Beamery

MASTER SERVICES AGREEMENT

These terms and conditions, together with each Order, Statement of Work or other document agreed between the parties shall constitute the Master Services Agreement (the "**Agreement**"), between the Customer (as identified on the Order Form or Statement of Work as appropriate) and Beamery (as identified on the Order Form or Statement of Work as appropriate), each a "party" and together the "parties".

The Effective Date of this Agreement is the date set forth on the Order Form or a Statement of Work. Any additional Order Forms or Statement of Work executed after the Effective Date shall be incorporated herein by reference and governed by this Agreement. The Customer is responsible for reviewing this Agreement prior to executing an Order Form or Statement of Work. By executing an Order Form or Statement of Work, or accessing or using the Services, the Customer confirms that it accepts the terms and conditions of this Agreement.

AGREED TERMS

1.   DEFINITIONS & INTERPRETATION

1.1   Definitions

Affiliates means, with respect to any party, any third-party that directly or indirectly through one or more intermediaries controls, is controlled by or is under common control with, the party in question. As used herein, the term "control" means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of said party, whether through ownership of voting securities, by contract or otherwise.

Authorized Users means the nominated personnel of Customer or its chosen Affiliates issued with unique live logins and passwords.

Beta Services means a version or feature of the Subscription Service that Supplier has not made generally available for production use.

Charges mean the fees payable by Customer to Supplier agreed between the parties in writing.

Contact means a single candidate, prospect, lead, or other individual (other than an Authorized User) whose contact information and Personal Data is submitted to and/or stored in the Subscription Service.

Customer Data means the data inputted by Customer, Customer's Affiliates or the Authorized Users for the purpose of using the Subscription Service or facilitating Customer's use of the Subscription Service, including Contact information and all other text, graphics, information, documentation, content, notes, images and other materials.

Data Protection Legislation means any legislation relating to personal data together with any regulatory requirements, data storage and export requirements, in force from time to time which apply to a party relating to the use of personal data (including, without limitation, the privacy of electronic communications) and the guidance and codes of practice issued by the relevant data protection or supervisory authority and applicable to a party in its use or provision of the Services.

Documentation means, the applicable Order, Statement of Work, and training materials or any other documentation provided to Customer by Supplier in connection with the Services.

Enrichment Data means customized professional and social data pertaining to Contacts generated from publicly available sources via Sub-Processors that is structured and algorithmically transformed, and made available to Customer as part of the Subscription Service.

Force Majeure means any cause preventing either party from performing any or all of its obligations which arises from or is attributable to acts, events, omissions or accidents beyond the reasonable control of the party so prevented including, without limitation, act of God, war, riot, computer viruses and malware, epidemics, pandemics, compliance with any law or governmental order, rule, regulation or direction, flood or storm, save that strike or lockout of the party's own staff shall not entitle them to claim that to be a force majeure event.

Intellectual Property Rights or IPR means all tangible and intangible rights associated with works of authorship throughout the world, including, but not limited to, copyrights, moral rights, and mask works; trademarks and trade name rights and similar rights; trade secret rights; patents, designs, algorithms, and other intellectual or industrial property rights (of every kind and nature) whether registered, registerable or otherwise arising by operation of law, contract, license, or otherwise; and all registrations, initial applications, renewals, extensions, continuations, divisions, or reissues now or hereafter in force (including any rights in the foregoing).

Order means an order form agreed in writing and entered into between Supplier and Customer or an Affiliate of Customer, as applicable, which references this Agreement.

Professional Services means implementation, integration, and/or training services agreed between the parties as set out in an Order or Statement of Work.

Restricted Information means any Contact Information, of which collection, use and disclosure is regulated by applicable laws or industry standards, including but not limited to: payment card information; financial information; social security

numbers; passport numbers; drivers licence numbers; physical or mental health; medical conditions; political opinions; religious or philosophical beliefs; trade union membership; genetic data; biometric data; sex life; sexual orientation. Restricted Information does not include gender, racial or ethnic data.

Security Policy means the Supplier's security policy (www.beamery.com/policy/security) as amended from time to time.

Services means, collectively (as applicable), the Subscription Service, any Professional Services and any other services agreed between the parties in an Order or Statement of Work.

SLA means the service level agreement and support services description (https://preview.beamery.com/terms-and-conditions) as amended from time to time.

Statement of Work means an order for Professional Services as agreed in writing by both parties.

Sub-Processors means the sub-processors set out at (INSERT LINK) as updated from time to time.

Subscription Service means Supplier's proprietary web-based candidate relationship management and marketing applications, tools and platform, any ancillary products and services, including website hosting, and the support services, that Supplier provides pursuant to this Agreement.

Term means the Initial Term together with all subsequent Renewal Terms.

1.2 Interpretation

    a) A reference to a statute or statutory provision is a reference to it as amended, extended or re-enacted from time to time.

    b) In the event of any conflict or ambiguity between any provision contained in an Order or Statement of Work and in the Agreement, the provision in the Order or Statement of Work shall take precedence.

2. RIGHTS TO USE SERVICES

2.1 In consideration of payment of the Charges and subject to these terms and conditions Supplier shall provide the Services to Customer and any of its Affiliates as set out in each Order.

2.2 Both parties agree that that any Affiliate may agree an Order directly with Supplier or Supplier's Affiliate, where applicable and such Order shall be governed by this Agreement.

2.3 Each party shall be responsible for the acts and omissions and any loss or damage arising therefrom of such of its Affiliates to the extent they would be under this Agreement if they had themselves performed the act or omission.

2.4 Each party confirms that it has the legal power to, and hereby does, enter into this Agreement and any Order in accordance with applicable law and with all due authority.

3. SUPPLY OF SERVICES

3.1 **Subscription Service**. Supplier shall provide access to the Subscription Service, as set out in an Order, promptly following the effective date of the applicable Order and for the duration of the Term.

3.2 Support Services and Service Levels. Supplier shall provide the Subscription Services in accordance with the SLA which forms part of the Agreement.

