

Data Subscription Agreement

Last Updated May 31, 2017

This Data Subscription Agreement (“**DSA**”) is entered into between Salary.com, LLC., a Delaware corporation (“**Salary**”), and the customer (“**Customer**”) who has purchased the Service (as defined below) by means of an order form issued by Salary (an “**Order**” or “**Order Form**”; together with the DSA, the “**Agreement**”).

1. **SOFTWARE SERVICE.** Subject to the Agreement, Salary will provide Customer with access to use a subscription to Salary’s software-as-a-service offering and other services and/or consulting purchased in an Order (“**Service**”) for the duration of the Subscription Term (as defined herein). As part of provision of the Service, Salary may provide Customer with access to various compensation, HR, and/or other information or data (the “**Salary Data**”) which Customer may only use for its internal operational purposes.
2. **USE OF SERVICE.**
 - a. **Customer Data.** All data and information uploaded or otherwise submitted into the Service by Customer (“**Customer Data**”) will remain the property of Customer. Customer grants Salary the right to use and modify the Customer Data as necessary for Salary to provide the Service. Customer represents and warrants to Salary that it has full power and authority to enter into the Agreement and to convey all rights granted to Salary under the Agreement. Notwithstanding anything to the contrary, Customer Data does not include Anonymous Data or IPAS Data.
 - b. **Access and Usage.** Customer may allow its employees, agents, and contractors to access the Service and Salary Data in compliance with the terms of the Agreement, which access must be for the sole benefit of Customer. Customer is responsible for the compliance with the Agreement by its employees, agents 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) must 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 Customer Data in aggregated, anonymous format (the “**Anonymous Data**”) (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). For clarity, Anonymous Data is excluded from Customer Data and all such Anonymous Data is deemed Salary Data.
 - e. **Salary Support.** Salary will provide telephone support to Customer for the Service between 9:30am to 5:30pm EST, Monday to Friday (excluding company holidays. Such support may include general maintenance (bug fixes) releases, enhancements, new versions, additions and modifications and is provided at no additional fee. Salary will try to limit scheduled outages to evening hours (EST) and to provide Customer with notice of scheduled outages via the Services, email to the address on record, or any of Salary’s websites (including, but not limited to, www.salary.com and www.companalyst.com).
 - f. **Safeguards.** Salary will take commercially appropriate and reasonable physical, technical, and administrative measure to safeguard, protect, and secure the Service and Customer Data. Salary will only use Customer Data in accordance with the Agreement and Salary’s Privacy Policy located at www.salary.com/privacy-policy (the “**Privacy Policy**”).

