

Data Protection Addendum

This Data Protection Addendum (“**Addendum**”) is effective May 25, 2018, and forms part of the written agreement regarding software-as-a-service and other products and services provided by TextRecruit, Inc. (the “**Subscription Agreement**”) by and between TextRecruit, Inc. (“**Text Recruit**”) and the subscriber listed below (“**Subscriber**”).

<u>Subscriber’s Formal Registered Entity Name:</u>	
<u>Subscriber’s State/Country of Organization/Formation:</u>	
<u>Subscriber’s Registered Number (if applicable):</u>	
<u>Subscriber’s Registered Address:</u>	

The terms used in this Addendum shall have the meanings set forth in this Addendum. Except as modified below, the terms of the Subscription Agreement shall remain in full force and effect.

In consideration of the mutual obligations set out herein, the parties hereby agree that the terms and conditions set out below shall be added as an Addendum to the Subscription Agreement. Except where the context requires otherwise, references in this Addendum to the Subscription Agreement are to the Subscription Agreement as amended by, and including, this Addendum.

1. Definitions

1.1 In this Addendum, the following terms shall have the meanings set out below and cognate terms shall be construed accordingly:

1.1.1 “**Applicable Laws**” means (a) European Union or Member State laws with respect to any Subscriber Personal Data in respect of which any Subscriber Group Member is subject to EU Data Protection Laws; and (b) any other applicable law with respect to any Subscriber Personal Data in respect of which any Subscriber Group Member is subject to any other Data Protection Laws;

1.1.2 “**Contracted Processor**” means Text Recruit or a Subprocessor;

1.1.3 “**Data Protection Laws**” means the GDPR and laws implementing and supplementing the GDPR, and, to the extent applicable, the data protection or privacy laws and regulations of the European Union, the EEA and their Member States, Switzerland and the United Kingdom, applicable to the Processing of Personal Data under the Subscription Agreement;

1.1.4 “**EEA**” means the European Economic Area;

1.1.5 “**GDPR**” means EU General Data Protection Regulation 2016/679;

1.1.6 “**Text Recruit Affiliate**” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Text Recruit, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise.

1.1.7 “**Restricted Transfer**” means:

1.1.7.1 a transfer of Subscriber Personal Data from any Subscriber Group Member to a Contracted Processor; or

1.1.7.2 an onward transfer of Subscriber Personal Data from a Contracted Processor to a Contracted Processor, or between two establishments of a Contracted Processor,

in each case, where such transfer would be prohibited by Data Protection Laws (or by the terms of data transfer agreements put in place to address the data transfer restrictions of Data Protection Laws) in the absence of the Standard Contractual Clauses to be established under Section 6.4.3 or Section 12. For the avoidance of doubt, where a transfer of Subscriber Personal Data is of a type authorized by Data Protection Laws in the exporting country, for example in the case of transfers from within the European Union to a country (such as Switzerland) or scheme (such as the U.S. Privacy Shield) which is approved by the Commission as ensuring an adequate level of protection or any transfer which falls within a permitted derogation, such transfer shall not be a Restricted Transfer;

1.1.8 “**Services**” means the Subscription and other services and activities to be supplied to or carried out by or on behalf of Text Recruit for Subscriber Group Members pursuant to the Subscription Agreement;

1.1.9 “**Subscriber Affiliate**” means an entity that owns or controls, is owned or controlled by or is or under common control or ownership with Subscriber, where control is defined as the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of an entity, whether through ownership of voting securities, by contract or otherwise;

1.1.10 “**Subscriber Group Member**” means Subscriber or any Subscriber Affiliate;

1.1.11 “**Subscriber Personal Data**” means any Personal Data Processed by a Contracted Processor on behalf of a Subscriber Group Member pursuant to or in connection with the Subscription Agreement;

1.1.12 “**Subprocessor**” means any person (including any third party and any Text Recruit Affiliate, but excluding an employee of Text Recruit or any of its sub-contractors) appointed by or on behalf of Text Recruit or any Text Recruit Affiliate to Process Subscriber Personal Data on behalf of any Subscriber Group Member in connection with the Subscription Agreement; and

1.2 The terms, “**Commission**”, “**Controller**”, “**Data Subject**”, “**Member State**”, “**Personal Data**”, “**Personal Data Breach**”, “**Processing**” and “**Supervisory Authority**” shall have the same meaning as in the GDPR, and their cognate terms shall be construed accordingly.

