.

1.11 **"Test Response Data"** refers to TestTakers' responses to tests, assessments, and surveys provided by Criteria and administered through the Service, excluding TestMaker Content.

1.12 **"TestMaker Content"** refers to any test or other content uploaded to the TestMaker section of the Service by or for Customer for use as Customer-created tests or surveys.

1.13 **"TestTaker"** refers to an individual who uses the Service to take tests at Customer's direction or request. TestTakers may be Employees.

1.14 **"User"** refers to an individual who uses the Service on Customer's behalf. Users include TestTakers as well as Employees and other agents.

1.15 **"Service Provider"** refers to third parties engaged by Criteria to perform services in connection with the Service, Criteria operations, and Customer support.

2. Service in General. Criteria shall provide the Service to Customer, provided that Customer is in compliance with this Agreement.

2.1 Use of Information. Criteria may (without limiting Criteria's rights): (a) use PII and Test Response Data to create score reports and other analyses for Customer's use; (b) use Test Response Data and Optional Data for item analysis and to further refine and validate normative data; and (c) use, distribute, publicize, sell, and otherwise exploit Test Response Data and Optional Data, excluding PII, in aggregate anonymized form. Customer may at any time withdraw Criteria's right to share Customer's job opportunities by changing the settings in Customer's online account.

2.2 Data Management. Criteria shall use reasonable commercial efforts to retain all Customer Data. Notwithstanding the foregoing, (a) Criteria shall have no liability for erased or otherwise lost Customer Data, including for any damages resulting directly or indirectly from such loss; and (b) Criteria may suspend or terminate Customer's access to the Service and Customer Data if Customer's account is delinquent or suspended for 30 days or more..

2.3 Communications. Customer shall ensure that both the "bill to" and "ordered by" e-mail contact information provided to the Service are accurate. Customer is on notice that the Service sends automated invoices and dunning emails using such contact information.

2.4 Restrictions and Acceptable Data. Customer recognizes and agrees that: (a) the Service is for business use and not for consumers; (b) the Service is not intended to store or use sensitive personal information such as credit reporting information, credit card numbers, social security numbers, drivers licenses or similar identifiers from other jurisdictions; or protected health information, as defined by the Health Insurance Portability and Accountability Act of 1996 and its enabling regulations and related laws ("**HIPAA**"); (c) the Service is not HIPAA compliant and may not be compliant with laws governing such sensitive personal information.

2.5 Free Trials. "Free Trial" refers to a no-charge use of the Service for purchase consideration and to any other use designated "Free Trial" on the Order. Customer shall not: (a) use a Free Trial beyond the period designated on the Order; (b) use a Free Trial for more than 20 tests; or (c) use a Free Trial for any reason other than assessing purchase of a Service subscription. Without limiting the generality of the foregoing, Customer shall not use a Free Trial for job applicants. Criteria may discontinue a Free Trial at any time and for any reason.

2.6 ZipRecruiter Credits. The following applies if Customer's Order calls for it to receive job-posting credits through Criteria's arrangement with ZipRecruiter, Inc. (a "ZR-Included Order" and "ZRCredits," respectively):

- (a) Each ZRCredit is valid for one 30-day job posting.
- (b) ZRCredits may only be used through the Service and cannot be used directly with ZipRecruiter, Inc. or with any other provider.
- (c) ZRCredits are not redeemable for cash or refundable under any circumstances.
- (d) ZRCredits become valid and usable only upon payment in full of all fees due under the ZR-Included Order.
- (e) ZRCredits remain valid for 1 year from their purchase date, including after the Term where applicable, so long as Customer continuously retains a fully-paid ZR-Included Order. ZRCredits become permanently invalid if the terms of the Order are altered so that it is no longer a ZR-Included Order.

3. Pricing & Payment. Customer shall pay Criteria the applicable fees on the Order on or before the start of the Term but in no case more than 30 days after Criteria's invoice date. Criteria may issue invoices at any time. All payments shall be in U.S. dollars without any deductions. Customer shall pay any and all applicable levies, customs, and duties, or taxes imposed by any governmental authority related to the Order. If Customer is prohibited by applicable law from making required payments free of taxes (including value-added tax), deductions, or withholdings, or if such taxes are charged by Criteria, Customer shall pay Criteria additional contributions so that the actual amount received after such taxes, deductions, and withholdings equals the fees charged.

