

Last Updated 13 July 2020

**If you are a single user:**

These Terms of Use/ this Data Subscription Agreement (the "TOU" or the "DSA") constitute a legal contract between Salary.com, LLC ("Salary"), which owns, operates, or control's various websites, including, without limitation, salary.com (the "Site(s)") and you, the person or entity visiting, accessing, or using the Site ("You" or "Customer"). By visiting, accessing, or using the Sites, You acknowledge that You have read, understood, and agree to be bound by these TOU. If You do not agree to these TOU, You may not use the Sites.

**If you are a corporation:**

These Terms of Use/ this Data Subscription Agreement (the "TOU" or the "DSA") constitute a legal contract between Salary.com, LLC ("Salary"), which owns, operates, or control's various websites, including, without limitation, salary.com (the "Site(s)") and [Customer Name] "Customer"). By visiting, accessing, or using the Sites, You acknowledge that You have read, understood, and agree to be bound by these TOU. If You do not agree to these TOU, You may not use the Sites.

Salary reserves the right to change, modify, add, or remove portions of these TOU at any time. All changes will be posted on salary.com and, in such event, Salary will update the "Last updated" date above. Please be sure to review any changes made to these TOU by occasionally checking this page for updates. Your continued use of the Sites and Service will constitute your agreement to such updated TOU.

**1. SOFTWARE SERVICE**

Subject to this agreement ("Agreement"), Salary will provide Customer with access to use a subscription to Salary's software-as-a-service offering and other services (the "Subscription Service") and/or Consulting Services (as defined herein) as purchased either via any and all Salary websites or purchased in an order (each separately and together, the "**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 solely and exclusively for its own internal purposes.

**2. USE OF SERVICE**

**2.1 Customer Data**

All data and information uploaded or otherwise submitted into the Service by Customer ("**Customer Data**") will remain the property of Customer. 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, including all rights in and to the Customer Data. Customer grants Salary the right to use, modify and anonymize and aggregate Customer Data for purposes including, but not limited to providing aggregated and anonymized compensation analysis and information. Such aggregated and anonymized information is deemed Salary Data and is excluded from Customer Data. Salary will never share any data provided to Salary other than in an aggregated and anonymized format in accordance with applicable Safe Harbor provisions.

**2.2 Access and Usage**

Customer may allow its employees and their third parties to access the Service and any data contained therein in compliance with the terms of the Agreement, which access must be for the sole and exclusive benefit of Customer. Customer is responsible for the compliance with the Agreement by its employees and their third parties. You are responsible for access and use of Salary Data. Accordingly, you agree to indemnify and hold harmless Salary for any and all loss, damage or liability incurred by Salary as a result of a breach by You or any other party to whom you have shared Salary Data with as permitted under this Agreement.

You represent that You seek access to the Service for the sole and exclusive purposes as authorized in this Agreement. Your access, is subject at all times to: your own employees being made aware that any insubstantial parts of Salary Data to whom they are given access are made aware that such access must adhere to the terms of this Agreement, particularly sections 2.2 and section 4.2 and that use of any such parts of Salary Data are properly attributed to Salary.

Salary Data cannot be shared with any third parties for any reason whatsoever without first securing a non-disclosure agreement between you, the third party, and Salary and which is satisfactory to Salary. Click [here](#) for a downloadable copy of the required NDA. Salary Data may not be used for any other purpose including, without limitation, any purpose which may result in the development and provision of products or services competitive to Salary, the disparagement of Salary's reputation, or injury to Salary in its business or public affairs. **If you are using Salary Data on behalf of a third party, are a consultant, a software services provider or a consulting firm, your use is further bound by the terms of Section 2.3 below.**

### **2.3 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. You also must not host any Salary Data, such as a survey, in a third party's software without first having in place and signed by the third party, You, and Salary, a Non-Disclosure Agreement, which is satisfactory to Salary.

As a Consultant, you may:

- a. Use the Service to provide data or analytics to a single consulting client with whom you are working on a single compensation project with.
- b. Download and/or export insignificant parts of Salary Data for use with a single consulting client at one time.
- c. Transfer Salary Data to a single consulting client so long as a) such client agrees to abide by the same terms and conditions contained within this Agreement and b) such client adheres to

the same level of privacy protection and other rights afforded by this Agreement.

