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## Caliber Subscription Service Agreement

**PLEASE READ THIS SUBSCRIPTION AGREEMENT ("AGREEMENT") CAREFULLY BEFORE USING THE CALIBER SOFTWARE. BY SIGNING A SALES ORDER FORM INCORPORATING THIS AGREEMENT YOU ARE ACCEPTING THE TERMS AND CONDITIONS OF THIS AGREEMENT AND AGREEING TO BE BOUND BY THE TERMS OF THIS AGREEMENT.**

If you are signing up for the Service (as defined in Section 2.1 below) on behalf of a company, you represent that you are duly authorized to represent the company and accept the terms and conditions of the Agreement on behalf of the company. By your acceptance, a binding contract is then formed between Caliber Limited ("Caliber") and the company in accordance with the terms and conditions of this Agreement. You personally agree not to commit or encourage any violation of the Agreement between Caliber and the company.

If you are entering into this Agreement on behalf of your company, the terms "You" and "Your" in this Agreement means your company and all of its employees.

If you are entering into this Agreement on your own behalf, or if you are not authorized to represent the company on whose behalf you purport to sign up, you agree that you are personally bound by this Agreement. In such cases, the terms "You" and "Your" in this Agreement mean you.

IF THE COMPANY YOU REPRESENT OR YOU DO NOT AGREE TO THE TERMS OF THIS AGREEMENT, DO NOT EXECUTE A SALES ORDER FORM INCORPORATING THIS AGREEMENT, AND DO NOT USE THE SERVICE.

### 1. General

1.1. Modification. Caliber reserves the right to modify the terms and conditions of this Agreement, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute Your consent to such changes.

### 2. Right to Access Proprietary Software

**2.1. Right to Access.** Subject to the terms of this Agreement and any and all mutually executed ordering documents incorporating this Agreement and executed by You and Caliber (each, an "Order Form"), Caliber grants You a limited, non-transferable, non-exclusive right to access and use Caliber's proprietary, Caliber-hosted software products and certain third-party software licensed to Caliber ("Software") via a web browser and related documentation as described in an Order Form for the term set forth in an Order Form. The Software is made available to You as a hosted service ("Service"). Caliber will host and retain physical control over the Software and make such computer programs and code available only through the Internet for access, use and operation through a Web-browser (e.g., Internet Explorer). No provision under this Agreement shall obligate Caliber to deliver or otherwise make available any copies of computer programs or code from the Software, whether in object code or source code form.

**2.2. License Restrictions.** Except as may be expressly provided elsewhere in this Agreement or except to the extent applicable law precludes such activities from being prohibited

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by contract, You shall not, directly or indirectly, reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Software; modify, translate, or create derivative works based on the Software or authorize any third party to do so; rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Software; use the Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; obfuscate, remove or alter any of the logos, trademarks, internet links, patent or copyright notices, confidentiality or proprietary legends or other notices or markings that are on or in the Software or the related documentation; or send or store material containing software viruses, worms, Trojan horses or other harmful computer code, files, scripts, agents or programs. Because the Caliber Software is proprietary, You agree not to publish or disclose to third parties any evaluation of the Software without Caliber's prior written consent.

**2.3. Ownership.** You retain all right, title and interest to any and all information provided, inputted or uploaded to the Software by You, a candidate(s), or by Caliber on Your behalf. Caliber has no right, title or interest in any personally identifiable information related to Your candidates or employees. Caliber shall retain all right, title and interest in and to the Software, Services, the documentation for the Software, and all modifications and/or enhancements to the Software, regardless of the source of inspiration for any such enhancement or modification and regardless of whether You have provided input regarding such modifications and/or enhancements. You acknowledge that Caliber will retain all right, title and interest to transactional and performance data related to use of the Software which Caliber may collect, use and disclose for its business purposes (including software use optimization and product marketing) provided that such use does not reveal Your identity, any of Your Confidential Information or any personally identifiable candidate information that belongs to You. Custom developed documents, designs, computer programs, computer documentation and other tangible materials authored or prepared for You by Caliber ("Deliverables") as required by a statement of work are hereby licensed, solely for Your internal use, for the term of this Agreement. Caliber retains ownership and may reuse any Deliverables, provided that such use does not reveal Your identity or Your Confidential Information.