3.3 Professional Services. Supplier will provide Professional Services as set out in the applicable Order or Statement of Work. Customer will provide Supplier with all information and access permissions reasonably requested by Supplier to provide the Services. In the event that Supplier requests access to Customer's internal systems, Supplier will comply with Customer's reasonable security requirements which have been notified to Supplier in advance. Any request to change the scope of the Professional Services shall be agreed between the parties and set out in an Order or a Statement of Work.

3.4 **Enrichment Data.** Supplier shall provide Customer with the Enrichment Data as part of its provision of the Services. Customer acknowledges that the Supplier receives and uses data from its Sub-Processors in connection with the production of Enrichment Data and any objection by Customer to a new or alternative Sub-Processor may affect the provision of such Enrichment Data, which shall not constitute a breach of the Agreement by Supplier.

3.5 **Third Party Products, Services and Applications.** Customer acknowledges that the Services may include links to or enable or assist it to access the website content of, correspond with, and/or purchase products, applications and services from, third parties via third-party websites and that it does so solely at its own risk. The Services may also contain features designed to interoperate with third party applications, including ATS platforms, sourcing products and analytics applications ("**Third Party Applications**"). Supplier has no ability to ensure the continued availability of any such Third Party Applications, and may cease providing them without entitling Customer to any refund, credit, or other compensation.

3.6 **Beta Services**. Beta Services are occasionally made available to Customers by Supplier. At its option Customer may make use of any such Beta Services offered at no charge during the Term. Beta Services are provided: (i) for evaluation and testing purposes only; (ii) not subject to the SLA; and (v) may be subject to additional terms (as provided by the Supplier). Beta Services' will be available for six (6) months commencing the date Supplier first makes the Beta Services available to Customer or the date Supplier makes a version of the Beta Services generally available to its customers. Supplier may discontinue Beta Services at any time in its sole discretion and without any liability, and Customer acknowledges that Supplier may never make them generally available.

3.7 **Disclaimer**. Supplier shall not be responsible for:

    a) any delay to, or for the provision of, the Services in the event of a Force Majeure event;

    b) any delay that is caused in whole or in part by an act or omission of (i) Customer or its Affiliates, or each of their Authorized Users, or other representatives, (ii) any third party; or

    c) any loss, liability or damage caused by errors or omissions in any information, instructions or scripts provided to Supplier by Customer in connection with the Services, or any actions taken by Supplier at Customer's direction.

4. SUPPLIER WARRANTIES

4.1 Supplier warrants that:

    a) the Services shall substantially perform as specified in the Documentation during the Term;

    b) Support Services and Professional Services will be rendered with due care, skill and ability, and in accordance with recognized standards of industry practice;

    c) it shall comply with the measures and standards set out in the Schedule 1 (Data Processing) and the Security Policy; and

    d) it shall comply with all applicable laws.

4.2 **Non-Conformance.**

    a) The performance warranty at Clause 4.1 shall not apply to the extent that any non-conformance of the Services arises due to the use by or on behalf of Customer contrary to this Agreement, Documentation, Supplier's express instructions, or any modification or alteration of the Services by any party other than Supplier.

    b) If the Services do not conform to the warranty at Clause 4.1, Supplier will, at its expense, attempt to correct any such non-conformance promptly, or provide Customer with an alternative means of accomplishing the desired performance. If Supplier cannot correct or substitute any non-conformance, Supplier may terminate the Agreement or the applicable Statement of Work and issue a pro-rata refund to the Customer of any Charges paid in advance for work not completed under a Statement of Work or for the remainder of the Term in respect of the Subscription Services. Such correction, substitution, or refund constitutes Customer's sole and exclusive remedy in connection with any non-conformance with Clause 4.1.

4.3 **WARRANTY DISCLAIMER**. EXCEPT AS SET FORTH UNDER THIS CLAUSE 4 OR AS OTHERWISE SPECIFIED IN THIS AGREEMENT, SUPPLIER MAKES NO OTHER WARRANTY WITH RESPECT TO THE SERVICES PROVIDED HEREUNDER, AND DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE INCLUDING CUSTOMERS BUSINESS REQUIREMENTS. ANY BETA SERVICES ARE PROVIDED "AS IS" AND EXCLUSIVE OF ANY WARRANTY WHATSOEVER. SUPPLIER DOES NOT WARRANT THAT THE SERVICES ARE ERROR-FREE, UNINTERRUPTED OR CONTINUOUS OR THAT IT IS COMPATIBLE WITH CUSTOMER'S SYSTEMS (OTHER THAN AS SPECIFIED IN THE DOCUMENTATION) SUPPLIER SHALL HAVE NO LIABILITY FOR ANY LOSS, OR DAMAGE CAUSED BY ERRORS OR OMISSIONS IN ANY INFORMATION, INSTRUCTIONS OR SCRIPTS PROVIDED TO SUPPLIER BY CUSTOMER IN CONNECTION WITH THE SERVICES, OR ANY ACTIONS TAKEN BY SUPPLIER AT CUSTOMER'S DIRECTION. FURTHER, SUPPLIER SHALL HAVE NO LIABILITY FOR ANY DELAYS, DELIVERY FAILURES, LIMITATIONS TO THE SERVICES AND ANY OTHER LOSS OR DAMAGE INCURRED ARISING FROM OR RELATED TO CUSTOMER'S OR ANY AUTHORIZED USER'S NETWORK CONNECTIONS, OR TELECOMMUNICATIONS LINKS, OR ANY INTERNET ISSUES.

5. CUSTOMER OBLIGATIONS

5.1 **Cooperation.** Customer shall reasonably co-operate with Supplier in all matters relating to the Services; and promptly, upon request, provide all information and access permissions to allow Supplier to provide the Services in accordance with this Agreement.

5.2 **Limits**. Customer's use of the Subscription Services shall be limited in accordance with the limits in the applicable Order. Customer shall use the Subscription Services at all times in accordance with the terms of Supplier's Fair Use Policy (https://beamery.com/policy/fup) as updated from time to time.

