

Terms of Use

Criteria

Terms and Conditions of Use

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(For the previous (December 7, 2020) version of these Terms and Conditions of Use, [click here](#)).

Welcome to the Criteria website offering a web-based employment testing and assessment subscription applications and services. Criteria Corp, a California corporation, and its affiliate entities-such as Revelian Pty Ltd (“**Revelian**”), an Australian corporation (ABN 58 089 022 202)and others (collectively, “**We**” or “**Company**”) 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. We may revise this Agreement by notifying you 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, CONFIRM THAT 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 ASSUME RESPONSIBILITY 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.

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

1.02 **"AUP"** refers to the Acceptable Use Policy currently posted at <http://www.criteriacorp.com/aup.php>.

1.03 **"Customer Data"** refers to data relating to or controlled by Customer or a TestTaker in electronic form input or collected through the Service by or from Customer, including without limitation by or from Customer's Users or TestTakers, but excluding Test Response Data and Optional Data.

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

1.05 **"Optional Data"** refers to demographic information that TestTakers based in the United States may provide in connection with their use of the Service under the heading "Optional." If enable, TestTakers may elect to provide anonymous demographic data but will not be required to provide it as part of the Service.

1.06 **"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 us, as recorded by the Service's computer systems.

1.07 **"PII"** refers to data that can be used to identify or contact a person, including without limitation personally identifiable information provided by TestTakers.

1.08 **"Privacy Policy"** refers to Company's privacy policy currently posted at <http://www.criteriacorp.com/privacy.php>.

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

1.10 **"Term"** is defined in Section 12.01 below.

1.11 **"Test Response Data"** refers to TestTakers' responses to tests, assessments, and surveys provided by Company and administered through the Service, excluding TestMaker Content. Test Response Data includes test responses only (such as selection of answer "T" or "F", "a" "b" "c" or "d", or a 1-5 or 1-10 rating, etc.) but excludes PII.

1.12 **"TestMaker Content"** refers to Customer 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 Company to perform services in connection with the Service, Company operations, and Customer support.

1.16 **"Company Content"** refers to all tests, assessments, information and materials accessible and available to Customer through the Service (except for Customer Data and TestMaker Content).

1.17 **"IP"** refers to patents, patent applications, copyrights, trademarks, service marks, trade names, domain name rights, know-how and other trade secret rights, and all other intellectual property rights and similar forms of protection.

1.18 **"Score Report"** refers to a summary report issued to Customer or a TestTaker that includes key information regarding a TestTaker's performance on an assessment taken via the Service.

1.19 **"ZR-Included Order"** or **"ZRCredits"** refers to job-posting credits that Customer may optionally elect use through our arrangement with ZipRecruiter, Inc.

1.20 **"Security Incident"** refers to any accidental or unlawful destruction, loss, or alteration, or the unauthorized disclosure of, or access to, any Customer PII that reasonably requires notification under applicable data notification laws.

2. **Service in General.** We commit to provide the Service to Customer during the Term and as indicated in this Agreement on the condition that Customer complies with its commitments in this Agreement.

2.01 **Use of Information.** Customer is the sole owner of Customer Data and TestMaker Content. Customer permits Company to: (a) use Customer Data (including Customer PII) to create Score Reports and other analyses for Customer's use; (b) use, process, transmit, store and share Customer Data and TestMaker Content as necessary to provide the Service, improve the Service, or protect the Service (and the content or other assets associated with the Service), and (c) use, process, transmit, store and share Customer Data and TestMaker Content as instructed by Customer and as described in this Agreement, including the Company [Privacy Policy](#).

2.02 **Data Management.** We will only store Customer Data and Score Reports as necessary to provide the Service or to the extent required by applicable law. During the Term, We commit to use reasonable commercial efforts to store all Customer Data maintaining reasonable administrative and technical safeguards designed for the physical protection, confidentiality, and integrity of Customer Data as described in the our [Privacy Policy](#). Customer controls which Users it authorizes to access the Service, and retains the ability within the Service to view, download or otherwise control the Customer Data and Score Reports at Customer's election. Therefore, Customer understands that (a) We will have no liability for erased or otherwise lost Customer Data, including for any damages resulting directly or indirectly from such loss; and (b) We may suspend or

terminate Customer's access to the Service and Customer Data if Customer or its Users violate the AUP and/or if Customer's account is delinquent or suspended for 30 days or more.