**2.4. Equipment.** You are responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access the Service, and for paying all third-party access charges (e.g., Text Messaging, ISP, telecommunications) incurred while using the Software. Caliber reserves the right to make changes to its policies, procedures and practices and to make changes to its hosting and technical infrastructure during the term of this Agreement as deemed reasonably necessary by Caliber to provide service to Caliber customers. Such changes will not materially degrade the performance of the Software or materially decrease the functionality of the Software.

## 3. Use Restrictions

**3.1. Prohibited Uses.** You may not use the Service for spamming, chain letters, junk mail or distribution lists to contact any person who has not given specific permission to be included in such list. You agree not to transmit, or permit Your employees to transmit, through the Service any unlawful, harassing, libelous, abusive, threatening, vulgar, obscene or otherwise objectionable material of any kind. You agree to only use the Service for lawful purposes, in compliance with all applicable laws including, without limitations, copyright, trademark, obscenity and defamation laws. Unlawful activities may include (without limit) storing, distributing or transmitting any unlawful material, attempting to compromise the security of any networked account or site, or making direct threats of physical harm. You agree to defend, indemnify and hold Caliber harmless against any claim or action that arises from Your use of the Service in an unlawful manner or in any manner inconsistent with the restrictions and policies stated herein.

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**3.2. Third Party Contractors.** You may make the Service available for use by third-party contractors used by You solely to assist in Your staffing efforts ("Third-Party Contractor"), within the limits of the usage rights and restrictions set forth in this Agreement and any Order Form and subject to the section below titled "Caliber Competitors". You are responsible for the use of the Service by such Third-Party Contractors, including compliance with each term of this Agreement to the same extent as if the Third-Party Contractor were Your employee. You agree that any password provided to a Third-Party Contractor will be disabled immediately upon conclusion of such Third-Party Contractor's work for You.

**3.3. Ethical Hacks.** You shall not and shall not allow anyone working on Your behalf to (i) perform any technical security integrity review, penetration test, load test, denial-of-service simulation or vulnerability scan without Caliber's prior written consent, or (ii) attempt to access the data of another Caliber customer. You shall indemnify and hold Caliber harmless without limitation from any damages, losses, claims, costs, expenses or liabilities arising from downtime, production incidents or other technical problems arising during a time period in which You are in breach of this provision or as a result of Your breach of this provision, including without limitation, damages or credits to Caliber customers arising from downtime and costs, including third party costs, related to the correction of such downtimes, production incidents or other technical problems.

## 4. Support

**4.1. Caliber Support.** Caliber will provide support in accordance with Caliber's then current support policy, which may be acquired from Your Caliber contact. Unless specifically agreed in writing, Caliber has no obligation to provide You with hard-copy documentation, upgrades, enhancements, modifications, or other support.

## 5. Consulting Services

**5.1. Consulting Services.** You may elect to purchase Caliber consulting services associated with the implementation and optimization of the Software ("Consulting Services"). Such Consulting Services shall be set forth in a mutually executed **statement of work** that references and incorporates the terms of this Agreement (each an "SOW"). Fees for Consulting Services will accrue on a time and materials basis and shall be paid in Euro, unless otherwise indicated in the SOW. All fees for Consulting Services shall be invoiced monthly in arrears and paid net 30 days from receipt of invoice.

## 6. Billing and Payment

**6.1. Billing Information.** You agree to provide Caliber with accurate and complete billing and contact information, including Your legal name, company name, street address, e-mail address, and telephone number, and to update this information within 30 days of any change to it. If the contact information You provide is false or fraudulent, Caliber reserves the right to terminate Your access to the Service immediately without liability to You and without any obligation to return Your data.