5.3 **Restricted Information**. Customer shall not use the Subscription Service to collect, manage or process Restricted Information. Further, Supplier does not intend Customer's use of or access to the Subscription Service to create obligations or liability under the US Federal Health Insurance Portability and Accountability Act 1996 ("**HIPAA**"), the US Federal Gramm-Leach-Bliley Act ("**GLBA**") or equivalent international laws or regulations and makes no representations that the Services satisfy the requirements of such laws.

5.4 **Authorized Users**. Customer shall notify Supplier promptly if it suspects or becomes aware that any Authorized User's login details have been or are being shared, compromised or subject to unauthorised disclosure. If it is established that the Authorized Users have shared login details with other personnel or is otherwise over its Authorized user limits, then without prejudice to Supplier's other rights, Customer shall pay to Supplier an amount equal to the Charges that would have been payable for the additional Authorized Users for the then current contract year (in its entirety).

5.5 **Data Protection.** Customer warrants that it shall comply with all applicable Data Protection Legislation, all local data storage requirements, and that it has all necessary appropriate consents and notices in place (or other lawful basis) to enable

lawful transfer of the Personal Data to Supplier for the duration and purposes of the Agreement so that Supplier may lawfully use, process and transfer the Personal Data in accordance with this Agreement on Customer's behalf. Customer will defend and indemnify Supplier and its Affiliates (and their respective employees, directors and representatives) from all claims or demands by a third party, including all damages, liabilities, costs and expenses, including reasonable attorneys' fees, and fines imposed by legal or regulatory bodies, to the extent resulting from, alleged to have resulted from or in connection with any violation by Customer or its Affiliates of any applicable Data Protection Legislation.

6. UNAUTHORIZED USE

6.1 **Prohibited and Unauthorized Use.** Customer agrees that it will not:

(a) use or launch any automated system that sends more request messages to Supplier's servers in a given period of time than a human can reasonably produce in the same period by using a conventional browser, or at an API rate above 20 requests per second;

(b) attempt to gain unauthorized access to the Subscription Service;

(c) use the Services in a way that threaten the security, integrity, or availability of the Subscription Services;

(d) use the Supplier email send service to send unsolicited emails or in a way that results in excessive bounce-backs, SPAM notices or requests for removal from a mailing list by recipients;

(e) use the Subscription Service to email purchased lists;

(f) directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover or otherwise disclose to any third party the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Services or any software, Documentation, content or data related to the Services;

(g) make the Subscription Services, Documentation, content or data available for the benefit of any third party (except to its Affiliates with permitted access in accordance with this Agreement), or sell, resell, license, sublicense, distribute, rent or lease any Services, Documentation, content or data to any third party for any purpose, commercial or otherwise;

(h) use the Subscription Service with content or in a manner that uploads files that contain viruses, corrupted files, or any other similar software or programs that may damage the operation of another person's computer.

6.2 **Suspension for Unauthorized Use.** Supplier may suspend, in its reasonable discretion, any user's access to the Services, for use of the Service in a way that violates applicable law or the terms of Clause 6.1. Supplier will notify Customer of such suspension as soon as practicably possible. Any suspension shall be as limited in scope and duration as reasonably possible.

7. CHARGES & PAYMENT

7.1 **Annual Charges.** The Charges for the Services will remain fixed for the initial term, as set out in the Order, ("**Initial Term**") and shall be set out in the applicable Order. The Charges for any additional Services will be set out in a separate Order. Unless otherwise stated, all Charges paid or payable are non-refundable.

7.2 **Expenses**. If applicable, the parties agree that Supplier's travel-related costs and expenses incurred in connection with the Services will be reimbursed by Customer in accordance with Customer's standard travel policy provided to Supplier upon request.

7.3 **Invoicing**. In respect of the Subscription Service, Supplier will invoice Customer on or promptly after the effective date of the applicable Order, as applicable, and on or around each anniversary thereof. In respect of any other Charges payable, invoices shall be issued in accordance with the terms of the applicable Order. All issued invoices shall be paid (without deduction or set off) within thirty (30) days from the "Invoice Date" set out in Supplier's invoice. Supplier does not accept checks for payment. Customer shall provide Supplier with all documentation and information required to correctly submit an invoice to Customer through Customer's electronic spend management and invoicing system within five days from the Order Form Effective Date to accounts@beamery.com. For avoidance of doubt, the payment terms start from the "Invoice Date" set out in Supplier's invoice.

7.4 **Late Payments.** If Supplier has not received payment by the due date, it shall promptly notify Customer of such outstanding payment ("**Late Payment Notice**") and, without prejudice to any other rights and remedies of Supplier, and if payment remains outstanding ten (10) days from the date of the Late Payment Notice Supplier may:

(a) without liability to Customer, disable Customer's password, account and access to the Subscription Service and shall be under no obligation to provide any or all of the Services while the invoice(s) concerned remain unpaid; and

(b) charge Customer interest at the rate of 1% per month or lesser if such amount is required by applicable law on any overdue sums from the due date until the date of receipt of payment by Supplier (inclusive).

7.5 **Taxes.** All Charges are <u>exclusive</u> of any taxes, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction (collectively, "**Taxes**"). Customer agrees to pay any Taxes applicable to the Services purchased by it during the Term. Customer shall have no liability for any Taxes based upon Supplier's (or its Affiliates') gross revenues or net income.

7.6 **Withholding Tax.** Should Customer be required by any regulation to make any deduction on account of tax including but not limited to withholding tax or otherwise on any sum payable under the Agreement the Charges payable shall be increased by the amount of such tax to ensure that the Supplier receives a sum equal to the amount to be paid under the applicable Order.

8. TERM & TERMINATION

8.1 **Term.** This Agreement shall commence on the Effective Date and continue until expiry or termination as set out below.