1.3 The word “**include**” shall be construed to mean include without limitation, and cognate terms shall be construed accordingly.

2. **Authority**

Text Recruit warrants and represents that, before any Text Recruit Affiliate Processes any Subscriber Personal Data on behalf of any Subscriber Group Member, Text Recruit's entry into this Addendum as agent for and on behalf of that Text Recruit Affiliate will have been duly and effectively authorized (or subsequently ratified) by that Text Recruit Affiliate.

3. **Processing of Subscriber Personal Data**

3.1 Text Recruit and each Text Recruit Affiliate shall:

3.1.1 comply with all applicable Data Protection Laws in the Processing of Subscriber Personal Data; and

3.1.2 Process Subscriber Personal Data only on the relevant Subscriber Group Member's documented instructions for the following purpose: (i) Processing in accordance with the Subscription

Agreement and applicable Order Form(s); (ii) Processing initiated by Users in their use of the Services; and (iii) Processing to comply with other documented reasonable instructions provided by Subscriber (e.g., via email), where such instructions are consistent with the terms of the Subscription Agreement, unless Processing is required by Applicable Laws to which the relevant Contracted Processor is subject, in which case Text Recruit or the relevant Text Recruit Affiliate shall to the extent permitted by Applicable Laws inform the relevant Subscriber Group Member of that legal requirement before the relevant Processing of that Subscriber Personal Data. The parties agree that for the purpose of Clause 5(a) of the Standard Contractual Clauses, if in effect between the parties, the Processing of Subscriber Personal Data by Text Recruit is deemed to be in compliance with Subscriber's instructions if expressly authorized by the Agreement.

3.2 Each Subscriber Group Member:

3.2.1 instructs Text Recruit and each Text Recruit Affiliate (and authorizes Text Recruit and each Text Recruit Affiliate to instruct each Subprocessor) to:

3.2.1.1 Process Subscriber Personal Data; and

3.2.1.2 in particular, transfer Subscriber Personal Data to any country or territory,

as reasonably necessary for the provision of the Services and consistent with the Subscription Agreement; and

3.2.2 warrants and represents that it is and will at all relevant times remain duly and effectively authorized to give the instruction set out in section 3.2.1 on behalf of each relevant Subscriber Affiliate.

3.3 Annex 1 to this Addendum sets out certain information regarding the Contracted Processors' Processing of the Subscriber Personal Data as required by article 28(3) of the GDPR (and, possibly, equivalent requirements of other Data Protection Laws). Subscriber may make reasonable amendments to Annex 1 by written notice to Text Recruit from time to time as Subscriber reasonably considers necessary to meet those requirements. Nothing in Annex 1 (including as amended pursuant to this Section 3.3) confers any right or imposes any obligation on any party to this Addendum.

4. Text Recruit and Text Recruit Affiliate Personnel

Text Recruit and each Text Recruit Affiliate shall take commercially reasonable steps to ensure the reliability of any employee, agent or contractor of any Contracted Processor who may have access to the Subscriber Personal Data, ensuring in each case that access is strictly limited to those individuals who need to know / access the relevant Subscriber Personal Data, as strictly necessary for the purposes of the Subscription Agreement, and to comply with Applicable Laws in the context of that individual's duties to the Contracted Processor, ensuring that all such individuals are subject to confidentiality undertakings or professional or statutory obligations of confidentiality.

5. Security

5.1 Taking into account the state of the art, the costs of implementation and the nature, scope, context and purposes of Processing as well as the risk of varying likelihood and severity for the rights and freedoms of natural persons, Text Recruit and each Text Recruit Affiliate shall in relation to the Subscriber Personal Data implement appropriate technical and organizational measures to ensure a level of security appropriate to that risk, including, as appropriate, the measures referred to in Article 32(1) of the GDPR.

5.2 In assessing the appropriate level of security, Text Recruit and each Text Recruit Affiliate shall take account in particular of the risks that are presented by Processing, in particular from a Personal Data Breach.