3. **SALARY PROPERTY.** The software, all Salary provided data, workflow processes, user interface, designs and other technologies and data provided to Customer by Salary, including the Service and Salary Data, 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 the Agreement. The Agreement does not grant Customer any ownership rights in or to the Service or Salary Data.
4. **USE RESTRICTIONS.**
 - a. **Prohibited Data.** Customer agrees not to use the Service to store, transmit, process, or otherwise handle (i) infringing material, unsolicited marketing emails, libelous material, or otherwise objectionable, unlawful or tortious material, or to store or transmit material in violation of third-party rights, and (ii) social security numbers, passport numbers, driver's license numbers, physical or mental health information or other information subject to the Health Insurance Portability and Accountability Act or similar legislation, personal financial account information, debit or credit card numbers, or other information subject to the Gramm-Leach-Bliley Act or similar legislation (combined, "**Prohibited Data**"). Customer Data and Confidential Information expressly exclude Prohibited Data. Salary disclaims all liability arising from or related to the Prohibited Data.
 - b. **Prohibited Use.** Customer agrees that it will not (i) sell, resell, rent, lease, lend, provide, or otherwise make available the Service or the Salary Data to a third party or use them in a service provider capacity or make them available to third parties (except its employees and contractors as expressly permitted by the Agreement); (ii) interfere with or disrupt the integrity or performance of the Service or use the Service or Salary Data in violation of applicable law; (iv) attempt to gain unauthorized access to the Service or their related systems or networks; (v) reverse engineer the Service; (vi) upload to the Service or use the Service in conjunction with any viruses, worms, malware, spyware, or other malicious or harmful files, programs, code, or similar material; or (vii) access the Service or the Salary Data to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.
5. **PAYMENT.**
 - a. **General Payment.** Customer must pay all fees based on the payment terms specified on the Order. If no payment terms are specified on the Order, all fees are due upon receipt of an invoice. Fees specified on the Order are exclusive of taxes which will be charged as applicable. Customer is responsible for the payment of all sales, use, withholding, VAT and other similar taxes applicable to Customer's purchase of the Service. All payment obligations are non-cancelable and non-refundable except as expressly specified in the Agreement. Unless otherwise specified in the applicable Order, all fees shall be invoiced in advance of the applicable billing period and are due and payable immediately upon receipt of the applicable invoice. Invoices will be sent to the email address provided to Salary and will be deemed received upon being sent by Salary. Upon termination of the Agreement for any reason, except for termination by Customer for material breach, Customer must pay Salary for any unpaid amounts through the remainder of the Subscription Term. Salary may suspend and/or terminate the Order and/or Service if an invoice is more than fifteen (15) days past due. Unless expressly set forth otherwise, all amounts are in USD.
 - b. **Additional Fees.** Customer represents and warrants that the number of FTEs as indicated in the applicable Order is accurate. Customer agrees that it will promptly notify Salary if its actual number of FTEs increases and that Salary may monitor its use of the Service in order to evaluate Customer's number of FTEs. In the event that Customer's number of FTEs (as evaluated by Salary or, if higher, as reported by Customer) exceed the number of FTEs indicated in the applicable

Order, Salary may charge Customer for the increased number of FTEs and Customer agrees to pay such charge. Customer cannot downgrade or decrease the number of FTEs associated with its subscription to the Service at any time during a Subscription Term.

- c. **Collections.** In the event Customer fails to pay any fee, charge, or other bill when due, Customer agrees that Salary may use a third party collection agency to collect such past-due amounts (as well as any other fees, charges, or other bills that may be due) and Customer agrees to pay reasonable collection costs, including attorney fees, whether or not litigation has commenced, and all costs of litigation incurred.

6. TERM AND TERMINATION.

- a. **Term.** The term of the Agreement will be as specified in the applicable Order (the “**Subscription Term**”) and, except as otherwise expressly set forth in the Agreement, cannot be cancelled or otherwise terminated prior to the conclusion of the Subscription Term.
- b. **Renewal.** Unless either party provides the other party with notice of its intent to not renew the Service (the “**Notice of Non-Renewal**”) at least sixty (60) days prior to the end of the Subscription Term (or as otherwise specified in the applicable Order), upon conclusion of the Subscription Term, the Order will automatically renew for the Renewal Term specified in the Order or, if no Renewal Term is specified, for 36 months. Customer must send any Notice of Non-Renewal to Salary at billing@salary.com; notice of Customer’s intent to not renew the Service sent otherwise shall be invalid and have no effect.
- c. **Termination for Material Breach.** If either party is in material breach, the other party may terminate the applicable Order at the end of a written 30-day notice/cure period, if the breach has not been cured by the expiration of such notice/cure period. In the event that Salary terminates an Order in accordance with this paragraph, Customer will promptly pay all unpaid fees through the end of the Subscription Term.
- d. **Return of Customer Data.**
 - i. During the term of the Agreement and for 30 days after termination, Salary will preserve and maintain Customer Data and upon written request from Customer will provide a copy of Customer Data. Salary will have no obligation to maintain or provide a copy of Customer Data if Customer has not paid all fees owed to Salary.
 - ii. *After such 30-day period*, Salary has no obligation to maintain the Customer Data and may destroy it.
- e. **Return Salary Property Upon Termination.** Upon termination of this Agreement for any reason, Customer must destroy or return all property of Salary, including all Salary Data and will, upon Salary’s request, confirm in writing its compliance with this destruction or return requirement.
- f. **Suspension for Violations.** Salary may suspend and/or terminate 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 or is in breach of the Agreement. Salary will attempt to contact Customer in advance prior to suspension or termination under this paragraph.