8.2 **Renewal Terms.** After expiry of the Initial Term, the Agreement shall automatically renew for successive twelve (12) month periods (each a **"Renewal Term"**) unless:

    (a) either party provides notice of non-renewal to the other party no less than sixty (60) days before the end of the current Initial Term or Renewal Term (as applicable); or

    (b) it is otherwise terminated in accordance with the provisions of this Clause 8.

8.3 **Renewal Charges**. Supplier may increase the Charges at the start of each Renewal Term, provided such increase shall not exceed 8%.

8.4 **Termination for Cause.** Without affecting another right or remedy available to it, the relevant party may terminate this Agreement or, the applicable Order, by giving written notice of such termination to the other party:

    (a) in the case of Supplier, if Customer fails to pay any invoice in accordance with this Agreement and remains in default for thirty (30) days after being notified in writing to make such payment;

    (b) if the other party commits a material breach of any term of this Agreement and (if such breach is remediable) fails to remedy that breach within a period of thirty (30) days after being notified in writing to do so; or

    (c) immediately upon the occurrence of either party having a receiver, administrative receiver or an administrator appointed, passing a resolution for winding up or a court of competent jurisdiction making an order to that effect, becoming subject to an administration order, entering into a voluntary arrangement with its creditors or anything equivalent to the foregoing occurring under national or local law, except where for the purposes of a solvent and bona fide amalgamation or reorganisation.

8.5 **Effect of Termination.** Upon termination or expiration of the Term:

    (a) all rights granted hereunder to use the Services shall cease immediately and/or terminate automatically; and

    (b) Customer shall promptly pay any Charges, taxes or other amounts due or outstanding.

8.6 **Retrieval & Deletion of Customer Data.** Customer may export copies of Customer Data in .csv format at any time during the Term. If Customer does not export such copies prior to termination, and written notice has been received no later than ten (10) days following the effective date of termination of this Agreement, Supplier will, at its discretion, either (a) provide Customer with temporary access to the Subscription Service for a period of at most (30) days post termination to retrieve, or (b) Supplier shall provide Customer with copies of Customer's Contacts in .csv format. Unless otherwise agreed with Customer or legally prohibited, Supplier will, delete all Customer Data in its production environment thirty (30) days after termination or expiration of this Agreement.

9. PROPRIETARY RIGHTS

9.1 **Supplier's Proprietary Rights**. This is an Agreement for access to and use of the Subscription Service as set out herein. Supplier and its licensors remain the sole owner of all Intellectual Property Rights therein and other right, title, and interest in:

    (a) the Documentation, Supplier's trademarks and service marks, the Services and related software. Except as expressly stated herein, this Agreement does not grant Customer any rights to, under or in, any patents, copyright, database right, trade secrets, trade names, trademarks (whether registered or unregistered), or any other rights or licences in respect of the Services; and

    (b) any aggregated, anonymised and statistical data created, generated and/or derived from the Authorized Users' use of the Subscription Service.

9.2 **Customer's Proprietary Rights.** Customer remains the sole owner of all Intellectual Property Rights in Customer Data. Customer warrants that Supplier's use of Customer Data in the provision of the Services or otherwise in connection with this Agreement shall not cause Supplier to infringe any applicable law or the rights, including any Intellectual Property Rights, of any third party.

10. CONFIDENTIALITY

10.1 **Confidentiality Undertaking**. Subject to the terms of this Clause, each party shall, during the Term of this Agreement, keep confidential, any know-how, trade or business secrets, together with any commercial, financial, business, data, technical or other confidential information of whatever nature relating to the business of that party or its Affiliates, Sub-Processors involved in the provision of the Services (whether written, oral or in electronic or other form) which is clearly designated by a party as being confidential (whether or not it is marked as confidential) or which can reasonably be expected to be recognised as confidential, that the other party obtains, receives or has access to as a result of this Agreement (or any discussions held or information provided by one party to the other prior to the execution of this Agreement), including Customer Data, the Documentation, the terms and conditions of this Agreement ("**Confidential Information**"). Each party shall not use Confidential Information for its own purposes (other than implementation and performance of this Agreement or provision of the Services) nor without the prior written consent of the other, disclose to any third party (except its Affiliates, Sub-Processors and professional advisors or as may be required by any law or any legal or regulatory

authority) any and all Confidential Information which may become known to such party from the other party in connection with this Agreement. Each party shall use its reasonable endeavours to prevent the unauthorised disclosure of any such information. Notwithstanding the foregoing, Customer permits Supplier to disclose (verbally or in writing), under obligations of confidentiality no less onerous than those set out herein, that Customer is a customer of Supplier to Supplier's Affiliates' clients, partners, and investors, and potential clients, partners, or investors of Supplier.

10.2 **Exceptions**. Confidential Information shall not be deemed to include any information which:

(a) is or becomes publicly known other than through any act or omission of the receiving party;

(b) was in the other party's lawful possession before the disclosure;

(c) is lawfully disclosed to the receiving party by a third party without restriction on disclosure; and

(d) was or is independently developed by the receiving party without reference to the Confidential Information of the other party.

10.3 <u>Required Disclosure</u>. If a receiving party is required to disclose Confidential Information of the other party under applicable law, court order or other governmental authority lawfully demanding the Confidential Information, the receiving party shall: (i) to the extent legally permissible, give to the disclosing party prompt written notice of the request and a reasonable opportunity to object to the disclosure and to seek a protective order or other appropriate remedy; (ii) use reasonable efforts to limit disclosure; (iii) disclose only the Confidential Information specifically required and only to the extent compelled to do so; and (iv) continue to maintain confidentiality after the required disclosure.

11. DATA & SECURITY

11.1 **Data Protection**. Both parties shall comply with their obligations under Data Protection Legislation and in particular those set out in the Data Processing & Security Addendum attached at Schedule 1 to this Agreement.

11.2 **Security**. Supplier will maintain appropriate administrative, physical, and technical safeguards for protection of the security, confidentiality and integrity of Customer Data, as further described at the Beamery Security Policy. Those safeguards will include, but will not be limited to, measures designed to protect against the unauthorized access to or disclosure of Customer Data.