6. Subprocessing

- 6.1 Appointment. Each Subscriber Group Member authorizes Text Recruit and each Text Recruit Affiliate to appoint (and permit each Subprocessor appointed in accordance with this Section 6 to appoint) Subprocessors in accordance with this Section 6 and any restrictions in the Subscription Agreement.
- 6.2 Current Subprocessors and Notification of New Sub-Processors. Text Recruit and each Text Recruit Affiliate may continue to use those Subprocessors already engaged by Text Recruit or any Text Recruit Affiliate as at the date of this Addendum, subject to Text Recruit and each Text Recruit Affiliate in each case as soon as practicable meeting the obligations set out in Section 6.4. The current list of Subprocessors used to provide the Services and their country of location will be posted to <https://www.textrecruit.com/gdpr-subprocessors> on or prior to May 25, 2018. Text Recruit shall give Subscriber prior written notice of the appointment of any new Subprocessor, including details of the Processing to be undertaken by the Subprocessor, by posting such information on <https://www.textrecruit.com/gdpr-subprocessors>.
- 6.3 Objection Right for New Subprocessors. If, within ten (10) days of the posting of notice of a new Subprocessor as set forth in Section 6.2, Subscriber notifies Text Recruit in writing of any objections (on reasonable grounds) to the proposed appointment:
- 6.3.1 Text Recruit shall work with Subscriber in good faith to make available a commercially reasonable change in the provision of the Services or recommend a commercially reasonable change to Subscriber's configuration or use of the Services which avoids the use of that proposed Subprocessor; and
- 6.3.2 where such a change cannot be made within thirty (30) days from Text Recruit's receipt of Subscriber's objection notice, notwithstanding anything in the Subscription Agreement, Subscriber may by written notice to Text Recruit, with immediate effect, terminate the applicable Order Form(s) with respect only to those Services (i.e., product offering, portal, module, line item) which cannot be provided by Text Recruit without the use of the objected-to new Subprocessor (the "Terminated Service Portion"). Text Recruit will refund to Subscriber any prepaid fees covering the remainder of the Subscription Period for the Terminated Service Portion following the effective date of termination with respect to such Terminated Service Portion, without imposing a penalty for such termination on Subscriber.
- 6.4 Other Measures. With respect to each Subprocessor, Text Recruit or the relevant Text Recruit Affiliate shall:
- 6.4.1 before the Subprocessor first Processes Subscriber Personal Data (or, where relevant, in accordance with Section 6.2), carry out reasonable due diligence to ensure that the Subprocessor is capable of providing the level of protection for Subscriber Personal Data required by the Subscription Agreement;
- 6.4.2 ensure that the arrangement between on the one hand (a) Text Recruit, or (b) the relevant Text Recruit Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand, the Subprocessor, is governed by a written contract including terms which offer at least the same level of protection for Subscriber Personal Data as those set out in this Addendum and meet the requirements of article 28(3) of the GDPR; and
- 6.4.3 if that arrangement involves a Restricted Transfer, ensure that the Standard Contractual Clauses are at all relevant times incorporated into the agreement between on the one hand (a) Text Recruit, or (b) the relevant Text Recruit Affiliate, or (c) the relevant intermediate Subprocessor; and on the other hand, the Subprocessor.
- 6.5 Standard Contractual Clauses. The parties agree that for the purposes of Clause 5(h) and Clause 11(1) of the Standard Contractual Clauses, if in effect between the parties, the consent of the Subscriber shall be deemed obtained in accordance with the foregoing provisions.

6.6 Liability. Text Recruit shall be liable for the acts and omissions of its Subprocessors to the same extent Text Recruit would be liable if performing the services of each Subprocessor directly under the terms of this Addendum, except as otherwise set forth in the Subscription Agreement.

7. Data Subject Rights

7.1 Taking into account the nature of the Processing, Text Recruit and each Text Recruit Affiliate shall assist each Subscriber Group Member by implementing appropriate technical and organizational measures, insofar as this is possible, for the fulfilment of the Subscriber Group Members' obligations, as reasonably understood by Subscriber, to respond to requests to exercise Data Subject rights under the Data Protection Laws. To the extent legally permitted, Subscriber shall be responsible for any costs arising from Text Recruit's provision of such assistance.

7.2 Text Recruit shall:

7.2.1 promptly notify Subscriber if any Contracted Processor receives a request from a Data Subject under any Data Protection Law in respect of Subscriber Personal Data; and

7.2.2 ensure that the Contracted Processor does not respond to that request except on the documented instructions of Subscriber or the relevant Subscriber Affiliate or as required by Applicable Laws to which the Contracted Processor is subject, in which case Text Recruit shall to the extent permitted by Applicable Laws inform Subscriber of that legal requirement before the Contracted Processor responds to the request.

