

## DATA SUBSCRIPTION AGREEMENT

Version effective prior to May 19, 2017

This agreement is between Salary.com, LLC., a Delaware corporation (**Salary**), and the customer agreeing to these terms (**Customer**). It is dated as of the date Salary signs below.

1. **SOFTWARE SERVICE.** This agreement provides Customer a subscription to a software as a service offering and other services as specified on an order (**Service**).

2. **USE OF SERVICE.**

a. **Data Rights.**

- **Grant by Salary.** Salary grants Customer a non-exclusive, non-transferable worldwide licenses to use the salary data provided by the Service (Salary Data) only for Customer internal operational purposes.

- **Customer Data.** All data and information uploaded by Customer to the Service remains the property of Customer, as between Salary and Customer (**Customer Data**). Customer grants Salary the right to use and modify the Customer Data as necessary for Salary to perform under this agreement. Customer represents and warrants to Salary that it has the legal authority to upload and process such data within the Service.

b. **Access and Usage by Employees and Contractors.** Customer may allow its employees and contractors to access the Service and Salary Data in compliance with the terms of this agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with this agreement by its employees and contractors.

c. **Customer Responsibilities.** Customer (i) must keep its passwords secure and confidential; (ii) is solely responsible for Customer Data and all activity in its account in the Service; (iii) must use commercially reasonable efforts to prevent unauthorized access to its account, and notify Salary promptly of any such unauthorized access; and (iv) may use the Service only in accordance with the Service's technical documentation and applicable law.

d. **Anonymized Data.** Notwithstanding anything to the contrary, Salary may retain and use the Customer Data provided to Salary under this Agreement in aggregated, anonymous format (i.e., so that Customer cannot be identified as the source of the confidential information and so that personally identifiable information allowing the identification of individual employees and/or applicants is removed).

e. **Salary Support.** Salary must provide customer support for the Service under the terms of Salary's Customer Support Policy (**Support**) which is located and updated from time to time at <http://www.companalyst.com/services/support/terms/year2016>

3. **DISCLAIMER. SALARY DISCLAIMS ALL WARRANTIES, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE. WHILE SALARY TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, SALARY DOES NOT GUARANTEE THAT THE SERVICE**

**CANNOT BE COMPROMISED. CUSTOMER UNDERSTANDS THAT THE SERVICE AND SALARY DATA MAY NOT BE ERROR FREE, AND USE OF THE SERVICE MAY BE INTERRUPTED. SALARY TAKES REASONABLE STATISTICAL AND OTHER MEASURES TO ENSURE THE DATA IS ACCURATE AND REPRESENTATIVE, BUT IT CANNOT GUARANTY THAT THE SALARY DATA IS ACCURATE OR REPRESENTATIVE.**

4. **PAYMENT.** Customer must pay all fees based on the payment terms specified on the order. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes. This agreement contemplates one or more orders for the Service, which orders are governed by the terms of this agreement.

5. **MUTUAL CONFIDENTIALITY.**

- a. **Definition of Confidential Information.** Confidential Information means all non-public information disclosed by a party (**Discloser**) to the other party (**Recipient**), whether orally or in writing, that is designated as confidential or that reasonably should be understood to be confidential given the nature of the information and the circumstances of disclosure (**Confidential Information**). Salary's Confidential Information includes without limitation the Service and all data provided by Salary within the Service, its user interface design and layout, and pricing information). Confidential Information provided by Customer Data is Confidential Information of Customer.
- b. **Protection of Confidential Information.** The Recipient must use the same degree of care that it uses to protect the confidentiality of its own confidential information (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Discloser for any purpose outside the scope of this agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and contractors who need such access for purposes consistent with this agreement and who have signed confidentiality agreements with Recipient no less restrictive than the confidentiality terms of this agreement.
- c. **Exclusions.** Confidential information *excludes* information that: (i) is or becomes generally known to the public without breach of any obligation owed to Discloser, (ii) was known to the Recipient prior to its disclosure by the Discloser without breach of any obligation owed to the Discloser, (iii) is received from a third party without breach of any obligation owed to Discloser, or (iv) was independently developed by the Recipient without use or access to the Confidential Information. The Recipient may disclose Confidential Information to the extent required by law or court order, but will provide Discloser with advance notice to seek a protective order.

6. **SALARY PROPERTY.**

- a. **Reservation of Rights.** The software, all Salary provided data, workflow processes, user interface, designs and other technologies and data provided by Salary as part of the Service are the proprietary property of Salary and its licensors, and all right, title and interest in and to such items, including all associated intellectual property rights, remain only with Salary. Customer may not remove or modify any proprietary marking or

restrictive legends in the Service. Salary reserves all rights unless expressly granted in this agreement.

b. **Restrictions.** Customer *may not* (i) sell, resell, rent or lease the Service or the Salary Data or use it in a service provider capacity or make the Salary Data available to third parties; (ii) use the Service to store or transmit infringing, unsolicited marketing emails, libelous, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights; (iii) interfere with or disrupt the integrity or performance of the Service; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service; or (vi) access the Service or the Salary Data to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

## 7. TERM AND TERMINATION.

a. **Term.** This agreement continues until all orders have terminated.