7. 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

apply to Customer's use of the specified product(s) and service(s) and, in the event of a conflict between this clause (including the sub-clauses below) and any other clause of this DSA, this clause will control.

- a. **Free Services.** This clause will apply to any Service made available to Customer free of charge including, but not limited to, free trials of a Service (a "**Free Service**"). Customer agrees that (i) all Free Services and related material are provided "as is" and without warranty of any kind, (ii) Salary may suspend, limit, modify, or terminate any Free Service for any reason at any time without notice, and (iii) Salary will not be liable to Customer or any third party for damages of any kind related to or arising from a Free Service. Notwithstanding anything to the contrary herein, Salary has no obligation to maintain or return any data provided to Salary as part of the Free Services.
- b. **Alpha and Beta Services.** This clause will apply to Customer's use of any alpha and beta version of any Service (the "**Alpha/Beta Services**"). Customer agrees that (i) the Alpha/Beta Services and related material are provided "as is" and without warranty of any kind, (ii) Salary may suspend, limit, modify, or terminate the Alpha/Beta Services for any reason at any time without notice, and (iii) Salary will not be liable to Customer or any third party for damages of any kind related to or arising from the Alpha/Beta Services. Customer may be required to provide feedback to Salary about the Alpha/Beta Services and Customer agrees that Salary will own all rights to use and incorporate Customer's feedback into Salary's products and service without payment or attribution to Participant. Notwithstanding anything to the contrary herein, Salary has no obligation to maintain or return any data provided to Salary as part of the Alpha/Beta Services.
- c. **IPAS.** This clause will apply to Customer's use of Salary's IPAS service only. In order to access and use the IPAS service, Customer must provide Salary with any survey data and other data inputs requested by Salary ("**IPAS Data**") within fifteen (15) days of such request. If Customer fails to provide Salary with the IPAS Data within such period, Salary may charge, and Customer agrees to pay, a non-refundable non-participation fee. Customer hereby grants Salary a perpetual, irrevocable, royalty free license to reproduce, modify, distribute, create derivative works and otherwise use the IPAS Data in anonymized form for Salary internal and external business purposes. Customer represents and warrants that it is authorized to provide the IPAS Data, such data is true and accurate, and uploading such data does not violate any law or regulation. Customer agrees to indemnify, defend, and hold Salary harmless any claim, suit, or action based upon or arises out of an allegation to the contrary. Customer Data does not include IPAS Data. Notwithstanding anything to the contrary herein, Customer agrees that Salary may use Customer's name and logo in connection with Salary's IPAS service and the IPAS Data.

11. INDEMNITY.

- a. **By Salary.** Salary will defend or settle any third party claim against Customer to the extent that such claim alleges that Salary Data violates a copyright, trademark or trade secret, so long as 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. **Process:** If such a claim appears likely, then Salary may modify the Salary 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 Order 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.** Customer will defend, indemnify, and hold Salary (and Salary's officers, directors, employees, agents, and affiliates) harmless, at Customer's expense (including costs, damages, and attorney's fees), from and against any third party claim, suit, fine, or action based upon or arising from, directly or indirectly (i) Customer's Customer Data, (ii) Prohibited Data, (iii)

Customer's breach or alleged breach of this Agreement, (iv) Customer's misappropriation or alleged misappropriation of Salary Data. **Process:** Salary will: promptly notify Customer in writing of the claim and allow Customer to control, and will cooperate with Customer in, the defense and any related settlement; provided that Customer will not (without Salary's prior written consent) accept any related settlement that requires Salary to make an admission or imposes any obligation, restriction, or liability on Salary that is not covered by this indemnification.