2.03 Communications. Customer commits that any e-mail contact information provided to the Service is accurate. Customer understands and accepts that the Service sends required service notifications, automated invoices and dunning emails using such contact information. Customer will promptly notify Company of any changes in Customer's contact information.

2.04 Restrictions and Acceptable Data. Customer is responsible for the accuracy, quality, and legality of all Customer 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, sensitive financial information, social security numbers, drivers licenses or similar identifiers from other jurisdictions; information which is otherwise defined as "sensitive information" in the Australian *Privacy Act 1988* (Cth); or protected health information, as defined by (i) the Health Insurance Portability and Accountability Act of 1996 and its enabling regulations and related laws ("**HIPAA**") or (ii) any applicable Australian privacy legislation and no such data should be input or uploaded into the Service; and (c) the Service is not compliant with HIPAA or the Gramm-Leach-Bliley Act, and may not be compliant with other laws governing such sensitive personal information.

2.05 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 will only use a Free Trial: (a) for the period designated on the Order; (b) for no more than 20 tests; or (c) for the sole purpose of assessing the purchase of a Service subscription. Without limiting the generality of the foregoing, Customer will not use a Free Trial for job applicants. We may discontinue a Free Trial at any time and for any reason. Only one Free Trial per organization or individual is permitted.

2.06 ZipRecruiter Credits. This Section 2.06 will only apply if Customer designates a ZR-Included Order or elects to use ZRCredits in its Order:

(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 will pay Company the applicable fees on the Order on or before the start of the Term but in no case later than the date indicated on Company's invoice. Company may issue invoices at any time. All payments will be made without any deductions and in the designated currency for the Criteria contracting entity and jurisdiction, which include U.S. dollars for Criteria Corp or Australian dollars for Revelian or other Australian Affiliate. Customer assumes responsibility for and will pay any and all applicable levies, customs, and duties, or taxes imposed by any governmental authority related to the Order, including GST and withholding tax, as applicable. 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 Company, Customer will reimburse all such additional charges/amounts to Company.

3.01 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 will provide Company with complete and accurate information regarding its number of Employees, as well as complete and accurate billing and contact information. Without limiting Company's rights or remedies, if Customer's testing administration exceeds usage expectations for its service level pricing tier, Company may charge Customer for additional fee(s) that correspond to Customer's use; and may suspend Customer's use of the Service without advanced notice. If requested by Company, Customer will verify, certify, or provide its Employee count to Company.

3.02 Credit Cards. Company 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, Company may direct the credit card processor to charge the card again or require an alternative credit card to be used (without limiting Company's other rights or remedies).

3.03 No Refunds/Cancellations. All Orders are non-cancellable. Neither prepaid fees nor any other fees are refundable under any circumstances.

3.04. Collection. If Customer fails to make any payment when due, Customer is responsible for and will pay or, at Company's option, reimburse all reasonable costs of collection, including without limitation attorneys' fees.

4. Customer's Responsibilities & Restrictions.

4.01 Users. Customer is responsible and liable for the acts and omissions of Users, including without limitation, any User conduct that violates the AUP or Customer's responsibilities under this Agreement.

4.02 Content Rights. Customer has a non-exclusive, non-sublicensable, nontransferable (except as specifically permitted in this Agreement) right to access and use the Service and Company Content under this Agreement during the Term, in connection with Customer's internal staffing business purposes. Customer rights do not include the right to reproduce, distribute, or disclose to third parties any Company Content (including

any test information). Customer acknowledges and agrees: (a) that the Company Content (including all tests available through the Service) are protected by copyright and other laws and are Company's trade secrets and Confidential Information (as defined below in Section 5.01); and (b) that unauthorized distribution, disclosure, or other use would reduce or destroy their validity, usefulness, and value and would cause Company substantial and irreparable harm, including without limitation potential harm to its reputation.