11.3 **Data Use for Development**. Supplier and its Affiliates may collect data derived from the Customer's use of the Subscription Services for development, artificial intelligence learning, benchmarking, and marketing, and for creating analyses. All such data is collected in an aggregated or anonymized form that does not permit direct association with Customer, any specific Authorized User, or other individual or third party.

12. MARKETING

12.1 **Promotional Licence**. For the Term of this Agreement, Customer grants to Supplier a non-exclusive license to use Customer's company name, logo and/or relevant trademarks to market and promote the Services purchased by Customer. Supplier will comply with Customer's marketing and brand guidelines that are communicated to Supplier and use Customer's preferred form of logo.

12.2 **Case Study**. If Customer has received a marketing discount, Customer agrees to participate in press releases, video and text webinars, Supplier's website, blog posts, social media, case studies, event and exhibition marketing collateral, internal communication documents and sales collateral. Supplier shall provide Customer with a draft of the proposed marketing material for Customer's approval which shall not be unreasonably withheld or delayed. Customer acknowledges that it is a condition of any marketing discount that permission under this Clause shall continue for the Term.

13. INDEMNIFICATION

13.1 **Supplier Indemnification**. Supplier shall defend and indemnify Customer and its Affiliates against any losses, costs, expenses (including reasonable legal costs) and damages or, at Supplier's option, settle any third party claim or action brought against Customer to the extent that such claims arise from an allegation that the use of the Services (or any part thereof) infringes the Intellectual Property Rights of a third party ("**Claim**"). This Section shall not apply where the Claim is attributable to: (i) use of the Services (or any part thereof) by or on behalf of Customer other than in accordance with the terms of this Agreement; (ii) any use by or on behalf of Customer of the Services in combination with any item not supplied or recommended by Supplier where such use of the Services directly gives rise to the Claim; or (iii) fraud, fraudulent misrepresentation, negligence or wilful misconduct by or on behalf of Customer.

13.2 **Conditions**. If any third party makes a claim under any indemnities under this Agreement, or notifies an intention to make such claim against the indemnified party, the indemnified party shall:

(a) as soon as reasonably practicable, give written notice of the claim to the indemnifying party, specifying the nature of the claim in reasonable detail;

(b) not make any admission of liability, agreement or compromise in relation to the claim without the prior written consent of the indemnifying party (such consent not to be unreasonably withheld or delayed);

(c) allow the indemnifying party to have full control of the claim and the authority to settle or otherwise dispose of the claim;

(d)   use reasonable endeavours to mitigate any damages, costs, losses, liabilities and expenses resulting from any relevant claim; and

(e)   give the indemnifying party and its professional advisers reasonable assistance and access to relevant documents and records within the power or control of the indemnified party, so as to enable the indemnifying party and its professional advisers to examine the same and to take copies for the purpose of assessing, defending and/or settling the claim.

13.3   **Replacement or Modification**. In the event of a Claim, Supplier may (at its sole discretion and expense):

(a)   modify the Service so that it ceases to be infringing; or

(b)   replace any infringing software or component part of the Service with non-infringing software or a non-infringing component part.

(c)   procure for Customer the right to continue to use the infringing Services (or any component part thereof);

If Supplier does not provide Customer with one of the options above, Supplier may, at its sole discretion, terminate the Order for the affected Services with immediate effect and reimburse Customer any prepaid Fees covering the remainder of the Services Term and terminate Customer's access to the affected Services. This section states Customer's sole and exclusive rights and remedies, in respect of any Claim.

14.   LIMITATION OF LIABILITY

14.1   **NO LIMITATION**. NOTHING IN THIS AGREEMENT EXCLUDES EITHER PARTY'S LIABILITY FOR: (A) DEATH OR PERSONAL INJURY CAUSED BY THEIR GROSS NEGLIGENCE; (B) FOR FRAUD OR FRAUDULENT MISREPRESENTATION; (C) CUSTOMER'S LIABILITY FOR PAYMENT OF CHARGES; (D) EACH PARTY'S LIABILITY FOR VIOLATION OF THE OTHER PARTY'S INTELLECTUAL PROPERTY RIGHTS; OR (E) ANY LIABILITY THAT CANNOT BE LAWFULLY LIMITED OR EXCLUDED.

14.2   **EXCLUDED DAMAGES**. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOSSES OR DAMAGES WHETHER THE SAME ARE INCURRED DIRECTLY OR INDIRECTLY OR ARE IMMEDIATE OR CONSEQUENTIAL, AND WHETHER THE SAME ARISE IN CONTRACT, TORT (INCLUDING NEGLIGENCE) OR OTHERWISE, WHICH FALL WITHIN ANY OF THE FOLLOWING CATEGORIES: (a) SPECIAL DAMAGE EVEN IF THE OTHER PARTY WAS AWARE OF THE CIRCUMSTANCES IN WHICH SUCH SPECIAL DAMAGE COULD ARISE; (b) LOSS OF PROFITS; (c) LOSS OF ANTICIPATED SAVINGS; (d) LOSS OF BUSINESS OPPORTUNITY; (e) LOSS OF GOODWILL AND REPUTATION; (f) COST OF REPLACEMENT OF SUBSTITUTE GOODS; OR (g) LOSS OR CORRUPTION OF DATA.

14.3   **LIMITATION OF LIABILITY**. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EXCEPT AS SET OUT IN CLAUSE 14.1, IF EITHER PARTY IS DETERMINED TO HAVE ANY LIABILITY TO THE OTHER PARTY OR ANY THIRD PARTY UNDER OR IN CONNECTION WITH THIS AGREEMENT, EACH PARTY'S AGGREGATE LIABILITY, TOGETHER WITH THAT OF ITS OFFICERS, DIRECTORS, EMPLOYEES AFFILIATES AND AGENTS, WILL BE LIMITED TO THE TOTAL AMOUNT OF CHARGES PAID OR PAYABLE IN THE TWELVE MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO ANY CLAIM.