3.1 Information Accuracy. Customer recognizes and agrees that: (a) the Service is priced using algorithms that estimate usage based on tests used, positions, hiring, and Customer's count of Employees; and (b) such Employee count may only exclude independent contractors if the Service will not be used to test, screen, or otherwise address independent contractors. Customer shall provide Criteria with complete and accurate information regarding its number of Employees, as well as complete and

accurate billing and contact information. Without limiting Criteria's rights or remedies, if Customer's testing administration exceeds usage expectations for its service level pricing tier, Criteria may suspend Customer's use of the Service without advanced notice.

3.2 Credit Cards. Criteria uses a PCI compliant third-party gateway processor for its credit card processing. If Customer attempts to pay with a credit card and payment is declined or an account balance remains due, Criteria may direct the credit card processor to charge the card again or require an alternative credit card to be used (without limiting Criteria's other rights or remedies).

3.3 No Refunds/Cancellations. Customer may not cancel an Order, and neither prepaid fees nor any other fees are refundable under any circumstances.

3.4. Collection. If Customer does not make any payment required in this Agreement, Customer shall pay or, at Criteria's option, reimburse all reasonable costs of collection, including without limitation attorneys' fees.

4. Customer's Responsibilities & Restrictions.

4.1 Users. Customer is responsible and liable for Employee Users' use of the Service, including without limitation any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer.

4.2 Content Rights. With the exception of TestMaker Content, Customer shall not reproduce, distribute, or disclose to third parties any test or test answer provided through the Service. With the sole exception of TestMaker Content, Customer acknowledges and agrees: (a) that tests and other content in the Service are protected by copyright and other laws and are Criteria's trade secrets and Confidential Information (as defined below in Section 5.1); and (b) that unauthorized distribution, disclosure, or other use would reduce or destroy their validity, usefulness, and value and would cause Criteria substantial and irreparable harm, including without limitation potential harm to its reputation.

4.3 Hiring Practices. Customer acknowledges and agrees as follows:

(a) Test scores should be only one element of a comprehensive applicant evaluation process.

(b) U.S. customers should become familiar with the Uniform Guidelines on Employee Selection Procedures ("**UGESP**") issued by the U.S. Equal Employment Opportunity Commission ("**EEOC**") to help avoid cultural bias and unfair discrimination and to make certain that only job-related selection techniques are used in hiring job applicants. Non-U.S. customers should become familiar with their jurisdiction's employment laws related to bias and discrimination.

(c) Use of tests for evaluation of job applicant honesty or integrity is unlawful or restricted in some jurisdictions, and Customer shall not use them where prohibited by applicable law.

(d) Customer, not Criteria, is responsible for making testing accommodations for Users as required by applicable law, including, without limitation, the Americans with Disabilities Act of 1990 and EEOC regulations. To inquire about available accommodation support, Customer shall promptly send an "accommodation request" to *Help* at [Criteriacorp.com](mailto:Help@Criteriacorp.com) or to Criteria's Chief Operating Officer through Criteria's notice address listed below in Section 13.1. Responsibility for compliance remains with Customer whether or not Criteria assists.

(e) Criteria has no role in determining or control over the legality, quality, or propriety of Customer's hiring practices. Customer is solely responsible and liable for such practices.

(f) The Service does not include psychological or medical tests and is not intended to be used for such testing.

(g) Customer, not Criteria, is responsible for its compliance with any laws or rules governing testing or hiring by government agencies.

4.4 Data Accuracy. Customer assumes sole responsibility for the accuracy of data uploaded to the Service by Users, and Criteria will have no responsibility or liability for the accuracy of such data.

4.5 Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the Service, including without limitation by protecting its log-in passwords and other information. The steps required in the preceding sentence shall be no less extensive than Customer takes to protect its accounts and other information of similar sensitivity. Customer shall notify Criteria immediately of any known or suspected unauthorized use of or access to the Service and shall use best efforts to stop such use or access.

4.6 Employment and Recruiting Agencies. Customer shall not use the Service to facilitate hiring or retention of Employees other than for its own internal staffing needs, unless it has clearly identified itself to Criteria as an Employment Agency and has Criteria's prior written consent to use the Service on behalf of third parties. ("Employment Agency" refers to a recruiting or hiring firm or consultant, employment agency, or other person or entity in the business of assisting with recruiting or hiring.)

(a) If Customer becomes an Employment Agency, including without limitation through merger or acquisition, it shall notify Criteria 30 days in advance in writing. In such case, Criteria may terminate this Agreement for convenience without advanced notice.