4.03 Hiring Practices. Customer is solely responsible for its employment practices, including Customer's use of the Service in its recruiting activities. As such, Customer acknowledges and agrees as follows:

- (a) Test and/or assessment scores from the Service 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 will not use the Service (or specific tests or assessments) where prohibited by applicable law.
- (d) Customer, not Company, 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 within the Service, Customer shall promptly send an "accommodation request" to help@Companycorp.com. Responsibility for compliance remains with Customer whether or not Company assists.
- (e) Company has no role in determining or control over the legality, quality, or propriety of Customer's hiring or employment practices.
- (f) Tests and assessments within the Service are not intended for diagnostic or treatment purposes and are not intended for mental health, medical, or other health professionals.
- (g) Customer, not Company, is responsible for its compliance with any laws or rules governing testing or hiring by government agencies.

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

4.05 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. Customer will use the same or similar actions as it takes to protect its accounts and other

information of similar sensitivity. Customer will immediately notify Company if it becomes aware of or reasonably suspects any unauthorized use of or access to the Service (including Company Content) and commits to use its best efforts to stop such use or access.

4.06 Employment and Recruiting Agencies. Customer will 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 as an Employment Agency and has Company'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) Customer commits to provide Company with at least 30 days advance written notice if it becomes an Employment Agency, including without limitation through merger or acquisition. In such case, we elect to 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 4.02 (Content Restrictions), or in any other way infringes Company's IP rights, we 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, industry(ies) served, type and number of positions for which it is recruiting, and the number of Employment Agency customers.)

4.07 TestMaker Content. Customer commits and agrees that it will have all necessary rights and title and/or permission to use TestMaker Content before it is submitted to the Service. Customer will promptly notify Company in writing of any claims relating to TestMaker Content, and will remove any TestMaker Content that is subject to verified claims at Company's request.

4.08 PII.

(a) Customer commits and agrees that Customer will have all consents and permissions for any PII that may be part of the Customer Data. When collecting, uploading, downloading, transferring or accessing any PII in connection with the Service, Customer will abide by all applicable privacy and data protection laws.

(b) We maintain reasonable administrative, physical, and technical safeguards designed to protect any PII uploaded by Customer to the Service or collected by Company on Customer's behalf ("**Customer PII**"). Those safeguards will include measures for managing Security Incidents. Before sharing Customer PII with a Service Provider, we expect such Service Provider to have, at a minimum, reasonable data practices for maintaining the confidentiality, security of Customer PII and preventing unauthorized access, and an agreement which imposes obligations no less protective than the obligations of this Agreement. If and to the extent permitted by applicable law, we will (a) promptly notify Customer of any Security Incident, (b) investigate the Security Incident and (c) provide such reasonable assistance to Customer (and any law enforcement or regulatory

official) as required to investigate the Security Incident. Customer remains responsible (to the extent permitted by law) for the timing, content, cost and method of any third-party notice requirements that may be triggered by the Security Incident and compliance with applicable laws. Customer is fully responsible for (i) adequate security, protection and backup of Customer Data when in Customer's or its representatives' or agents' possession or control, and (ii) what 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 Company agree and acknowledge that for purposes of US Privacy Law, Company is Customer’s “service provider”. As such, Company 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 Company’s own Service Providers; as well as use for Company’s business purposes and as authorized by US Privacy Law. We will refrain from actions that qualify as “selling personal information” (as defined by the CCPA). We 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, we 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, we 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 we receive a verified request for access, information or deletion directly from an authorized person enforcing available rights under applicable US Privacy Law, we will notify Customer of the request and either respond to the request directly or refer the request to Customer. At Customer’s option, Customer and we will enter into a Data Protection Addendum located at (<https://www.criteriacorp.com/dpa>).

(d) 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 we act as a processor for that Customer Data, Company and Customer will enter into a Data Protection Addendum located at (<https://www.criteriacorp.com/dpa>), which includes the European Commission’s Standard Contract Clauses for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection) before Customer’s submission of PII through the service.

4.09 Technology Restrictions. Customer will not and will not permit any of its Users to do 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 Company'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) have 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, we make no representation regarding any of the subject-matter of the preceding sentence, and Customer assumes all risks related to such subject-matter.