- d. The rights above are further conditioned upon and granted to you upon your agreement to use only insignificant parts of the Salary Data.

Salary has the right at any time to ask for and receive within 30 days of its request a full and complete report from you describing all third parties including consulting clients with access to Salary Data and/or Surveys and for Salary to conduct an audit (at Salary's sole expense) of your records to ensure compliance with the terms of this Agreement. Should an audit not be permitted, then it is assumed that such third party is acting in violation of the terms of this Agreement.

As a Consultant you may not:

- a. Share any Salary Data with any third parties other than for a single consulting client with whom you are working with on a single compensation project. You also will defend, indemnify, and hold Salary (and Salary's officers, directors, employees, agents, and affiliates) harmless, at your expense (including costs, damages, and attorney's fees), from and against any third party claim, suit, fine, action, or allegation based upon or arising from, directly or indirectly your breach of these terms or your misappropriation of Salary Data.
- b. Allow access to any Services and/or Salary Data to individuals not having an explicit need to know and whom agree in writing to the terms of this Agreement.
- c. Pay the non-Consultant price for a survey or a set of surveys purchased from Salary.
- d. Copy, cut and paste, email, broadcast, adapt, edit, re-utilize, reproduce, disseminate, reverse engineer, sell, extract, paraphrase, or create any derivative works or derive compensation methodologies or processes based on Salary Data for any reason whatsoever for use with or by means of using other analytics or artificial intelligence environments. If You become aware of scraping or any other automated collection of data found on the website in violation of these terms You must immediately report any and all such violations via email to [privacy@salary.com](mailto:privacy@salary.com). In the event that such a report is found

to be materially accurate, the reporting individual shall be entitled to 30% of any settlement reached in such a case.

## **2.4 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 Sites.

## **2.5 Safeguards**

Salary will take commercially appropriate and reasonable physical, technical, and administrative measures to safeguard, protect, and secure the Service and Customer Data. This Agreement shall incorporate by reference the Data Processing Addendum located at [www.salary.com/legal/dpa](http://www.salary.com/legal/dpa), which sets forth the agreement and respective obligations of the Parties with respect to the processing of Personal Data which may be included in Customer Data transferred to Salary under this Agreement. In addition, Salary will only use Customer Data in accordance with the Agreement and Salary's Privacy Policy located at [www.salary.com/legal/pp/](http://www.salary.com/legal/pp/) (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 (or its licensors as the case may be). 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**

### **4.1 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 or other government identification 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, or any Special Categories of Data under applicable EEA data protection regulations (combined, "**Prohibited Data**"). Customer Data and Confidential Information expressly exclude Prohibited Data. Salary disclaims all liability arising from or related to the Prohibited Data.

### **4.2 Prohibited Use**

Customer agrees that it will not (i) commercially exploit, including but not limited to selling, reselling, renting, leasing, lending, providing, commercially exploiting or making available the Service or the Salary Data to a third party or use Salary Data in a service provider capacity or make them available to third parties; (ii) store any Salary Data in an archive, library, or any other storage mechanism; (iii) 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) aggregate insubstantial parts of Salary Data for machine learning or artificial intelligence purposes; (vii) 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 (viii) access the Service or the Salary Data for purposes of sharing with a competitor of Salary or to build a competitive service or product, or copy any feature, function or graphic for competitive purposes.

You may not copy, cut and paste, email, broadcast, adapt, edit, re-utilize, reproduce, disseminate, reverse engineer, sell, extract, paraphrase, or create any derivative works based on the Salary Data for any reason whatsoever including, but not limited to other analytics or artificial intelligence environments. You also agree not to provide access to Salary Data to anyone else other than your fellow employees who have an explicit need to know or use such Salary Data. If You become aware of scraping or any other automated collection of data found on the website in violation of these terms You must immediately report any and all such violations via email to [privacy@salary.com](mailto:privacy@salary.com). In the event that such a report is found to be materially accurate, the reporting individual shall be entitled to 30% of any settlement reached in such a case.