(b) If Customer is an Employment Agency and its use of the Service exceeds the limits authorized in the Order, breaches Section 4.2 (Content Restrictions), or in any other way infringes Criteria's intellectual property rights, Criteria may suspend Customer's use of the Service or terminate this Agreement, in each case without advanced notice or opportunity to cure. Conduct authorizing suspension or termination pursuant to the preceding sentence includes, without limitation, immaterial excesses, breaches, or infringements. (Customer recognizes and agrees that Employment Agency pricing is based on algorithms that estimate usage based on the size of the agency, number of positions for which it is recruiting, and the number of Employment Agency customers.)

4.7 TestMaker Content. Customer represents and warrants that TestMaker Content will not contain material subject to third party proprietary rights, including without limitation copyrights and trade secrets, unless Customer has first obtained all necessary permissions. Customer shall notify Criteria in writing of all third-party content and of any claims relating to TestMaker Content.

4.8 PII.

(a) Customer acknowledges and agrees that Customer Data may contain PII. When collecting, uploading, or downloading any PII in connection with the Service, Customer shall abide by all applicable privacy and data protection laws. Customer is responsible for determining the Service's suitability for use with data regulated by the Gramm-Leach-Bliley Act, HIPAA, and other privacy-related law and regulations, and Criteria is not responsible or liable for any incorrect determination.

(b) Criteria shall maintain reasonable administrative, physical, and technical safeguards designed to protect any PII uploaded by Customer to the Service or collected by Criteria on Customer's behalf ("**Customer PII**"). Those safeguards will include measures for preventing unauthorized access, use, modification, deletion and disclosure of Customer PII by Criteria's personnel. Before sharing Customer PII with a Service Provider, Criteria expects such Service Provider to have, at a minimum, reasonable data practices for maintaining the confidentiality and security of Customer PII and preventing unauthorized access. If Criteria has a reasonable, good faith belief that Customer PII is at risk due to unauthorized access of Customer PII, Criteria will promptly notify Customer and use reasonable efforts to cooperate with Customer's investigation of the incident. If such incident triggers any third-party notice requirements, Customer (not Criteria) will be responsible (to the extent permitted by law) for the timing, content, cost and method of any such notice and compliance with applicable laws. Customer (not Criteria) bears sole responsibility for adequate security, protection and backup of Customer Data when in Customer's or its representatives' or agents' possession or control. Criteria is not responsible, and Customer is fully responsible, for what Employee Users do with Customer PII.

(c) If Customer is subject to the California Consumer Privacy Act (“**CCPA**”) or other applicable law of the United States governing the use of PII (collectively, “**US Privacy Law**”); Customer and Criteria agree and acknowledge that for purposes of US Privacy Law, Criteria is Customer’s “service provider”. As such, Criteria is only authorized to use, retain and disclose Customer PII for the delivery of Services to Customer in accordance with this Agreement, including disclosures to Criteria’s own Service Providers; as well as use for Criteria’s business purposes and as authorized by US Privacy Law. Criteria will refrain from actions that qualify as “selling personal information” (as defined by the CCPA). Criteria will retain Customer PII only for as long as Customer deems it necessary for the permitted purpose, or as required by applicable laws. Upon termination of this Agreement, or upon Customer’s written request, Criteria will either destroy or return Customer PII to the Customer, unless legal obligations require storage of the Customer PII. Subject to detailed written request by Customer, Criteria will provide Customer with reasonable assistance for Customer’s compliance obligations to respond to requests to delete or access Customer PII required by US Privacy Law. If Criteria receives a verified request for access, information or deletion directly from an authorized person enforcing available rights under applicable US Privacy Law, Criteria will notify Customer of the request and either respond to the request directly or refer the request to Customer.

(d) Without limiting the generality of the foregoing, if Customer is established in the European Economic Area, or any of the Customer Data contains the personal data of individuals in the European Economic Area, to the extent that Criteria acts as a processor in respect of that Customer Data, Criteria shall process any such personal data in accordance with the [Data Protection Addendum \(DPA\)](#), which will be supplemental to this Agreement. For the purposes of this Section, the terms "processor", "process" and "personal data" have the meanings given to them in Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data.