15.   INSURANCE

15.1   **Supplier Cover**. During the Term, Supplier shall, at its own cost and expense, obtain and maintain in full force and effect, comprehensive insurance to cover its potential liabilities to Customer and such insurance as is legally required and appropriate to its business. On receipt of Customer's written request (not more than once annually), Supplier will provide an updated insurance confirmation to confirm continuity of cover.

16.   MISCELLANEOUS

16.1   **Notices**. Any notice or other communication required to be given under this Agreement shall be in writing and shall be delivered by email, in the case of Customer to the email account registered with Supplier in the Order and in the case of Supplier to **contract.notices@beamery.com.** If such email is sent on or after 5:00pm on a business day, or on a day that is not a business day, it will be deemed served at 9:30am the next business day.

16.2   **Export Controls.** In the event that the Services are subject to applicable U.S., UK, or EU export control and economic sanctions laws, the parties agree to comply strictly with all such domestic and international export laws and economic sanctions regulations as they apply to the Services or use thereof, and to the extent consistent with the Agreement, to obtain any necessary license or other authorization to export, re-export, or transfer the Services

16.3   **Variation.** No variation or amendment of this Agreement shall be effective unless it is in writing and signed by the parties.

16.4   **No Waiver.** No failure or delay by a party to exercise any right or remedy, in whole or in part, provided under this Agreement or by law shall constitute a waiver of that or any other right or remedy, nor shall it prevent or restrict the further exercise of that or any other right or remedy.

16.5   **Severance**. If any provision or part-provision of this Agreement is or becomes invalid, illegal or unenforceable, it shall be deemed modified to the minimum extent necessary to make it valid, legal and enforceable. If such modification is not possible, the relevant provision or part-provision shall be deemed deleted. Any modification to or deletion of a provision or part-provision under this clause shall not affect the validity and enforceability of the rest of this Agreement.

16.6 **Entire Agreement**. This Agreement contains the whole agreement between the parties relating to the subject matter hereof and supersedes all prior agreements, arrangements and understandings between the parties relating to that subject matter.

16.7 **Third Party Rights**. Nothing in this 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 or under the Contracts (Rights of Third Parties) Act 1999 (to the extent applicable).

16.8 **Relationship of the Parties**. Nothing in this Agreement is intended to, or shall be deemed to, establish any partnership or joint venture between any of the parties, constitute any party the agent of another party, or authorise any party to make or enter into any commitments for or on behalf of any other party.

16.9 **Assignment**. Neither party shall assign any of their rights or obligations under this Agreement without the prior written consent of the other party, which consent shall not unreasonably be withheld. However, consent is not required for an assignment of this Agreement in connection with a change of control, merger, stock transfer, sale or other disposition of substantially all the assets of the assigning party's business.

16.10 **Counterparts**. This Agreement may be executed in any number of counterparts, each of which when executed and delivered (which may be done so by the exchange of PDF attachments to emails) shall constitute a duplicate original, but all the counterparts shall together constitute the one agreement.

16.11 **Force Majeure**. Neither party shall in any circumstances be in breach of this Agreement nor liable for delay in performing, or failure to perform, any of its obligations under this Agreement if such delay or failure results from an event of Force Majeure, and in such circumstances the time for performance shall be extended by a period equivalent to the period during which performance of the obligation has been delayed or failed to be performed. If the Force Majeure event prevents the affected party's performance of its obligations for a continuous period of more than four (4) weeks, the party not affected by the Force Majeure event may terminate this Agreement by giving one (1) week's written notice to the affected party.

16.12 **Survival**. In addition to any provisions that expressly survive, the following provisions shall survive the expiration or termination of this Agreement: Clauses 8 (*Term & Termination*), 9 (*Proprietary Rights*), 10 (*Confidentiality*), 11 (*Data Protection & Security*), 14 (*Limitation of Liability*), 17 (*Miscellaneous*), and 18 (*Governing Law & Jurisdiction*).

17. GOVERNING LAW AND JURISDICTION

17.1 If the Customer is located outside of North America, any dispute or claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of England and Wales. The parties irrevocably agree that the courts of England and Wales shall have exclusive jurisdiction to settle any dispute or claim that arises out of or in connection with this Agreement.

17.2 If the Customer is located within North America, any dispute, claim arising out of or in connection with it shall be governed by and construed in accordance with the laws of the State of Delaware, without regard to or application of its conflicts of law principles. The parties hereto hereby irrevocably and unconditionally consent to and submit to the exclusive jurisdiction of the courts of the State of Delaware and of the United States of America located in such state (the "Delaware Courts") for any litigation arising out of or relating to this Agreement , waive any objection to the laying of venue of any such litigation in the Delaware Courts and agree not to plead or claim in any Delaware Court that such litigation brought therein has been brought in any inconvenient forum.

SCHEDULE 1 - DATA PROCESSING

PART 1 – DATA PROCESSING ADDENDUM

As used herein**, Personal Data, Data Controller, Data Processor, Data Subject** and **process/processing** have the meanings given to them in the Data Protection Legislation.

1. **PERSONAL DATA PROCESSING. THE PARTIES ACKNOWLEDGE THAT:**

1.1 Supplier shall process Personal Data on the Customer's behalf to perform its obligations under this Agreement and, as such, the Customer is the Controller and Supplier is the Processor for the purposes of the Data Protection Legislation.

1.2 Part 2 of this Schedule 1 sets out the scope, nature and purpose of processing to be undertaken by Supplier, the duration of the processing and the types of Personal Data and categories of data subject.

1.3 The Personal Data processed on behalf of the Customer by Supplier pursuant to this Agreement may be transferred or stored outside the EEA or the country where the Customer and the Authorized Users are located as necessarily required in order to carry out Supplier's obligations under this Agreement.