b. **Mutual Termination for Material Breach.** If either party is in material breach of this agreement, the other party may terminate this agreement at the end of a written 30-day notice/cure period, if the breach has not been cured. Notwithstanding the foregoing, Salary may suspend or terminate the Service, or both, without liability to Customer if Customer has not paid a correct invoice within 15 days past the due date.

c. **Return of Customer Data.**

- During the term of this agreement and for 30 days after termination, Salary will preserve and maintain Customer Data and upon written request from Customer will provide a file of Customer Data.
- *After such 30-day period*, Salary has no obligation to maintain the Customer Data and may destroy it.

d. **Return Salary Property Upon Termination.** Upon termination of this agreement for any reason, Customer must pay Salary for any unpaid amounts, and destroy or return all property of Salary. Upon Salary's request, Customer will confirm in writing its compliance with this destruction or return requirement.

e. **Suspension for Violations of Law.** Salary may temporarily suspend the Service or remove the applicable Customer Data, or both, if it in good faith believes that, as part of using the Service, Customer has violated a law. Salary will attempt to contact Customer in advance.

## 8. LIABILITY LIMIT.

a. **EXCLUSION OF INDIRECT DAMAGES.** Salary is not liable for any indirect, special, incidental or consequential damages arising out of or related to this agreement (including, without limitation, costs of delay; loss of data, records or information; and lost profits, revenue or anticipated cost savings), even if it knows of the possibility of such damage or loss.

b. **TOTAL LIMIT ON LIABILITY.** Except for Salary's indemnity obligations, Salary's total liability arising out of or related to this agreement (whether in contract, tort or otherwise) does not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability.

## 9. INDEMNITY.

a. **Defense of Third Party Claims.** Salary will defend or settle any third party claim against Customer to the extent that such claim alleges that Salary provided data violates a copyright, trademark or trade secret, if Customer, promptly notifies Salary of the claim in writing, cooperates with Salary in the defense, and allows Salary to solely control the defense or settlement of the claim. **Costs.** Salary will pay its infringement claim defense costs, any Salary negotiated settlement amounts, and any court awarded damages. **Process.** If such a claim appears likely, then Salary may modify the data, procure the necessary rights, or replace it with the functional equivalent. If Salary determines that none of these are reasonably available, then Salary may terminate the applicable Service and refund any prepaid and unused fees. **Exclusions.** Salary has no obligation for any claim arising from use of Customer data or items not provided by Salary. THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SALARY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.

b. **By Customer.** If a third-party claims against Salary that any part of the Customer Data infringes or violates that party's patent, copyright or other right, Customer will defend Salary against that claim at Customer's expense and pay all costs, damages, and attorney's fees, that a court finally awards or that are included in a settlement approved by Customer, provided that Salary promptly notifies Customer in writing of the claim; and allows Customer to control and cooperates with Customer in, the defense and any related settlement.

10. **GOVERNING LAW AND FORUM.** This agreement is governed by the laws of the Commonwealth of Massachusetts (without regard to conflicts of law principles) for any dispute between the parties or relating in any way to the subject matter of this agreement. Any suit or legal proceeding must be exclusively brought in the federal or state courts for Norfolk County, Massachusetts, and Customer submits to this personal jurisdiction and venue. Nothing in this agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction. The prevailing party in any litigation is entitled to recover its attorneys' fees and costs from the other party.

11. **OTHER TERMS.**

a. **Entire Agreement and Changes.** This agreement and the order constitute the entire agreement between the parties and supersede any prior or contemporaneous negotiations or agreements, whether oral or written, related to this subject matter. Customer is not relying on any representation concerning this subject matter, oral or written, not included in this agreement. No representation, promise or inducement not included in this agreement is binding. No modification of this agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

b. **Press Releases.** Customer agrees to allow disclosure by Salary in press releases and in discussions with Salary customers, prospective customers and industry/financial

analysts and to permit inclusion of Customer's name and logo on Salary customer lists, sales materials and related disclosures.

c. **No Assignment.** Neither party may assign or transfer this agreement or an order to a third party, except that this agreement with all orders may be assigned, without the consent of the other party, as part of a merger, or sale of substantially all the assets, of a party, so long as such successor is not a competitor of the other party.

d. **Independent Contractors.** The parties are independent contractors with respect to each other.

e. **Enforceability and Force Majeure.** If any term of this agreement is invalid or unenforceable, the other terms remain in effect. Except for the payment of monies, neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

f. **Money Damages Insufficient.** Any breach by a party of this agreement or violation of the other party's intellectual property rights could cause irreparable injury or harm to the other party. The other party may seek a court order to stop any breach or avoid any future breach.

g. **No Additional Terms.** Salary rejects additional or conflicting terms of any Customer form-purchasing document.

h. **Order of Precedence.** If there is an inconsistency between this agreement and an order, the order prevails.

i. **Survival of Terms.** Any terms that by their nature survive termination of this agreement for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the confidentiality terms). The UN Convention on Contracts for the International Sale of Goods does not apply.

j. **Feedback.** If Customer provides feedback or suggestions about the Service, then Salary (and those it allows to use its technology) may use such information without obligation to Customer.

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