8. Personal Data Breach

8.1 In accordance with Text Recruit's documented incident response policies and procedures, Text Recruit shall notify Subscriber without undue delay upon Text Recruit or any Subprocessor becoming aware of a Personal Data Breach affecting Subscriber Personal Data, providing Subscriber with sufficient information to allow each Subscriber Group Member to meet any obligations to report or inform Data Subjects of the Personal Data Breach under the Data Protection Laws.

8.2 Text Recruit shall co-operate with Subscriber and each Subscriber Group Member and take such reasonable commercial steps as are directed by Subscriber to assist in the investigation, mitigation and remediation of each such Personal Data Breach.

9. Data Protection Impact Assessment and Prior Consultation

Text Recruit and each Text Recruit Affiliate shall, to the extent Subscriber does not otherwise have access to the relevant information, and to the extent it is available to Text Recruit, provide commercially reasonable assistance to each Subscriber Group Member with any data protection impact assessments, and prior consultations with Supervising Authorities or other competent data privacy authorities, which Subscriber reasonably considers to be required of any Subscriber Group Member by Article 35 or 36 of the GDPR or equivalent provisions of any other Data Protection Law, in each case solely in relation to Processing of Subscriber Personal Data by, and taking into account the nature of the Processing and information available to, the Contracted Processors. To the extent legally permitted, Subscriber shall be responsible for any costs arising from Text Recruit's provision of such assistance.

10. Deletion or Return of Subscriber Personal Data

10.1 Subject to Sections 10.2 and 10.3 Text Recruit and each Text Recruit Affiliate shall promptly and in any event within thirty (30) days of the date of cessation of any Services involving the Processing of Subscriber Personal Data (the "**Cessation Date**"), delete and procure the deletion of all copies of those Subscriber Personal Data, in accordance with Text Recruit's documented data storage and retention policies and procedures.

10.2 Subject to Section 10.3, Subscriber may in its absolute discretion by written notice to Text Recruit within ten (10) days of the Cessation Date request Text Recruit and each Text Recruit Affiliate to (a) return a complete

copy of all Subscriber Personal Data to Subscriber in a format and method as set forth in the Subscription Agreement.

- 10.3 Each Contracted Processor may retain Subscriber Personal Data to the extent required by Applicable Laws and only to the extent and for such period as required by Applicable Laws and provided that Text Recruit and each Text Recruit Affiliate shall ensure the confidentiality of all such Subscriber Personal Data and shall ensure that such Subscriber Personal Data is only Processed as necessary for the purpose(s) specified in the Applicable Laws requiring its storage and for no other purpose.
- 10.4 After the Cessation Date, upon the written request of Subscriber, Text Recruit shall provide written certification that it has deleted all copies of Subscriber Personal Data governed by the Data Protection Laws in accordance with Text Recruit's documented data storage and retention policies and procedures, within thirty (30) days of receiving the request. The parties agree that for the purpose of Clause 12(1) of the Standard Contractual Clauses, if in effect between the parties, Text Recruit is required to provide certification of deletion of Subscriber Personal Data only upon the written request by Subscriber.

11. Audit Rights

- 11.1 Supervisory Authority. If a Supervisory Authority requires an audit of the data processing facilities from which Text Recruit Processes Subscriber Personal Data in order to ascertain or monitor Subscriber's compliance with Data Protection Laws, Text Recruit will cooperate with such audit. Subscriber is responsible for all costs and fees related to such audit, including all reasonable costs and fees for any and all time Text Recruit expends for any such audit, in addition to the rates for services performed by Text Recruit.
- 11.2 Audits and Certifications. Upon Subscriber's written request (not to exceed one request per calendar year) by providing notice as required by the Subscription Agreement, and subject to the confidentiality obligations set forth in the Subscription Agreement, provide to Subscriber that is not a competitor of Text Recruit, information regarding Text Recruit's compliance with the obligations set forth in this Addendum. Subscriber may contact Text Recruit by providing notice as required by the Subscription Agreement to request an on-site audit of the architecture, systems and procedures relevant to the protection of Subscriber Personal Data at locations where Subscriber Personal Data is stored. Subscriber shall reimburse Text Recruit for any time expended by Text Recruit or its third-party Subprocessors for any such on-site audit at Text Recruit's or third-party Subprocessors' then-current professional services rates, which shall be made available to Subscriber upon request. Before the commencement of any such on-site audit, Subscriber, Text Recruit, and if applicable, any third-party Subprocessor, shall agree in writing, upon the scope, timing, and duration of the audit in addition to the reimbursement rate for which Subscriber shall be responsible. All reimbursement rates shall be reasonable, taking into account the resources expended by Text Recruit or its third-party Subprocessors. Subscriber shall promptly notify Text Recruit with information regarding any non-compliance discovered during the course of an audit. The parties agree that the audits described in Clause 5(f) and Clause 12(2) of the Standard Contractual Clauses, if in effect between the parties, shall be carried out in accordance with the foregoing specifications.