2. **SUPPLIER OBLIGATIONS.**

2.1 Without prejudice to the generality of Section 1.1, Supplier shall, in relation to any Personal Data processed by Supplier in connection with the performance of its obligations under this Agreement:

2.2 Process Personal Data only for the purpose of fulfilling the terms of the Agreement in place between the Data Controller and the Data Processor. In no event shall the Data Processor use any of this Personal Data for its own purposes or for any other purpose other than the specific purpose which the use of such Personal Data has been authorised by the Data Controller.

2.3 Process Personal Data on the documented instructions of the Data Controller, including with regards to any transfer of data to third countries or international organisations unless required to do so by Union or Member State law to which the Data Processor shall inform the Data Controller of that legal requirement before processing, unless that law prohibits such information on important grounds of public interest.

2.4 Ensure that any person acting under the authority of the Data Processor, who has access to Personal Data is subject to a duty of confidentiality and that such individual's process such data in accordance with the Data Processors instructions only.

2.5 At all times, taking into account the nature of the processing, implement technical and organizational measures appropriate to the level of risk that shall provide:

a) The ability to ensure the ongoing confidentiality, integrity, availability, and resilience of processing systems and services,

b) Security against unauthorized or unlawful processing, access, disclosure, copying, modification, storage, reproduction, display or distribution of Personal Data,

c) The ability to restore the availability and access to Personal Data in a timely manner in the event of a physical or technical incident,

d) A process for regularly testing, assessing, and evaluating the effectiveness of technical and organizational measures for ensuring the security of the processing.

2.6 Ensure that the security of Personal Data is backed up by robust policies and procedures and reliable, well-trained staff.

2.7 Ensure that each of its employees, agents, subcontractors or any other persons acting under the authority of the Data Processor are made aware of the Data Processors obligations and duties with regard to the confidentiality, integrity, and availability of the Personal Data and shall require that they enter into binding obligations with the Data Processor in order to maintain the levels of confidentiality, security, and protection.

2.8 Assist the Data Controller by technical and organizational measures for the fulfilment of the Data Controller's obligation to respond to requests for exercising the data subject's rights laid down in Chapter III of the General Data Protection Regulation.

2.9 Assist the Data Controller in ensuring compliance with the Data Controllers obligations pursuant to Articles 32 through 36 of the General Data Protection Regulation in respect of security of processing, notification of Personal Data breaches to the appropriate supervisory authority, communication of Personal Data breaches to the data subject, Data Protection impact assessments and prior consultation with the appropriate supervisory authority where appropriate.

2.10 The Data Processor shall notify the Data Controller without undue delay, after becoming aware of a Personal Data breach. The notification shall at least: (i) describe the nature of the Personal Data breach including where possible, the categories and approximate number of data subjects concerned and the categories and approximate number of Personal Data records concerned; (ii) communicate the name and contact details of the data protection officer or other contact point where more information can be obtained; (iii) describe the likely consequences of the Personal Data breach; (iv) describe the measures taken or proposed to be taken by the controller to address the Personal Data breach, including, where appropriate,

measures to mitigate its possible adverse effects. Where, and in so far as, it is not possible to provide the information at the same time, the information may be provided in phases without undue further delay.

2.11   Make available to the Data Controller all information necessary to demonstrate compliance with Article 28 of the GDPR and the obligations laid down in clause 4 of this agreement and allow for and contribute to audits, including inspections, conducted by the Data Controller or another auditor mandated by the Data Controller.

2.12   The Data Processor shall without undue delay notify the Data Controller if in its opinion, it is asked to do something that infringes the General Data Protection Regulations or any other Union or Member State data protection provisions.

2.13   Maintain a record of all categories of processing activities carried out on behalf on the Data Controller that is compliant with Article 30 of the General Data Protection Regulation.

2.14   Where applicable cooperate with the appropriate supervising authority in the performance of its tasks.

2.15   At the choice of the Data Controller, delete or return all Personal Data to the Data Controller within 30 days after the end of the provision of services relating to the processing and delete existing copies within 90 days of termination of the Agreement unless Union or Member State law requires storage of the Personal Data.

3.   SECURITY MEASURES.

3.1   In providing the Services, Supplier shall:

    a)   comply with the measures and standards set out in the Security Policy and test the effectiveness of such security measures (at least once annually);

    b)   provide to Customer, upon request, copies of applicable certificates to evidence Supplier's compliance with the above; and

    c)   ensure that it has in place appropriate technical and organisational measures to protect against unauthorised or unlawful processing of Personal Data and against accidental loss or destruction of, or damage to, Personal Data, appropriate to the harm that might result from the unauthorised or unlawful processing or accidental loss, destruction or damage and the nature of the data to be protected, having regard to the state of technological development and the cost of implementing any measures (those measures may include, where appropriate, pseudonymising and encrypting Personal Data, ensuring confidentiality, integrity, availability and resilience of its systems and services, ensuring that availability of and access to Personal Data can be restored in a timely manner after an incident, and regularly assessing and evaluating the effectiveness of the technical and organisational measures adopted by it).

4.   SUB-PROCESSORS.

4.1   The Customer consents to Supplier appointing each of the Sub-Processors set out here https://preview.beamery.com/terms-and-conditions as third-party processors of Personal Data under this Agreement and as amended from time to time. Supplier or its Affiliates have entered or (as the case may be) will enter with the third-party processor into a written agreement which Supplier confirms will or does reflect and will continue to reflect the requirements of the Data Protection Legislation, including as may be applicable Processor to Processor Standard Contractual Clauses, and in particular providing sufficient guarantees to implement appropriate technical and organizational measures in such a manner that the processing will meet, at least, the requirements of Articles 32 and 28 of the General Data Protection Regulation.

4.2   Customer may reasonably object to Supplier's use of a new Sub-processor by notifying Supplier promptly in writing within thirty (30) days after receipt of Suppliers notice. In the event Customer objects to a new Sub-processor, Supplier will use reasonable efforts to make available to Customer a change in the Services or recommend a commercially reasonable change to Customer's configuration or use of the Services to avoid Processing of Personal Data by the objected-to new Subprocessor without unreasonably burdening Customer. If Supplier is unable to make available such change within a reasonable period of time, which shall not exceed thirty (30) days, Customer may terminate the applicable Order Form(s) with respect only to those Services which cannot be provided by Supplier without the use of the objected-to new Sub-processor by providing written notice to Supplier.