4.11 ATS License Rights. If Customer elects to use the Service through its ATS, Customer will obtain the necessary rights and permissions for the configuration and/or integration of the ATS with the Service, including access and use by Company. Customer's use of the ATS (including availability) are governed by separate terms established between Customer and the ATS provider. Customer accepts the risk of possible disruptions of the Service outside of Company's control caused by the ATS, including Service disruptions resulting from the suspension or interruption of the ATS. Such disruptions will not qualify as a "Service Interruption" covered by the service level agreement under Section 6.01.

5. Confidential Information.

5.01 Confidential Information Defined.

(a) Company's "**Confidential Information**" is: (i) the Company Content; (ii) any pricing or non-standard terms Company offers; (iii) business and marketing plans, technology and technical information, product plans and designs, and business processes; (iv) any other information we provides to Customer and either marks "Confidential" or and orally designates as "Confidential"; and (v) any other nonpublic, sensitive information Customer should reasonably consider a trade secret or otherwise confidential.

(b) Customer's "Confidential Information" is (i) Customer's non-public hiring plans. (ii) Customer may propose additional Confidential Information by providing a non-confidential written summary thereof, and such information will be Customer's Confidential Information if we accept in writing such proposed disclosure. (iii) Except as set forth in Subsection 5.01(b)(i) above, Customer information disclosed without such a summary and acceptance is not Customer's Confidential Information.

(c) 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.

5.02 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. We are not responsible for misuse of Customer Confidential Information by or through an ATS, including without limitation if we integrate the Service with such ATS.

5.03 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.

5.04 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 will 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.

6.01 **Service Level.** We commit that the Service will not materially fall below the Service Obligation. The "**Service Obligation**" means that the Service will be operational and available to Customer at least 99% of the time during any calendar month (subject to the provisions of this Article 6). If Company does not meet the Service Obligation during any calendar month, we will provide Customer with a Service credit at no charge by extending 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 (collectively, the "**Extension**"). The Extension will apply only if Customer notifies Company within 48 hours of a Service Interruption by email to "support@criteriacorp.com" (or to such other address as we may designate), with the email subject "HireSelect Service Interruption." The additional 30 days will apply to no more than 1 Extension per calendar month.

6.02 **Sole Remedy.** With the exception of termination pursuant to Section 12.02 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. Company does not exclude, restrict or modify any liability that cannot be excluded, restricted or modified, or which cannot be excluded, restricted or modified by law except to a limited extent, as between Company and the Customer by law (including without limitation liability under the Australian Competition and Consumer Act 2010 (Cth)). The Extension may not be exchanged for refunds or other monetary amounts.

6.03 **Maintenance.** We will exercise reasonable efforts to schedule Service upgrades and routine maintenance (collectively, "**Maintenance**") outside of normal business hours. Neither Maintenance nor events beyond Company's reasonable control will count toward Service Interruptions or breaches of Company's obligations, and neither will authorize an Extension or other remedy. (As used in the preceding sentence, "events beyond Company's reasonable control" include, without limitation, Force Majeure as defined in Section 13.06 below, failures of Internet backbone providers, and acts or omissions of third parties that are not Company's vendors or agents.) We will notify Customer of Maintenance as early as commercially reasonable via a posting on the Service.

7. Content & IP.

7.01 **Company IP.** Customer recognizes and agrees that: (a) Company Content and Company IP is the property of Company or its licensors and protected by IP laws; and (b) Customer does not acquire any right, title, or interest in or to the Company Content, Company IP or Company Confidential Information.

7.02 **TestTaker Information.** Customer acknowledges and agrees that TestTakers will be required to accept and agree to be bound by the [TestTaker Terms and Conditions of Use](#) ("**TestTaker Agreement**") prior to accessing the Service and taking any test(s). Subject to the TestTaker Agreement and Company Privacy Policy, Company may use TestTaker PII: (a) to provide the Service to Customer; and (b) to offer and provide additional Company services directly to TestTakers, including, without limitation, test preparation, career services, and other job-related services.

Subject to the TestTaker Agreement and applicable law, Customer may view, download, and retain Score Reports provided by the Service during the Term, provided no payments are late and Customer is otherwise in compliance with this Agreement.

7.03 Aggregate & Anonymized Information. Customer acknowledges that Company collects, logs, and aggregates Test Response Data, Optional Data and usage data as part of the normal operation of the Service (“**Aggregated Data**”). Subject to applicable law, we may use Aggregated Data for purposes of operating the Service as well as the Company business, managing the Service performance and improving the Service as long as the Aggregated Data is anonymized and Company’s use does not reveal or disclose any Customer Data, Customer Confidential Information, or PII of Users.