4.9 Technology Restrictions. Customer shall not do any of the following or permit its Employee Users to do any of the following, and Customer will be responsible and liable for any injury to Criteria if an Employee User does any of the following:

- (a) access the Service or use any of its features or resources, including without limitation score reports, in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics, or to copy any ideas, features, functions, graphics, or source code of the Service;
- (b) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make the Service or its content available to any third party without Criteria's

express written consent;

(c) modify or make derivative works based upon the Service or its content;

(d) share non-public Service features or content with any third party;

(e) reverse engineer, decompile, disassemble or otherwise attempt to derive the source code, techniques, processes, algorithms, know-how or other information from the Service, including but not limited to the binary code portions of the Service or permit, encourage, or induce the foregoing; or

(f) interfere with or disrupt the integrity or performance of the Service or the data contained therein.

4.10 Risks Related to TestTakers. Customer recognizes and agrees that: (a) Criteria has no control over or the truth or accuracy of information provided by TestTakers or TestTakers' integrity or ability to perform job responsibilities; and (b) doing business and communicating through the Service involves inherent risks, including without limitation risks of physical harm, harassment, and defamation, as well as hacking and other malicious use of computers. Without limiting the generality of the foregoing, Criteria makes no representation regarding any of the subject-matter of the preceding sentence, and Customer assumes all risks related to such subject-matter.

5. Confidential Information.

5.1 Confidential Information Defined. Criteria's "**Confidential Information**" is: (a) the tests, related testing materials, and other content provided through the Service; (b) any pricing or non-standard terms Criteria offers; (c) business and marketing plans, technology and technical information, product plans and designs, and business processes; (d) any other information Criteria provides to Customer and either marks "Confidential" or and orally designates as "Confidential"; and (e) any other nonpublic, sensitive information Customer should reasonably consider a trade secret or otherwise confidential. Customer's "Confidential Information" is (f) Customer's non-public hiring plans. Customer may propose additional Confidential Information by providing a non-confidential written summary thereof, and such information will be Customer's Confidential Information if Criteria accepts in writing such proposed disclosure. Except as set forth in Subsection 5.1(f) above, Customer information disclosed without such a summary and acceptance is not Customer's Confidential Information. Notwithstanding the foregoing, Confidential Information does not include information: (i) in the receiving party's ("**Recipient's**") possession at the time of original disclosure, without obligation of confidentiality; (ii) independently developed by Recipient without use of or reference to the disclosing party's ("**Discloser's**") Confidential information; or (iii) that becomes known publicly, before or after disclosure, other than as a result of Recipient's improper action or inaction.

5.2 Nondisclosure. Recipient shall not use Discloser's Confidential Information for any purpose other than to facilitate use and provision of the Service pursuant to this Agreement. Except as specifically authorized in writing in advance by Discloser, Recipient shall not disclose Discloser's Confidential Information to any third party and shall take precautions to prevent unauthorized disclosure, consistent with the precautions it takes to protect its own confidential information of similar nature, but not less than reasonable precautions. Recipient may disclose Discloser's Confidential Information to its Employees and Service Providers who need to know in order to facilitate the purpose of disclosure, provided each such Employee or Service Provider is subject to a reasonable nondisclosure agreement with Recipient. However, Recipient may disclose Discloser's Confidential Information as required by applicable law or by proper legal or government authority, provided it gives Discloser advanced written notice reasonably sufficient to obtain a protective order or otherwise to contest such required disclosure and reasonably cooperates in any such effort. Recipient shall promptly notify Discloser in writing of any known misuse or misappropriation of Discloser's Confidential Information. Upon termination of this Agreement or upon Discloser's written request, Recipient shall return Discloser's Confidential Information and certify, in writing, the destruction of any copies thereof. For the avoidance of doubt, Criteria is not responsible for misuse of Customer Confidential Information by or through an ATS, including without limitation if Criteria integrates the Service with such ATS.

5.3 Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Discloser will retain all right, title, and interest in and to all Confidential Information.

5.4 Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:

(a) Immunity. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.

(b) Use of Trade Secret Information in Anti-Retaliation Lawsuit. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document

containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

6. SLA / Service Level Agreement.

6.1 **Service Level.** The "**Service Obligation**" means that the Service will be operational and available to Customer at least 99% of the period from 6:00 a.m. - 5:00 p.m. in the Pacific time zone ("**Business Hours**") during any calendar month (subject to the provisions of this Article 6). If Criteria does not meet the Service Obligation during any calendar month, Criteria shall extend the Term by a period equal to the duration of the failure to meet the Service Obligation (the "**Service Interruption**"), plus an additional 30 days, without additional charge (collectively, the "**Extension**"). The Extension will apply only if Customer notifies Criteria within 48 hours of such Service Interruption by email to "accounting at criteriacorp.com" (or to such other address as Criteria may designate), with the email subject "HireSelect Service Interruption." The additional 30 days will apply to no more than 1 Extension per calendar month.