**6.2. Fees and Taxes.** During the term of this Agreement, You agree to pay Caliber the fees associated with use of the Caliber Service and optional services reflected in an Order Form.

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Except as otherwise provided, fees are non-refundable, and the number of subscriptions purchased cannot be decreased during the relevant subscription term stated on the Order Form. All payments, fees and other charges payable by You to Caliber under this Agreement are exclusive of all applicable local and foreign taxes, levies and assessments. You agree to bear and be responsible for the payment of all such taxes, levies and assessments imposed on You or Caliber arising out of this Agreement, excluding any tax based on Caliber's net income. If You are required by any applicable law to deduct or withhold amounts otherwise payable to Caliber hereunder, You agree to pay the required amount to the relevant governmental authority and pay to Caliber, in addition to the payment to which Caliber is otherwise entitled under this Agreement, such additional amount as is necessary to ensure that the net amount actually received by Caliber free and clear of all taxes equals the full amount Caliber would have received had no such deduction or withholding been required.

**6.3. Fraudulent or Delinquent Payment.** If you pay by fraudulent means, Caliber reserves the right to immediately and permanently terminate Your access to the Service, with no liability to You and no obligation to return Your data, and possibly seek criminal penalties. In the event that Your account is delinquent, Caliber reserves the right to suspend Your access to the Service, with no liability to You, until such amounts are paid in full. For credit card payments, an account will be considered delinquent if Your credit card company refuses for any reason to pay the amount billed to it and that amount remains unpaid thirty (30) days following the billing cycle. You agree that Caliber may impose a charge to restore archived data from delinquent accounts. Unpaid charges (except those charges under reasonable and good faith dispute) are subject to interest of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection.

**6.4. Adjustments.** To dispute an invoice, You must contact Caliber in writing no later than thirty (30) days after the billing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit. You agree to retain complete, clear and accurate records regarding Your use of the Software and agree to submit to a reasonable audit of this information upon reasonable notice by Caliber not more than once per calendar year.

## 7. Publicity

**7.1. Reference Permission.** If You become a subscriber of the Service, you agree that Caliber can disclose the fact that you are a paying customer. During the term of this Agreement, and unless otherwise set forth in an Order Form, You grant Caliber the permission to reference You, along with Your logo, on the customer section of Caliber's public web site until such time as Your use of the Service is discontinued.

## 8. Data Backup, Passwords and Security

**8.1. Data Backup.** Caliber shall use all reasonable efforts to protect Your data behind a secure firewall system, to conduct daily data backups, and to store weekly full-system backup in a separate, fire-safe facility.

**8.2. Passwords.** You will choose or be given all applicable passwords to use in connection with the Service. You are responsible for maintaining the confidentiality of Your passwords and account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by You). Furthermore, You are responsible for any and all activities that occur under Your account (including, if applicable, the accounts of each user

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accessing the Service by means of an account established by You). Each password may be used by one individual named person only. Passwords may not be used concurrently or shared by more than one individual named person.

**8.3. Security.** You shall notify Caliber immediately of any unauthorized use of its account (including, if applicable, the passwords and accounts of each user accessing the Service by means of an account established by You) or any other breach of security. Caliber will not be liable for any loss or damage arising from Your failure to comply with these requirements.

## 9. Confidentiality

**9. Confidential Information.** By reason of the relationship hereunder, each party will have access to certain information and materials concerning the other party's technology business, plans, and customers that are confidential and of substantial value to such party, which value would be impaired if such information were disclosed to third parties ("Confidential Information").