12. Standard Contractual Clauses

- 12.1 The parties agree that any transfers that would otherwise be Restricted Transfers shall be governed by the Standard Contractual Clauses, executed by Text Recruit (as Processor) and the Subscriber (as Controller), and attached hereto as Annex 2 and incorporated by reference.

13. General Terms

Governing law and jurisdiction

- 13.1 The parties to this Addendum hereby submit to the choice of jurisdiction stipulated in the Subscription Agreement with respect to any disputes or claims howsoever arising under this Addendum, including disputes regarding its existence, validity or termination or the consequences of its nullity; and

- 13.2 This Addendum and are governed by the laws of the State of California. Notwithstanding the foregoing, if the Standard Contractual Clauses are in effect between the parties, then this Addendum are governed by the laws of the country or territory stipulated for this purpose in the Subscription Agreement.

Order of precedence

- 13.3 Nothing in this Addendum reduces Text Recruit's or any Text Recruit Affiliate's obligations under the Subscription Agreement in relation to the protection of Personal Data or permits Text Recruit or any Text Recruit Affiliate to Process (or permit the Processing of) Personal Data in a manner which is prohibited by the Subscription Agreement. In the event of any conflict or inconsistency between this Addendum and the Standard Contractual Clauses, if in effect between the parties, the Standard Contractual Clauses shall prevail, except with respect to provisions of this Addendum that expressly clarify a specific provision of the Standard Contractual Clauses. In addition, the Parties hereto agree that this Addendum shall amend and replace any Privacy Shield Addendum or any other amendment or addendum pertaining to the Processing of Subscriber Personal Data entered into by the Parties.
- 13.4 Subject to Section 13.2, with regard to the subject matter of this Addendum, in the event of inconsistencies between the provisions of this Addendum and any other agreements between the parties, including the Subscription Agreement and including (except where explicitly agreed otherwise in writing, signed on behalf of the parties) agreements entered into or purported to be entered into after the date of this Addendum, the provisions of this Addendum shall prevail.

Changes in Data Protection Laws, etc.

- 13.5 Subscriber may:
- 13.5.1 if a new form of Standard Contractual Clauses is approved by the Commission or other competent authority, by providing at least 30 (thirty) calendar days' written notice to Text Recruit, make any variations to the Standard Contractual Clauses (including any Standard Contractual Clauses entered into under Section 12.1), as they apply to Restricted Transfers which are subject to a particular Data Protection Law, which are required, as a result of any change in, or decision of a competent authority under, that Data Protection Law, to update them to a new form to allow those Restricted Transfers to be made (or continue to be made) without breach of that Data Protection Law; and
 - 13.5.2 propose any other variations to this Addendum which Subscriber reasonably considers to be necessary to address the requirements of any Data Protection Law.
- 13.6 If Subscriber gives notice under Section 13.5.1:
- 13.6.1 Text Recruit and each Text Recruit Affiliate shall promptly co-operate (and ensure that any affected Subprocessors promptly co-operate) to ensure that equivalent variations are made to any agreement put in place under Section 6.4.3;
 - 13.6.2 Subscriber shall not unreasonably withhold or delay agreement to any consequential variations to this Addendum proposed by Text Recruit to protect the Contracted Processors against additional risks associated with the variations made under Section 13.5.1 and/or 13.6.1; and
 - 13.6.3 where such a variations cannot be made within thirty (30) days from Text Recruit's receipt of Subscriber's notice, notwithstanding anything in the Subscription Agreement, Subscriber may by written notice to Text Recruit, with immediate effect, terminate the applicable Order Form(s) with respect only to those Services (i.e., product offering, portal, module, line item) which cannot be provided by Text Recruit without resulting in Restricted Transfers (the "Terminated Services"). Text Recruit will refund to Subscriber any prepaid fees covering the remainder of the Subscription Period for the Terminated Services following the effective date of termination with respect to such Terminated Services, without imposing a penalty for such termination on Subscriber.
- 13.7 If Subscriber gives notice under Section 13.5.2, the parties shall promptly discuss the proposed variations and negotiate in good faith with a view to agreeing and implementing those or alternative variations designed to address the requirements identified in Subscriber's notice as soon as is reasonably practicable.
- 13.8 Neither Subscriber nor Text Recruit shall require the consent or approval of any Subscriber Affiliate or Text Recruit Affiliate to amend this Addendum pursuant to this Section 12 or otherwise.