6.2 **Sole Remedy.** With the exception of termination pursuant to Section 12.2 below where applicable, this Article 6 provides Customer's sole and exclusive remedy for any failure of the Service to perform as expected or required, even if such remedy fails of its essential purpose. The Extension may not be exchanged for refunds or other monetary amounts.

6.3 **Maintenance.** Criteria shall exercise reasonable efforts to schedule Service upgrades and routine maintenance (collectively, "**Maintenance**") outside of Business Hours. Neither Maintenance nor events beyond Criteria's reasonable control will count toward Service Interruptions or breaches of Criteria's obligations, and neither will authorize an Extension or other remedy. (As used in the preceding sentence, "events beyond Criteria's reasonable control" include, without limitation, Force Majeure as defined in Section 13.6 below, failures of Internet backbone providers, and acts or omissions of third parties that are not Criteria's vendors or agents.) Criteria shall notify Customer of Maintenance as early as commercially reasonable via a posting on the Service.

7. Content & IP.

7.1 **Content.** Customer recognizes and agrees that: (a) all tests, test items, and other content on the Service (other than Customer Data and TestMaker Content) is the property of Criteria or its licensors and protected by copyright, trademark, trade secret, and other intellectual property laws; and (b) Customer does not acquire any right, title, or interest in or to any such content. Customer hereby authorizes Criteria to use TestMaker Content to provide the Service to Customer.

7.2 **TestTaker Information.** Subject to the Privacy Policy, Customer agrees that Criteria may use PII: (a) to provide the Service to Customer; and (b) to offer and provide

additional Criteria services directly to TestTakers, including, without limitation, test preparation, career services, and other job-related services. Subject to applicable law, Customer may view, download, and retain TestTaker results and score reports provided to it by the Service, provided no payments are late and Customer is otherwise in compliance with this Agreement.

7.3 Aggregate & Anonymized Data. Notwithstanding any terms to the contrary in this Agreement and subject to applicable law, Criteria may use, reproduce, sell, publicize, or otherwise exploit in any way and in its sole discretion Customer Data without PII or that is otherwise anonymized or de-identified.

7.4 Ownership of the Service. Criteria retains all right, title, and interest in and to the Service, Test Response Data, and Optional Data, including, without limitation, all software used in the Service (other than Customer's logos as applicable). This Agreement does not grant Customer any intellectual property rights in or to the Service or any of its components. Without limiting the generality of the foregoing, this Agreement does not grant Customer a software or trademark license.

3. Online Policies.

8.1 AUP. Customer shall comply with the AUP. In the event of Customer's material breach of the AUP, including without limitation copyright infringement and Employee Users' violations, Criteria may suspend or terminate Customer's access to the Service, in addition to such other remedies as Criteria may have. Neither this Agreement nor the AUP requires that Criteria take any action against Customer or any User or other third party for violating the AUP, but Criteria is free to take any such action it sees fit.

8.2 Privacy Policy. The Privacy Policy applies only to Criteria's websites, application, and the Service and does not apply to any third-party website or service linked to the Service or recommended or referred to through the Service or by Criteria's staff.

9. Representations & Warranties.

9.1 From Customer. Customer represents and warrants that:

- (a) it has accurately identified itself and has not provided any inaccurate information about itself to the Service, and it will update all such information to maintain accuracy;
- (b) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law;
- (c) it will use the Service for business purposes and not for personal, family, household, or other consumer purposes;
- (d) it has the full right and authority to enter into, execute, and perform its obligations under this Agreement;

- (e) no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement;
- (f) it owns or has obtained all necessary licenses, rights, consents, and permissions to use all TestMaker Content;
- (g) its use of the Service is in compliance with all applicable laws and regulations, including without limitation, federal, state and local employment and anti-discrimination laws;
- (h) the TestMaker Content does not and will not include any information restricted by Section 2.4 (Restrictions the Service and Acceptable Data) above;
- (i) it does not operate or plan to operate a pre-employment testing system for the benefit of its customers or of other third parties, or if it does, Customer has so informed Criteria's Chief Operating Officer in writing and received written acknowledgement and consent nevertheless to use the Service; and
- (j) it will comply with all applicable laws if it seeks or obtains a consumer report, investigative consumer report, or other background report (collectively, a "**Background Report**").

Customer recognizes and agrees that Criteria is not a consumer reporting agency and that, if Criteria assists Customer in obtaining a Background Report, Criteria does so solely to assist Customer and not for any purpose of Criteria, and Criteria will have no responsibility or liability arising out of or related to such assistance.