7.04 Ownership of the Service. We retain 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 IP 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.

8. Online Policies.

8.01 AUP. Customer will comply with the AUP. If Customer or any of its Users materially violate the AUP, we may suspend or terminate Customer's access to the Service, in addition to relying on any other remedies. Neither this Agreement nor the AUP requires that Company take any action against Customer or any User or other third party for violating the AUP, but we may take any such action it sees fit.

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

9. Representations & Warranties.

9.01 From Customer. Customer represents and warrants that:

(a) it has accurately identified itself, 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 internal 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 2.04 (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 Company's Chief Executive Officer or 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 Company is not a consumer reporting agency and that, if Company assists Customer in obtaining a Background Report, we do so solely to assist Customer and not for any Company purpose, and we will have no responsibility or liability arising out of or related to such assistance.

9.02 **As Is.** Except for the Service Level commitments and sole remedy described in Article 6, THE SERVICE (INCLUDING COMPANY CONTENT) IS PROVIDED "AS IS," AND WITHOUT GUARANTEES OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, OR STATUTORY, 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 TO THE MAXIMUM EXTENT PERMITTED BY THE LAW.

9.03 **Additional Disclaimers.** WITHOUT LIMITING THE GENERALITY OF THE PROVISIONS OF SECTION 9.02 ABOVE: (a) COMPANY DOES NOT WARRANT OR GUARANTEE THE ACCURACY, RELIABILITY, COMPLETENESS, USEFULNESS, OR QUALITY OF ANY COMPANY CONTENT; (b) COMPANY 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) COMPANY IS NOT RESPONSIBLE OR LIABLE FOR ANY CONTENT POSTED ON OR LINKED FROM THE SERVICE; (D) COMPANY IS NOT RESPONSIBLE OR LIABLE FOR THE PERFORMANCE OF ANY ATS, INCLUDING WITHOUT LIMITATION ANY ATS THAT COMPANY INTEGRATES WITH THE SERVICE; (E)

COMPANY IS NOT RESPONSIBLE OR LIABLE FOR ANY INJURY RELATED TO DATA LISTED IN SECTION 2.04 (RESTRICTIONS ON THE SERVICE AND ACCEPTABLE DATA); (F) COMPANY 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 COMPANY THROUGH ZR-INCLUDED ORDERS (AS DEFINED IN SECTION 2.06, ZIPRECRUITER CREDITS); (G) COMPANY IS NOT RESPONSIBLE OR LIABLE FOR ANY CUSTOMER HIRING PRACTICE OR EMPLOYMENT DECISION, INCLUDING WITHOUT LIMITATION THOSE ADDRESSED BY SECTION 4.03 (HIRING PRACTICES), OR ANY LOSS RESULTING FROM USE OF OR RELIANCE ON INFORMATION GATHERED THROUGH THE SERVICE; AND (H) COMPANY 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 COMPANY NOR THE SERVICE PROVIDES ANY PROFESSIONAL OR LEGAL ADVICE.

10. Indemnification.

10.01 Customer's Indemnifications. Customer will defend, indemnify, and hold harmless Company and its Affiliates (as defined in Section 10.04) 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 10.02 below but include: (a) claims by Users, including without limitation claims alleging any wrongs related to recruitment, hiring, or employment (including those related to Section 4.03 (Hiring Practices), and applicable laws; (b) claims related to Customer violation of applicable law (including privacy obligations); (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, provided that such failure is not caused by a breach of the Agreement by Company or by Company's willful misconduct.

10.02 Company's IP Indemnification. We will 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. Company's indemnity obligations 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) Company'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 Company.

10.03 Indemnification re ZipRecruiter. The provisions of this Section 10.03 will only apply if Customer has a ZR-Included Order. To the maximum extent permitted by applicable law, Customer agrees to defend, indemnify and hold harmless Company and its Affiliates (as defined below in Section 10.04) 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 2.06) 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.