Salary monitors exports and downloads from the Sites and will not hesitate to take aggressive legal and/or other action including blocking all IP addresses, without prior notification, against those individuals and/or IP addresses used to take such illegal action, in the event that any inappropriate or unusual download activity is detected. While non-systematic downloading of insubstantial parts of Salary Data are acceptable, bulk and/or systematic downloads including, but not limited to downloading of the entire Salary Data database and/or an aggregated data set for commercial machine learning purposes, are not allowed. All data found on the site including, but not limited to Salary Data and job descriptions are the intellectual property of Salary. While certain forms of some data found on the site may be found in the public domain, any misuse of any data found on the site in violation of this Agreement is subject to damages including, but not limited to, \$2,000 per each copyrighted data point (which includes Salary Data including, but not limited to job titles, pay ranges, job descriptions and geographical information excluding Survey Data) used in violation of applicable copyright law as well as attorney fees and costs and in addition to any and all other penalties or fines available under copyright or other applicable law.

## **5. PAYMENT**

### **5.1 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.

## **5.2 Additional Fees**

Customer represents and warrants that its number of full-time employees ("FTEs") is less than or equal to FTE Limit indicated in the applicable order. Customer agrees that it will promptly notify Salary if its actual number of FTEs increases above the FTE Limit indicated in the applicable order and that Salary may monitor its use of the Service in order to evaluate Customer's number of FTEs. Upon request, Customer must provide a report of its current FTE count. In the event that Customer's number of FTEs exceeds the FTE Limit indicated in the applicable order, Salary will increase Customer's FTE Limit to the next appropriate FTE Limit tier and charge Customer a corresponding fee for such increased FTE Limit and Customer agrees to pay such fee. Customer cannot downgrade or decrease the FTE Limit associated with its subscription to the Service at any time during a Subscription Term.

## **5.3 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 as determined by a neutral arbitrator in accordance with the terms of Section 13.3.

# **6. TERM AND TERMINATION**

## **6.1 Term**

The term of the Agreement will commence on the Subscription Start Date and expire on the Subscription End Date as specified in the applicable and any and all website purchases or this Agreement, order (such period, the "**Subscription Term**") and cannot be cancelled or otherwise terminated prior to the conclusion of the Subscription Term.

## **6.2 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. During any renewal term the renewal price will be an increase by up to 7% above the applicable pricing in the prior term unless Salary provides Customer notice of different pricing at least 60 days prior to the applicable renewal term. Customer must send any Notice of Non-Renewal to Salary at [billing@salary.com](mailto:billing@salary.com); notice of Customer's intent to not renew the Service sent otherwise shall be invalid and have no effect. In the event that a Customer's Subscription Term ends,

but is in the process of renewing its agreement, unless the agreement is terminated at Salary's sole discretion, such a Customer contract shall be automatically extended on a month to month basis for continued access until such renewal agreement is completed and executed by both parties.

### **6.3 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.

### **6.4 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.

### **6.5 Suspension for Violations**

Salary may 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 or is in breach of the Agreement. Salary will attempt to contact Customer prior to suspension under this paragraph.

## **7. MUTUAL CONFIDENTIALITY**

### **7.1 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, its user interface design and layout, pricing information about the Service, and all Salary Data. Customer's Confidential Information includes without limitation Customer Data. Confidential Information does not include Anonymous Data or Survey Data (as defined below).

### **7.2 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 of a similar nature (but in no event less than reasonable care). Recipient agrees not to disclose or use any Confidential Information of the Discloser for any purpose except as permitted by the Agreement. The Recipient must make commercially reasonable efforts to limit access to Confidential Information of Discloser to those of its employees and third parties who need such access in order to deliver the Service and who are bound by confidentiality obligations no less restrictive than the confidentiality terms of this Agreement.

### **7.3 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 or becomes known to the

Recipient without, to Recipient's reasonable knowledge, breach of any obligation owed to the Discloser, or (iii) 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, to the extent not prohibited by law, provide Discloser with reasonable advance notice in order to allow Discloser an opportunity to seek a protective order.

## 8. NOTICE

Except as otherwise specified in the Agreement, any notice required to be sent under the Agreement must be sent as specified below.

### Notice to Salary

Salary.com, LLC

Attn: Legal Department

610 Lincoln St. North, Suite # 200

Waltham, MA 02451

With a copy to [billing@salary.com](mailto:billing@salary.com)

### Notice to Customer

Customer's address as provided in Salary's account information for Customer. Customer agrees that it is Customer's responsibility keep its contact and billing information with Salary up to date. Salary may give general notice via Salary's website or through the Service and will be deemed received upon posting on Salary's website or through the Service. Salary may also provide email notice to the email address in Salary's account information for Customer and will be deemed received upon being sent by Salary.