9.2 As Is. Except as specifically set forth in this Agreement, THE SERVICE IS PROVIDED "AS IS," AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, CRITERIA, ITS AFFILIATES, LICENSORS, THIRD-PARTY CONTENT OR SERVICE PROVIDERS, DISTRIBUTORS, DEALERS, AND SUPPLIERS DISCLAIM ALL GUARANTEES AND WARRANTIES, WHETHER EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SERVICE AND RELATED MATERIALS, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE, TITLE, MERCHANTABILITY, OR NON-INFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, AND ANY WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE.

9.3 Additional Disclaimers. WITHOUT LIMITING THE GENERALITY OF THE PROVISIONS OF SECTION 9.2 ABOVE: (a) CRITERIA DOES NOT WARRANT OR GUARANTEE THE ACCURACY, RELIABILITY, COMPLETENESS, USEFULNESS, OR QUALITY OF ANY CONTENT IN THE SERVICE; (b) CRITERIA DOES NOT WARRANT THAT THE SERVICE IS SECURE, FREE FROM BUGS, VIRUSES, INTERRUPTION, ERRORS, THEFT, OR DESTRUCTION OR THAT THE SERVICE WILL MEET CUSTOMER'S REQUIREMENTS; (c)

CRITERIA IS NOT RESPONSIBLE OR LIABLE FOR ANY CONTENT POSTED ON OR LINKED FROM THE SERVICE; (d) CRITERIA IS NOT RESPONSIBLE OR LIABLE FOR THE PERFORMANCE OF ANY ATS, INCLUDING WITHOUT LIMITATION ANY ATS THAT CRITERIA INTEGRATES WITH THE SERVICE; (e) CRITERIA IS NOT RESPONSIBLE OR LIABLE FOR ANY INJURY RELATED TO DATA LISTED IN SECTION 2.4 (Restrictions on the Service and Acceptable Data); (f) CRITERIA IS NOT RESPONSIBLE OR LIABLE FOR ANY LOSS ARISING OUT OF OR RELATED TO CUSTOMER'S USE OF JOB POSTINGS OR OTHER SERVICES FROM ZIPRECRUITER, INC., INCLUDING WITHOUT LIMITATION JOB POSTINGS PROVIDED THROUGH CRITERIA THROUGH ZR-INCLUDED ORDERS (AS DEFINED IN SECTION 2.6, ZipRecruiter Credits); (g) CRITERIA IS NOT RESPONSIBLE OR LIABLE FOR ANY CUSTOMER HIRING PRACTICE OR EMPLOYMENT DECISION, INCLUDING WITHOUT LIMITATION THOSE ADDRESSED BY SECTION 4.3 (Hiring Practices), OR ANY LOSS RESULTING FROM USE OF OR RELIANCE ON INFORMATION GATHERED THROUGH THE SERVICE; AND (h) CRITERIA IS NOT RESPONSIBLE OR LIABLE FOR ANY FAILURE OF THE SERVICE TO INTERFACE WITH OR OPERATE IN CONJUNCTION WITH ANY THIRD-PARTY SOFTWARE OR HARDWARE. CUSTOMER RECOGNIZES AND AGREES THAT NEITHER CRITERIA NOR THE SERVICE PROVIDES ANY PROFESSIONAL, LEGAL, OR EMPLOYMENT-RELATED ADVICE.

10. Indemnification.

10.1 Customer's Indemnifications. Customer shall defend, indemnify, and hold harmless Criteria and its Affiliates (as defined in Section 10.4) from any third-party claim, suit, or proceeding arising out or related to Customer's alleged or actual use of, misuse of, or failure to use the Service. Claims, suits, and proceedings described in the preceding sentence exclude claims listed in Section 10.2 below but include, without limitation: (a) claims by TestTakers and other Users, including without limitation claims alleging wrongful termination, discrimination in hiring, negligence, other wrongs related to employment, or violation of legal rights related to Background Checks, the U.S. Fair Credit Reporting Act, and other applicable laws; (b) claims related to Customer acts or omissions addressed above in Section 4.3 (Hiring Practices); (c) claims alleging that TestMaker Content or other Customer-provided materials used with the Service infringe or violate intellectual property or privacy rights or defame or libel any person or entity; and (d) claims alleging failure of the Service, including failures of the Service Obligation (as defined in Section 6.1), security breaches, and faults in the Service leading to the release or exposure of PII or other private data (whether such data belongs to Customer, to a User, or to other third parties).