4.3   As between the Customer and Supplier, Supplier shall remain liable for all acts or omissions of all Sub-Processors appointed by it pursuant to this Agreement to the same extent Supplier would be liable if performing the services of each Sub-processor directly under the terms of this DPA, except as otherwise set forth in the Agreement.

5.   PERSONAL DATA TRANSFERS

5.1   The Data Controller hereby authorises the Data Processor to make the following transfers of the personal data:

    a)   The Data Processor may transfer the Personal Data internally to its own members of staff, offices and facilities.

    b)   The Data Processor may transfer the Personal Data to its Sub-Processors provided that such transfers are for the only purposes of providing the services.

    c)   The Data Processor shall not transfer in any case the Personal Data to a country outside the EEA, the United Kingdom, and the United States.

6. **TRANSFER MECHANISMS FOR DATA TRANSFERS.**

6.1 The Standard Contractual Clauses ("SCCs") set forth here https://preview.beamery.com/terms-and-conditions apply to any transfers of Personal Data under this DPA from the European Union, the European Economic Area and/or their member states, Switzerland and the United Kingdom to countries which do not ensure an adequate level of data protection within the meaning of Data Protection Regulations of the foregoing territories, to the extent such transfers are subject to such Data Protection Regulations.

6.2 The SCCs and the additional terms specified in this Section apply to a customer which is subject to the Data Protection Laws of the European Union, the European Economic Area and/or their member states, Switzerland and/or the United Kingdom and its Authorized Affiliates. For the purpose of the SCCs and this Section, the aforementioned entities shall be deemed "data exporters".

6.3 Pursuant to Clause 5(h) of the SCCs, Customer acknowledges and expressly agree that (a) Beamery Affiliates may be retained as Sub-processors; and (b) Beamery and its Affiliates respectively may engage third-party Sub-processors in connection with the provision of the Services. Beamery shall make available to the Customer the current list of Sub-processors and any updates here https://preview.beamery.com/terms-and-conditions. Pursuant to Clause 5(h) of the SCCs, Customer acknowledges and expressly agree that Beamery may engage new Sub-processors as described in Section 4 of this DPA. The parties agree that the copies of the Sub-processor agreements that must be provided pursuant to Clause 5(j) of the SCCs may have all commercial information, or clauses unrelated to the SCCs, and will be removed beforehand; and, that such copies will be provided by Us, in a manner to be determined in Our discretion, only upon request.

6.4 The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the SCCs shall be carried out in accordance with the following specifications: (i) Upon Your request, and subject to the confidentiality obligations set forth in the Agreement, We shall make available to You or Your independent, third-party auditor information regarding the Our compliance with the obligations set forth in this DPA in the form of the third-party certifications and audits set forth in our Security Center (www.beamery.com/policy/security). You may contact information.security@beamery.com to request an on-site audit of the procedures relevant to the protection of Personal Data. You shall reimburse Us for any time expended for any such on-site audit at the Our then-current Professional Services rates. Before the commencement of any such on-site audit, the parties shall mutually agree upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which You shall be responsible. You shall promptly notify Us with information regarding any non-compliance discovered during the course of an audit. The parties agree that the certification of deletion of Personal Data that is described in Clause 12(1) of the SCCs shall be provided to You only upon Your request.

Beamery	Confidential. www.beamery.com

PART 2 - DATA PROCESSING SCHEDULE

1. **Nature and purposes of processing**

1.1 Supplier is a provider of web-based candidate relationship management and marketing applications, tools, platform and associated Professional Services. These services consist primarily of the provision of Supplier's Subscription Service that enables the Customer to manage its talent acquisition and CRM recruitment efforts, including developing and managing relationships with Contacts (in the Customer's sole discretion). Supplier will also provide a number of associated services to the Customer in connection with the Subscription Service, including Professional Services and other Services.

1.2 Otherwise, the data processing undertaken by Supplier will involve any such processing that is necessary for the purposes set out in the Agreement, any subsequent Addenda, or as otherwise agreed between the parties in writing during the Term.

2. **Categories of data subjects**

2.1 The Personal Data transferred concern the following data subjects:

(a) Customer's or its Affiliates' Authorized Users – being the individuals who use the Subscription Service;

(b) Customer's or its Affiliates' representatives who are involved in the receipt of Services; and

(c) Contacts who are interested in employment with the Customer or its Affiliates or who are approached by the Customer, its Affiliates or their Authorized Users and get in contact via the Subscription Service.

3. **Categories of data**

3.1 The Personal Data transferred concern the following categories of data for the data subjects:

(a) First and last name

(b) Business contact information (company, email, phone, physical business address)

(c) Personal contact information (email, cell phone)

(d) Title

(e) Position

(f) Employer

(g) ID data

(h) Professional life data (including employment history)

(i) Personal life data

(j) Connection data

(k) Localization data

(l) Technical usage and telecommunications data as well as telecommunications metadata (e.g. IP address, browser history, information regarding the used devices, operating system and browser)

(m) Notes and other data logged by users (e.g. feedback on candidates)

(n) Communication and calendar information (e.g. emails sent to candidates)

(o) Information regarding application forms, CVs, credentials or qualification.

3.2 The Personal Data transferred to Supplier for processing is determined and controlled by the Customer in its sole discretion.

4. **Special categories of PERSONAL data (if appropriate)**

4.1 Supplier does not intentionally collect or process any special categories of Personal Data in the provision of Services.

4.2 Under the Agreement, the Customer agrees not to provide special categories of Personal Data (including Restricted Information) to Supplier at any time, *except for racial or ethnic origin*.

5. **Duration of processing**

5.1 The Personal Data will be processed for the Term of the Agreement and for 30 days from termination in the production environment and for 90 days thereafter in the back-up environments, or as otherwise required by law or agreed between the parties.