## 9. DISCLAIMER

***TO THE MAXIMUM EXTENT PERMITTED BY LAW, SALARY DISCLAIMS ALL WARRANTIES, EXPRESS AND IMPLIED, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE AND FITNESS FOR A PARTICULAR PURPOSE, ACCURACY, AND NON-INFRINGEMENT. WHILE SALARY TAKES REASONABLE PHYSICAL, TECHNICAL AND ADMINISTRATIVE MEASURES TO SECURE THE SERVICE, SALARY DOES NOT GUARANTEE THAT THE SERVICE CANNOT BE COMPROMISED NOR THAT IT IS FREE OF VIRUSES OR MALICIOUS CODE. CUSTOMER UNDERSTANDS THAT THE SERVICE AND SALARY DATA MAY NOT BE ERROR FREE, AND USE OF THE SERVICE MAY BE INTERRUPTED. THOUGH SALARY TAKES REASONABLE STATISTICAL AND OTHER REASONABLE MEASURES TO ENSURE THE DATA IS ACCURATE AND REPRESENTATIVE, IT CANNOT AND DOES NOT GUARANTY THAT THE SALARY DATA IS ACCURATE OR REPRESENTATIVE. THE SERVICE AND SALARY DATA IS PROVIDED "AS IS".***

## 10. PRODUCT SPECIFIC TERMS

Salary offers a variety of products and services some of which require additional terms specific to the relevant product or service. This clause sets forth additional terms that apply to Customer's use of the specified products, (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 Agreement, the applicable clause below will control.

### 10.1 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. If Salary is determined to have any liability arising from or related to any Free Services, such liability (whether in contract, tort or otherwise) will not exceed one hundred dollars (\$100).

## **10.2 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. If Salary is determined to have any liability arising from or related to the Alpha/Beta Services, such liability (whether in contract, tort or otherwise) will not exceed one hundred dollars (\$100).

## **10.3 Surveys**

These clauses will apply to Your use of Salary's participant, survey-based products and services. If you purchase access to data at the discounted "participant" rates, you agree to and must provide Salary with acceptable submission of a file containing all of participant's employees, jobs, pay and locations within sixty (60) days of contract execution / renewal. Failing to provide Salary with acceptable submission of data within 60 days will result in You being charged an incremental upgrade fee ("Fee") equal to the difference between the current listed non-participant price and participant price annual price. The Fee is then divided by the remaining months of the initial twelve (12) month contract period and invoiced monthly until acceptable participation submission files are provided, or the full contract term has expired, whichever occurs first. Should a state of non-participation exist at the end of the initial twelve (12) month contract period, then the customer will be converted to a non-participant and billed annually the non-participant price for each of the remaining contract annual periods. In addition, If you are a customer purchasing a survey on behalf of a consultant, you must select and pay the consulting price. If You do not, You will be liable and charged for the difference between the non-consultant price and the consulting price.

You hereby grant Salary a perpetual, irrevocable, royalty free license to reproduce, modify, distribute, create derivative works and otherwise use the participation data in anonymized form for Salary internal and external business purposes. You represent and warrant that it is authorized to provide participation data, such data is true and accurate, and uploading such data does not violate any law or regulation. You agree to indemnify, defend, and hold Salary harmless any claim, suit, or action based upon or arises out of an allegation to the contrary.

You agree that Salary may use Your company name and logo in connection with Salary's survey participant lists and to build safe harbor compliant, aggregated, peer group data cuts. You may not disseminate, sell, extractor paraphrase, or use any Survey Data to create any derivative works.