Severance

- 13.9 Should any provision of this Addendum be invalid or unenforceable, then the remainder of this Addendum shall remain valid and in force. The invalid or unenforceable provision shall be either (i) amended as necessary to ensure its validity and enforceability, while preserving the parties' intentions as closely as possible or, if this is not possible, (ii) construed in a manner as if the invalid or unenforceable part had never been contained therein.

IN WITNESS WHEREOF, this Addendum is entered into and becomes a binding part of the Subscription Agreement with effect from the date first set out above.

Subscriber

Signature:

Name:

Title:

Date Signed:

Text Recruit, Inc.

Signature:

Name:

Title:

Date Signed:

ANNEX 1: DETAILS OF PROCESSING OF SUBSCRIBER PERSONAL DATA

This Annex 1 includes certain details of the Processing of Subscriber Personal Data as required by Article 28(3) GDPR.

Subject matter and duration of the Processing of Subscriber Personal Data

The subject matter and duration of the Processing of the Subscriber Personal Data are set out in the Subscription Agreement and this Addendum.

The nature and purpose of the Processing of Subscriber Personal Data

Subscriber Personal Data will be processed in accordance with the Subscription Agreement for the purposes of enabling Subscriber Group Members to send text messages as part of the talent acquisition lifecycle or for other employment purposes.

The types of Subscriber Personal Data to be Processed

First name, last name, telephone numbers and the content of text messages sent by Subscriber to data subjects.

The categories of Data Subject to whom the Subscriber Personal Data relates

Data Subjects includes applicants for positions with Subscriber to whom Subscriber elects to communicate using Text Recruit services.

The obligations and rights of Subscriber and Subscriber Affiliates

The obligations and rights of Subscriber and Subscriber Affiliates are set out in the Subscription Agreement and this Addendum.

ANNEX 2: STANDARD CONTRACTUAL CLAUSES

For the purposes of Article 26(2) of Directive 95/46/EC for the transfer of personal data to processors established in third countries which do not ensure an adequate level of data protection

Name of the data exporting organisation:

Address:

Tel.; fax; or e-mail:

Other information needed to identify the organisation:

.....
(the **data exporter**)

And

Name of the data importing organisation: Text Recruit, Inc.

Address: 60 S. Market Suite 260 San Jose, CA 95113Tel.: +1 408-675-9005

Email: support@textrecruit.com

.....
(the **data importer**)

each a “party”; together “the parties”,

HAVE AGREED on the following Contractual Clauses (the Clauses) in order to adduce adequate safeguards with respect to the protection of privacy and fundamental rights and freedoms of individuals for the transfer by the data exporter to the data importer of the personal data specified in Appendix 1.

Clause 1
Definitions

For the purposes of the Clauses:

- (a) *'personal data', 'special categories of data', 'process/processing', 'controller', 'processor', 'data subject' and 'supervisory authority'* shall have the same meaning as in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data;
- (b) *'the data exporter'* means the controller who transfers the personal data;
- (c) *'the data importer'* means the processor who agrees to receive from the data exporter personal data intended for processing on his behalf after the transfer in accordance with his instructions and the terms of the Clauses and who is not subject to a third country's system ensuring adequate protection within the meaning of Article 25(1) of Directive 95/46/EC;
- (d) *'the subprocessor'* means any processor engaged by the data importer or by any other subprocessor of the data importer who agrees to receive from the data importer or from any other subprocessor of the data importer personal data exclusively intended for processing activities to be carried out on behalf of the data exporter after the transfer in accordance with his instructions, the terms of the Clauses and the terms of the written subcontract;
- (e) *'the applicable data protection law'* means the legislation protecting the fundamental rights and freedoms of individuals and, in particular, their right to privacy with respect to the processing of personal data applicable to a data controller in the Member State in which the data exporter is established;
- (f) *'technical and organisational security measures'* means those measures aimed at protecting personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing.