10.04 Litigation. The claims listed in Sections 10.01, 10.02, and 10.03 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. COMPANY 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 (a) THE FEES PAID BY CUSTOMER FOR THE SERVICE DURING THE 12-MONTH PERIOD PRECEDING THE INJURY GIVING RISE TO THE CLAIM, or (b) USD\$5,000-WHICHEVER IS GREATER. 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 COMPANY 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, Company's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Company's liability limits and other rights set forth in this Article 11 apply likewise to Company's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

12. Term & Termination.

12.01 Term. The term of this Agreement (the "**Term**") begins on the Effective Date and continues until the end of the Service subscription in the Order.

12.02 Suspension & Termination for Cause. Company 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.

12.03 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 4.06 (Employment and Recruiting Agencies) or 13.7 (Assignment & Successors), does not require that Company refund any fees and does not release Customer's obligation to pay fees already incurred.

12.04 Customer Data Following Expiration or Termination. After termination or expiration of this Agreement, Customer will no longer have access to Customer's account(s) associated with the Agreement. Customer shall have 90 days in which to either renew the Service subscription to retain Customer Data and TestMaker Content or provide written instructions to Company to delete such data. If no written instructions are received from Customer, we will delete all such data from the Service, unless legally required to retain it.

13. Miscellaneous.

13.01 Notices. We may send notices pursuant to this Agreement to Customer's email contacts provided by Customer, and such notices will be deemed received 24 after they are sent. Customer will send notices pursuant to this Agreement by nationally recognized overnight courier to Company's address as set forth below or such other address as We may designate in writing.

To Criteria Corp: Chief Operating Officer, Criteria, 750 North San Vicente Blvd. Suite 1500 East Tower, West Hollywood, CA 90069.

To Revelian: Chief Revenue Officer, Revelian Pty Ltd 1/21 Windorah St Stafford QLD 4053, with a copy to the Chief Operating Officer, Criteria, 750 North San Vicente Blvd. Suite 1500 East Tower, West Hollywood, CA 90069.

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

13.03 Revision of Privacy Policy & AUP. We 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.

13.04 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.

13.05 Injunctions. Each party agrees that breach of the provisions of Sections 4.02 (Content Rights), 4.09 (Technology Restrictions), or 5.02 (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.

13.06 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.

13.07 Assignment & Successors. Neither party may assign this Agreement without the prior written consent of the other party (which will not be unreasonably withheld), except that Company may assign this Agreement to the surviving party in a merger of Company into another entity or in the acquisition of all or substantially all Company'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. We 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 we reasonably consider not to constitute typical growth.

13.08 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.

13.09 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 Company'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 Company 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. No terms referenced, linked or pre-printed on any Customer document-including a purchase order, proposal or ordering document, will have any effect on the terms of this Agreement and are hereby rejected, including where the such Customer document is signed by Company.

13.10 Amendment. Company 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 Company will provide Customer with advance written notice of such changes. All such changes will be deemed accepted and become effective 30 days after Company's notice (the "**Proposed Amendment Date**") unless Customer first gives Company 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.

13.11 Export Laws. Each party will comply with the export laws and regulations of the United States and other applicable jurisdictions in providing and using the Service. Customer also represents that it is not named on any U.S. government denied-party list, and will not make the Service available to any User or entity that is located in a country that is subject to a U.S. government embargo, or is listed on any U.S. government list of prohibited or restricted parties.

13.12 Country Specific Provisions. The following country specific terms amend, replace or supplement the identified provisions of this Agreement if you are located in the applicable country.

Australia

1. Replace the last sentence of **Section 6.02 (Sole Remedy)** with the following:

“However, where such statutory provisions apply, to the extent to which the Criteria is entitled to do so, Criteria's liability will be limited at its option to:

- (i) in the case of a supply of goods:
 - (A) the replacement of the goods or supply of equivalent goods;
 - (B) the payment of the cost of replacing the goods or acquiring equivalent goods;
 - (C) the payment of the cost of having the goods repaired; or
 - (D) the repair of the goods; and
- (ii) in the case of services:
 - (A) the supply of the services again; or
 - (B) the payment of the cost of having the services supplied again.”

2. Replace the second sentence of **Section 13.08. (Dispute Resolution)** with the following:

“The parties consent to the non-exclusive jurisdiction of the Courts in the State of Queensland.”