#### **10.4 Consulting Services**

This clause will apply to any professional consulting services that You purchase from and/or which Salary may provide. Such services include, but are not limited to, implementation consulting services, training consulting services, and/or other consulting services (the "Consulting Services"). Unless otherwise specified, all Consulting Services will be delivered remotely and in English. One-time or recurring fees for any Consulting Services will be as specified in the applicable order. For Consulting Services performed on-site, You agree to will reimburse Salary for its reasonable costs for all expenses incurred in connection with the Consulting Services including, but not limited to, travel, room, and board expenses. Any invoices or other requests for reimbursements will be due and payable in accordance with the payment terms specified on the applicable order; if no payment terms are specified on the order, all fees are due upon receipt of an invoice. Unless otherwise specified in the applicable order, the parties agree that all materials, content, data or information is developed, produced, or otherwise created in the course of delivery of the Consulting Services, the parties agree that such materials, content, data, and information shall be Salary's sole and exclusive property and, except for the limited right to use such materials, content, data, and information in conjunction with the Consulting Services, You gain no rights in or to such materials, content, data, or information. Unless otherwise specified in the applicable order, all Consulting Services will expire ninety (90) days after purchase (the "Expiration Period"). Salary may extend the Expiration Period at its sole discretion. In order to realize the value of the Consulting Services, Your participation and effort are necessary and You acknowledge that your lack of participation shall not entitle Customer to an extension of the Expiration Period or a refund of any sort. All Consulting Services are non-cancellable and non-refundable.

#### **10.5 Certain Website Services**

This clause will only apply to the purchase of a subscription to Salary's Salary Wizard Pro ("SWP"), Salary's Job Valuation Reports, Personal Salary Reports products and syndicated e-commerce versions of those products. Such products shall be considered Services for purposes of this Agreement. All subscriptions to any of these products shall be for an initial subscription term of three (3) months. As regards SWP, upon expiration of the initial subscription term (and any subsequent subscription terms), Your subscription to SWP shall automatically renew for successive one (1) month Subscription Terms unless either (i) Customer disables automatic renewal from within Your online account for SWP at least thirty (30) days in advance or (ii) Salary provides You with at least thirty (30) days' notice that Your SWP subscription will not be renewed. Notwithstanding anything to the contrary herein, Salary's total liability arising out of or related to these products (whether in contract, tort or otherwise) will not exceed the amount paid by You within the 12-month period prior to the event that gave rise to the liability.

#### **10.6 Big Data, AI, Machine Learning and Analytics Vendors**

If You generally have operated in the past as a vendor or currently have product and services offerings in the Big Data, AI, Machine Learning or Analytics areas, You must have

in place a non-disclosure agreement with Salary.com. A copy of the NDA can be found and downloaded here. Furthermore, you may not copy, cut and paste, email, broadcast, adapt, edit, re-utilize, reproduce, disseminate, reverse engineer, sell, extract, paraphrase, or create any derivative works and/or derive compensation methodologies based on the Salary Data for any reason whatsoever including, but not limited to use with or in other analytics or artificial intelligence environments.

## 11. INDEMNITY

### 11.1 By Salary

Salary will defend, indemnify, and hold Customer (and Customer's officers, directors, employees, agents, and affiliates) harmless, at Salary's expense (including costs, damages, and reasonable attorney's fees), from and against any third party claim against Customer to the extent that such claim alleges that Salary Data violates a valid 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 provided that Salary will not (without Customer's prior written consent) accept any related settlement that requires Customer to make an admission or imposes any obligation, restriction, or liability on Customer that is not covered by this indemnification. **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 Salary's use of Customer Data in accordance with this Agreement, Customer's use of Customer Data or items, data, or materials not provided by Salary. **THIS SECTION CONTAINS CUSTOMER'S EXCLUSIVE REMEDIES AND SALARY'S SOLE LIABILITY FOR INTELLECTUAL PROPERTY INFRINGEMENT CLAIMS.**

### 11.2 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, action, or allegation based upon or arising from, directly or indirectly (i) Customer's Customer Data, (ii) Prohibited Data, (iii) Customer's breach of this Agreement, (iv) Customer's misappropriation of Salary Data. **For clarity, a customer completing an onward transfer of Salary Data to a third party vendor or customer ("Recipient") who then violates the terms of this agreement is jointly and severally financially and legally responsible for the actions of that Recipient. Salary has no obligation to prove that, upon multiple customers providing access to the same datasets to a Recipient, that the access to the data being provided by any one customer is the sole source of intellectual property violations.** **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

### 12.1 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. For clarity, these exclusions of indirect damages do not apply to a customer who provides Salary Data to a third party vendor or customer and such third party vendor or customer then violates the terms of this agreement.***

## **12.2 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.***

## **12.3 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**

### **13.1 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.

### **13.2 Forum**

Any suit or legal proceeding must be exclusively brought in the federal or state courts for Middlesex County, Massachusetts, and Customer submits to this personal jurisdiction and venue.