10.2 Criteria's IP Indemnification. Criteria shall defend and indemnify Customer from any third-party claim, suit, or proceeding arising out of, related to, or alleging infringement of any U.S. patent, copyright, or trade secret by the Service. Criteria's obligations in the preceding sentence do not apply to the extent that a claim, suit, or

proceeding arises out of: (a) Customer's breach of this Agreement; (b) Customer's unauthorized use or modification of the Service; (c) Criteria's modification of the Service in compliance with specifications provided by Customer; or (d) use of the Service in combination with hardware or software not provided by Criteria.

10.3 Indemnification re ZipRecruiter. The provisions of this Section 10.3 apply if Customer has a ZR-Included Order (as defined in Section 2.6, ZipRecruiter Credits). To the maximum extent permitted by applicable law, Customer agrees to defend, indemnify and hold harmless Criteria and its Affiliates (as defined below in Section 10.4) from and against any and all claims, damages, obligations, losses, liabilities, costs or debt, and expenses (including but not limited to all legal fees and expenses) arising out of or related to: (a) Customer's use of and access to ZRCredits (as defined in Section 2.6) or any other product or service provided by ZipRecruiter, Inc. (collectively, the "ZipRecruiter Services"), including any data or content transmitted or received by Customer; (b) Customer's violation of any term of any agreement that it may have with ZipRecruiter, Inc., including without limitation Customer's breach of any of the representations and warranties therein; (c) Customer's violation of any third-party rights, including without limitation any right of privacy or intellectual property rights, in its use of the ZipRecruiter Services; (d) Customer's violation of any applicable law, rule or regulation, including, without limitation, Customer's violation of the US Fair Credit Reporting Act and any applicable data protection laws, in its use of the ZipRecruiter Services; (e) any claims or damages that arise as a result of Customer's content used with the ZipRecruiter Services; (f) any other party's access and use of the ZipRecruiter Services with Customer's account or log-in information; and (g) Customer's intentional or willful misconduct, or negligence in its use of the ZipRecruiter Services.

10.4 Litigation. The claims listed in Sections 10.1, 10.2, and 10.3 are referred to collectively as "**Indemnified Claims**." The indemnifying party's ("**Indemnitor's**") obligations pursuant to this Article 10: (a) include retention and payment of attorneys and payment of court costs, as well as settlement at Indemnitor's expense and payment of judgments; and (b) are excused to the extent that the indemnified party's ("Indemnified Party") or its Affiliate's failure to provide prompt notice of the Indemnified Claim or reasonably to cooperate materially prejudices the defense. Indemnitor will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Indemnified Party will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. ("**Affiliates**" refers to a party's officers, directors, employees, agents, contractors, representatives, suppliers, subsidiaries, parents, affiliated companies, and insurers.)

11. Limitation of Liability. CRITERIA WILL NOT BE RESPONSIBLE OR LIABLE FOR ANY OF THE FOLLOWING ARISING OUT OF OR RELATED TO THIS AGREEMENT: (a) INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, EXEMPLARY, OR PUNITIVE DAMAGES; OR (b) DAMAGES IN EXCESS OF THE FEES PAID BY CUSTOMER FOR THE SERVICE DURING THE 12-MONTH PERIOD PRECEDING THE INJURY GIVING RISE TO THE CLAIM. THE LIABILITIES LIMITED BY THE PRECEDING SENTENCE APPLY: (i) TO LIABILITY FOR NEGLIGENCE; (ii) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (iii) EVEN IF CRITERIA IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (iv) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 11, Criteria's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Criteria's liability limits and other rights set forth in this Article 11 apply likewise to Criteria's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

12. Term & Termination.

12.1 Term. The term of this Agreement (the "*Term*") shall commence on the Effective Date and continue until the end of the Service subscription in the Order.

12.2 Suspension & Termination for Cause. Criteria may suspend Customer's access to the Service for Customer's breach of this Agreement, until such breach is cured. Either party may terminate this Agreement for the other's material breach of this Agreement on 30 days' written notice, unless the other party cures such breach before the effective date of termination.

12.3 Effects of Termination. The following provisions will survive termination or expiration of this Agreement: (a) obligations of Customer to pay for Service; (b) Sections and Articles 4, 5, 7, 9, 10, 11, and 13 of this Agreement; and (c) any other provision that must survive to fulfill its essential purpose. Early termination, including without limitation pursuant to Section 4.6 (Employment and Recruiting Agencies) or 13.7 (Assignment & Successors), does not require that Criteria refund any fees and does not release Customer's obligation to pay fees already incurred.