12. LIABILITY LIMIT.

- a. **EXCLUSION OF INDIRECT DAMAGES.** *Except as arising from or related to Customer's misappropriation or unauthorized disclosure of Salary Data, neither party will be liable for any indirect, special, incidental or consequential damages arising out of or related to the 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 liability arising from or related to either party's obligations under the 'Indemnity' section herein, Customer's payment obligations, or Customer's misappropriation or unauthorized disclosure of Salary Data, each party's total liability arising out of or related to the Agreement (whether in contract, tort or otherwise) will not exceed the amount paid by Customer within the 12-month period prior to the event that gave rise to the liability; provided that Salary's total liability arising from its indemnification obligations herein will not exceed \$100,000.*
- c. **LIMITATIONS BY LAW.** *Some jurisdictions do not allow the exclusion or limitation of incidental or consequential damages; as such, the above limitations or exclusions shall apply to the maximum extent permitted by law. Customer may have additional consumer rights under local law.*

13. GOVERNING LAW AND FORUM

- a. **Governing Law.** The 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 the Agreement.
- b. **Forum.** 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.
- c. **Injunctive Relief and Costs.** Nothing in the 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.

14. ENTIRE AGREEMENT AND CHANGES.

- a. **Entire Agreement.** The Agreement 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 the Agreement. No representation, promise or inducement not included in the Agreement is binding.
- b. **Updates.** Salary may update or change any part of this DSA at any time. If Salary updates or changes any part of this DSA, Salary will inform customer through a notification within the Service, posting the updated or changed DSA at <http://www.companalyst.com/companalyst/SDC/DSA/>, or updating the 'Last Updated' date above. The updated or changed DSA will be effective and binding upon Customer immediately.

- c. **Objections to Updates.** If Customer provides Salary with written notice to billing@salary.com that Customer objects to the updated or otherwise modified terms within thirty (30) days after the DSA is updated or otherwise modified, the remainder of Customer's then-current Subscription Term will be governed by the version of the DSA in effect immediately preceding the objectionable version. For clarity, any renewal or subsequent Subscription Term will be governed by the version of the DSA available at the time of such renewal or subsequent Subscription Term.
- d. **[RESERVED]**
- e. **Amendment; No Waiver.** Except as otherwise specified herein, no modification of the Agreement is effective unless both parties sign it, and no waiver is effective unless the party waiving the right signs a waiver in writing.

15. OTHER TERMS.

- a. **Press Releases.** Customer agrees to allow use of Customer's name and logo 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's websites, customer lists, sales and marketing materials and related disclosures.
- b. **No Assignment.** Neither party may assign or transfer the Agreement to a third party, except that the Agreement may be assigned, without the consent of the other party, to a party's affiliates or as part of a merger, change in control, or sale of all or substantially all the assets of a party, so long as such successor is not a competitor of the other party. In the event that any assignment or transfer of the Agreement results in an increased number of FTE, Salary may, in accordance with the Additional Fees section herein, charge Customer for the increased number of FTEs and Customer agrees to pay such charge.
- c. **Independent Contractors.** Salary and Customer agree that no joint venture, partnership, employment, or agency relationship exists between the parties. The parties are independent contractors with respect to each other.
- d. **Enforceability and Force Majeure.** If any term of the 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.
- e. **No Third Party Beneficiaries.** Nothing in the Agreement, express or implied, is intended to or shall confer upon any third party person or entity any right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.
- f. **Money Damages Insufficient.** Any breach by a party of the 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, purchase order, or similar document.
- h. **Order of Precedence.** If there is an inconsistency between this DSA and an Order, the applicable Order will prevail.
- i. **Survival of Terms.** Any terms that by their nature survive termination or expiration of this DSA or the applicable Order for a party to assert its rights and receive the protections of this agreement, will survive (including without limitation, the Mutual Confidentiality, Product Specific Terms, and the Anonymized Data sections of the Agreement).
- j. **Provision of Services.** Each Order, along with this DSA, is a contract for the provision of services, not for the sale of goods. The UN Convention on Contracts for the International Sale of Goods,

This historical archive copy of the Salary.com Data Subscription Agreement (version effective prior to May 25, 2017) is provided for reference only. Please find the current governing version of the Salary.com Data Subscription Agreement on our website www.salary.com/legal/DSA. For clarity, this document is not a contract and does not impose any obligations upon Salary.com. Thank you.

the Uniform Commercial Code (UCC), the Uniform Computer Information Transaction Act (UCITA), and any similar legislation now in effect or later enacted does not apply.

- k. **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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