### **13.3 Injunctive Relief and Costs**

Nothing in the Agreement prevents either party from seeking injunctive relief in a court of competent jurisdiction.

### **13.4 Disputes**

All disputes pertaining to this Agreement shall be subject to mandatory binding arbitration conducted in accordance with the commercial arbitration rules of the American Arbitration Association (the "AAA") to the fullest extent permitted by law. Salary shall have the right to audit Your books and records including electronic books and records during the term of this Agreement and the electronic books and records of any Recipient. Should such an audit uncover, in Salary's "reasonable" judgment Salary Data or other Salary.com intellectual property not handled in accordance with the terms of this Agreement, such a dispute shall

also be subject to mandatory binding arbitration. The AAA will appoint the arbitrator within 30 business days upon receiving notice of a dispute subject to this clause. The arbitrator shall allocate all of the costs of the arbitration including the fees of the arbitrator and the reasonable attorneys' fees of the prevailing party, against the party who did not prevail. Both parties understand that arbitration is final and binding on both parties and that each party in executing this agreement is waiving their rights to seek remedies in court, including the right to jury trial.

## **14. ENTIRE AGREEMENT AND CHANGES**

### **14.1 Entire Agreement**

The Agreement constitutes the entire agreement between the parties and supersedes 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.

### **14.2 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 [www.salary.com/legal/DSA](http://www.salary.com/legal/DSA), or updating the 'Last Updated' date above. The updated or changed DSA will be effective and binding upon Customer immediately.

### **14.3 Objections to Updates**

If Customer provides Salary with written notice to [billing@salary.com](mailto:billing@salary.com) that Customer objects to the updated or otherwise modified terms within thirty (30) days after the terms of this Agreement are updated or otherwise modified, the remainder of Customer's then-current Subscription Term will be governed by the version of the Agreement terms then in effect immediately preceding the objectionable version. For clarity, any renewal or subsequent Subscription Term will be governed by the version of the terms of the Agreement available at the time of such renewal or subsequent Subscription Term.

### **14.4 Archived Terms**

As a convenience, archived prior versions of Salary's legal terms are available [here](#). These archived prior versions are provided for convenience only and are expressly excluded from and do not form a part of this Agreement.

### **14.5 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**

### **15.1 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.

### **15.2 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.

### **15.3 Compliance with Law**

Salary will comply with all applicable U.S. federal, state, and local laws in relation to Salary's delivery of the Service. Customer agrees that Salary may disclose any information necessary to satisfy any applicable legal process, court order, governmental request, law, or regulation. Customer agrees that it will comply with all applicable laws in the course of Customer's use of the Service. Customer further agrees that it will comply with all applicable export laws including, but not limited to, the sanctions programs administered by the Office of Foreign Assets Control (OFAC) of the U.S. Department of the Treasury and Customer agrees that it will not directly or indirectly export, re-export, or transfer the Service to any prohibited countries or individuals or permit use by prohibited countries or individuals.

### **15.4 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.

### **15.5 Enforceability and Force Majeure**

If any term of the Agreement is invalid or unenforceable, the other terms remain in effect. Neither party is liable for events beyond its reasonable control, including, without limitation force majeure events.

### **15.6 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.

### **15.7 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.

### **15.8 No Additional Terms**

Salary rejects additional or conflicting terms of any Customer form-purchasing document, purchase order, or similar document.

### **15.9 Order of Precedence**

If there is an inconsistency between this Agreement and an order, the applicable order will prevail.

#### **15.10 Survival of Terms**

Any terms that by their nature survive termination or expiration of this Agreement or the applicable order, will survive (including without limitation, the Mutual Confidentiality, Product Specific Terms, and the Anonymized Data sections of the Agreement).

#### **15.11 Provision of Services**

Each order, along with this Agreement, 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, 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.

#### **15.12 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.

#### **15.13 Authority**

Each party represents and warrants to that it has all necessary power and authority to enter into this Agreement and that it is binding upon such party and enforceable in accordance with its terms.