Confidential Information of Caliber shall include, without limitation, information specifically designated as confidential, the features and functions of the Service that are not available to the general public via the public internet (including screen shots of the same), future product plans, any documentation or specifications provided to You, the commercial terms (including pricing) of this Agreement but not the mere existence of this Agreement, any Order Forms, statements of work, schedules, addenda or amendments to this Agreement, performance and security test results (whether conducted by Caliber or You), and any other proprietary, financial or business information supplied to You by Caliber.

Each party agrees that it will not and will ensure that its employees, agents and contractors will not make use of (except in furtherance of the Agreement), disseminate, or in any way disclose any Confidential Information of the other party to any person, firm or business, except for any purpose the disclosing party may hereafter authorize in writing.

Each party agrees that it will treat all Confidential Information with the same degree of care as it accords to its own Confidential Information, and each party represents that it exercises reasonable care to protect its own Confidential Information. Notwithstanding the foregoing, "Confidential Information" shall not include:

- (i) information previously known to the receiving party without reference to Confidential Information,
- (ii) information which is or becomes publicly known through no act or omission of the receiving party,
- (iii) information which has been independently developed by the receiving party without reference to the disclosing party's Confidential Information,
- (iv) information received from a third party under no confidentiality obligation with respect to the Confidential Information,
- (v) information required to be disclosed pursuant to administrative or court order, government or regulatory requirement or arbitration or litigation arising out of this Agreement.

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## 10. Term and Termination

### 10.1. Term

10.1.1. 30-day Trial. If You are participating in Caliber's free 30-Day Trial, this Agreement lasts thirty (30) days from date of Service Authorization. At the conclusion of the free 30-Day Trial, if You choose not to purchase a Caliber subscription, You will immediately cease all use of the Service, including the Caliber Software and any documentation.

10.1.2. Purchased Services. If You are a paying subscriber to the Service, this Agreement shall last for the term set forth in an Order Form, and will renew automatically upon the same terms and conditions, including fees set forth in the Order Form, for the contract period(s) specified in the Order Form unless You or Caliber requests change or termination thirty (30) days prior to the expiration of the then-current Order Form.

**10.2. Termination.** You or Caliber may terminate this Agreement for cause:

10.2.1. Upon 30 days written notice of a material breach to the other party if such breach remains uncured at the expiration of the 30-day period; or

10.2.2. If the other party becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors.

Additionally, any account which is suspended for more than thirty (30) days due to delinquent payments may be terminated, without notice to You and without any obligation on the part of Caliber to maintain, store or return any Your data or data residing in Your instance of the Caliber Service. If You terminate this Agreement for cause pursuant to this Section 10.2, Caliber shall refund to You the prorated amount of the fees prepaid by You that were to apply to the remainder of the unexpired term, as calculated from the termination date through the remainder of the unexpired term. Upon termination of this Agreement for any reason,

(i) the license will terminate, and You, and any user accessing the Service by means of a company account, if applicable, will cease to use or have access to the Caliber Software; and

(ii) except where such termination is due to delinquent or fraudulent payment, or false or fraudulent submission of contact information, You may request a copy of the most recent back-up of Your data. Fees may apply to retrieve data from back-ups. Caliber may, but is not obligated to, delete archived data, but will not do so until thirty (30) days after the termination of this Agreement. Delinquent accounts must be brought to good standing in order to receive data.

**10.3. Survival.** Each provision of this Agreement reasonably intended by its terms to survive termination or expiration of this Agreement shall so survive.

## 11. Warranty

Caliber represents, warrants, and covenants that the Software will perform substantially in accordance with any user instructions, manuals, or technical requirements documents that are generally provided by Caliber in connection with the Software. In the event of a breach of the

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foregoing warrant, Caliber's sole obligations, and Your sole remedy, shall be, at Caliber's option, to use commercially reasonable efforts to correct the Software or replace the Software free-of-charge.