13. Miscellaneous.

13.1 Notices. Criteria may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received twenty-four hours after they are sent. Customer may send notices pursuant to this Agreement to Chief Operating Officer, Criteria, 750 North San Vicente Blvd. Suite 1500 East Tower, West Hollywood, CA 90069, or such other address as Criteria may designate

in writing, and such notices will be deemed received seventy-two hours after they are sent.

13.2 Publicity. Notwithstanding any contrary provision of this Agreement, Criteria may include Customer's name and logo on its published customer lists, unless Customer notifies Criteria in writing that it does not wish to be included.

13.3 Revision of Privacy Policy & AUP. Criteria may revise the AUP or Privacy Policy from time to time by posting a revised version at its website, provided no such revisions will be effective during the then-current Term if it materially reduces Customer's rights or increases its obligations. Customer's continued use of the Service after such amendment becomes effective will confirm Customer's consent thereto.

13.4 Independent Contractors. The parties are independent contractors and will so represent themselves in all regards. Neither party is the agent of the other, and neither may bind the other in any way.

13.5 Injunctions. Each party agrees that breach of the provisions of Sections 4.2 (Content Rights), 4.9 (Technology Restrictions), or 5.2 (Nondisclosure) above would cause the injured irreparable injury for which monetary relief would not provide adequate compensation, and that in addition to any other remedies available, the injured will be entitled to preliminary, temporary, and permanent injunctive relief against such breach or threatened breach, without the necessity of proving actual damages or posting bond or other security.

13.6 Force Majeure. To the extent caused by hurricane, earthquake, other natural disaster or act of God, terrorism, war, labor unrest, general failure of the Internet or of communications systems, or other forces beyond the performing party's reasonable control (collectively, "Force Majeure"), no delay, failure, or default, other than Customer's failure to make payments when due, will constitute a breach of this Agreement. The time for performance shall be extended for a period equal to the duration of the Force Majeure event. The performing party shall use reasonable efforts to minimize the delays, to notify the other party promptly, and to inform the other party of its plans to resume performance.

13.7 Assignment & Successors. Neither party may assign this Agreement, except that Criteria may assign this Agreement to the surviving party in a merger of Criteria into another entity or in the acquisition of all or substantially all Criteria's assets. Except as set forth in the preceding sentence, this Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns. Criteria may terminate this Agreement for convenience on 10 business days' notice in the event of an increase in Customer's Employee-count resulting from an acquisition, merger, capital injection,

investment, or other factor that Criteria reasonably considers not to constitute typical growth.

13.8 Dispute Resolution. (a) This Agreement shall be governed solely by the internal laws of the State of California without reference to any principle of conflicts of law that would apply the substantive laws of another jurisdiction to the parties' rights or duties. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Los Angeles, California. (b) To the extent permitted under the applicable law, the parties agree that each may bring claims against the other only in their individual capacity and not as a plaintiff or class member in any purported class action or representative action. Unless both parties agree, no judge or arbitrator may consolidate more than one person's (or entity's) claims or otherwise preside over any form of a representative or class action proceeding.

13.9 Construction. This Agreement governs a single order for the Service and not any renewal of such order or future order. Customer understands that renewal orders and future orders will be subject to Criteria's then-current Terms and Conditions of Use, which may not be identical to this version of the Terms and Conditions of Use. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than in an explicit written waiver signed by such party. No waiver of a breach of this Agreement will constitute a waiver of any prior or subsequent breach of this Agreement. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect. In the event of any conflict between this Agreement and any Criteria policy posted online, including without limitation the AUP or Privacy Policy (both as defined in Article 8), the terms of this Agreement will govern. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to the subject matter hereof.

13.10 Amendment. Criteria may amend this Agreement from time to time by posting an amended version at its website. If changes to this Agreement will materially reduce Customer's rights or materially increase Customer's obligations, then Criteria will provide Customer with advance written notice of such changes. All such changes will be deemed accepted and become effective 30 days after Criteria's notice (the "**Proposed Amendment Date**") unless Customer first gives Criteria written notice of rejection of the change. In the event of such rejection: (a) this Agreement will continue under its original provisions; and (b) Customer shall not use any new feature

or functionality governed by the proposed amended terms but not by the original terms of this Agreement. Customer's continued use of the Service following the effective date of any change will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party.