## 12. Disclaimer, Limitation of Liability and Additional Rights

**12.1. Disclaimer.** EXCEPT AS PROVIDED IN SECTION 11, THE SERVICE IS PROVIDED "AS IS" WITHOUT WARRANTY OF ANY KIND, AND CALIBER DISCLAIMS ALL WARRANTIES, EITHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. SOME JURISDICTIONS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES, SO THE ABOVE LIMITATION MAY NOT APPLY TO YOU. CALIBER DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR-FREE. ANY MATERIAL DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE USE OF THE SERVICE IS DONE AT YOUR RISK AND YOU WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO YOUR COMPUTER SYSTEM OR NETWORK, OR LOSS OF DATA THAT RESULTS FROM YOUR USE OF THE SERVICE.

**12.2. Limitation of Liability.** EACH PARTY'S TOTAL LIABILITY WITH RESPECT TO THE SUBJECT MATTER OF THIS AGREEMENT (INCLUDING, BUT NOT LIMITED TO, LIABILITY ARISING OUT OF CONTRACT, TORT, STRICT LIABILITY, BREACH OF WARRANTY OR OTHERWISE), WILL BE LIMITED TO THE FEES PAID BY YOU TO CALIBER FOR THE SERVICE UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT OF INJURY THAT GAVE RISE TO THE LIABILITY. NEITHER PARTY SHALL BE LIABLE IN ANY EVENT FOR LOSS OR INACCURACY OF DATA, LOSS OF PROFITS OR REVENUE, OR INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES (INCLUDING, WITHOUT LIMITATION, THE COST OF ANY SUBSTITUTE PROCUREMENT), WHETHER OR NOT FORESEEABLE AND EVEN IF THE PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. CERTAIN STATES AND/OR JURISDICTIONS DO NOT ALLOW THE LIMITATION OF LIABILITY FOR INCIDENTAL, CONSEQUENTIAL OR CERTAIN OTHER TYPES OF DAMAGES, SO CERTAIN EXCLUSIONS SET FORTH ABOVE MAY NOT APPLY TO YOU.

## 13. Infringement Indemnity

Caliber shall, at its expense, defend or at its option, settle any claim, action or allegation brought against You that the Software or any Deliverable infringes any valid copyright, patent, trade secret, or any other proprietary right of any third party and shall pay any final judgments awarded or settlements entered into; provided that You give prompt written notice to Caliber of any such claim, action or allegation of infringement and give Caliber the authority to proceed as contemplated herein. Caliber will have the exclusive right to defend any such claim, action or allegation and make settlements thereof at its own discretion, and You may not settle or compromise such claim, action or allegation, except with prior written consent of Caliber. You shall assist and provide information as Caliber may reasonably require in settling or opposing such claims.

13.1 In the event any infringement claim, action or allegation is brought or threatened, Caliber may, at its sole option and expense;

- (a) procure for You the right to continue use of the Software or infringing part thereof; or
- (b) modify or amend the Software or infringing part thereof; or

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(c) replace the Software or infringing part thereof with other software having substantially the same or better capabilities; or

(d) terminate this Agreement and refund to You the prorated amount of the fees prepaid by Customer that were to apply to the remainder of the unexpired term, as calculated from the termination date through the remainder of the unexpired term.

The foregoing obligations will not apply to the extent the infringement arises as a result of

(a) any use of the Software in a manner other than as specified in this Agreement;

(b) any use of the Software in combination with other products, equipment, devices, software, systems or data not supplied by Caliber to the extent such claim is directed against such combination; or

(c) any alteration, modification or customization of the Software made by any party other than Caliber or Caliber's authorized representative if such infringement would not have occurred without such modification or combination.

This Section 13 above states the entire liability of Caliber with respect to infringement of any patent, copyright, trade secret or other intellectual property right.

## 14. Conflict of Terms

In the event of a conflict between this Agreement and any Order Form You have executed, the Caliber Order Form shall be deemed to govern with respect to the duration of the Agreement, fees, invoicing and payment terms, and Services purchased. In all other matters, in the event of a conflict between this Agreement and any Order Form, this Agreement will govern.