Clause 2
Details of the transfer

The details of the transfer and in particular the special categories of personal data where applicable are specified in Appendix 1 which forms an integral part of the Clauses.

Clause 3
Third-party beneficiary clause

1. The data subject can enforce against the data exporter this Clause, Clause 4(b) to (i), Clause 5(a) to (e), and (g) to (j), Clause 6(1) and (2), Clause 7, Clause 8(2), and Clauses 9 to 12 as third-party beneficiary.
2. The data subject can enforce against the data importer this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where the data exporter has factually disappeared or has ceased to exist in law unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity.
3. The data subject can enforce against the subprocessor this Clause, Clause 5(a) to (e) and (g), Clause 6, Clause 7, Clause 8(2), and Clauses 9 to 12, in cases where both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law as a result of which it takes on the rights and obligations of the data exporter, in which case the data subject can enforce them against such entity. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.

4. The parties do not object to a data subject being represented by an association or other body if the data subject so expressly wishes and if permitted by national law.

Clause 4
Obligations of the data exporter

The data exporter agrees and warrants:

- (a) that the processing, including the transfer itself, of the personal data has been and will continue to be carried out in accordance with the relevant provisions of the applicable data protection law (and, where applicable, has been notified to the relevant authorities of the Member State where the data exporter is established) and does not violate the relevant provisions of that State;
- (b) that it has instructed and throughout the duration of the personal data processing services will instruct the data importer to process the personal data transferred only on the data exporter's behalf and in accordance with the applicable data protection law and the Clauses;
- (c) that the data importer will provide sufficient guarantees in respect of the technical and organisational security measures specified in Appendix 2 to this contract;
- (d) that after assessment of the requirements of the applicable data protection law, the security measures are appropriate to protect personal data against accidental or unlawful destruction or accidental loss, alteration, unauthorised disclosure or access, in particular where the processing involves the transmission of data over a network, and against all other unlawful forms of processing, and that these measures ensure a level of security appropriate to the risks presented by the processing and the nature of the data to be protected having regard to the state of the art and the cost of their implementation;
- (e) that it will ensure compliance with the security measures;
- (f) that, if the transfer involves special categories of data, the data subject has been informed or will be informed before, or as soon as possible after, the transfer that its data could be transmitted to a third country not providing adequate protection within the meaning of Directive 95/46/EC;
- (g) to forward any notification received from the data importer or any subprocessor pursuant to Clause 5(b) and Clause 8(3) to the data protection supervisory authority if the data exporter decides to continue the transfer or to lift the suspension;
- (h) to make available to the data subjects upon request a copy of the Clauses, with the exception of Appendix 2, and a summary description of the security measures, as well as a copy of any contract for subprocessing services which has to be made in accordance with the Clauses, unless the Clauses or the contract contain commercial information, in which case it may remove such commercial information;
- (i) that, in the event of subprocessing, the processing activity is carried out in accordance with Clause 11 by a subprocessor providing at least the same level of protection for the personal data and the rights of data subject as the data importer under the Clauses; and
- (j) that it will ensure compliance with Clause 4(a) to (i).

Clause 5
Obligations of the data importer

The data importer agrees and warrants:

- (a) to process the personal data only on behalf of the data exporter and in compliance with its instructions and the Clauses; if it cannot provide such compliance for whatever reasons, it agrees to inform promptly the data exporter of its inability to comply, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (b) that it has no reason to believe that the legislation applicable to it prevents it from fulfilling the instructions received from the data exporter and its obligations under the contract and that in the event of a change in this legislation which is likely to have a substantial adverse effect on the warranties and obligations provided by the Clauses, it will promptly notify the change to the data exporter as soon as it is aware, in which case the data exporter is entitled to suspend the transfer of data and/or terminate the contract;
- (c) that it has implemented the technical and organisational security measures specified in Appendix 2 before processing the personal data transferred;
- (d) that it will promptly notify the data exporter about:
 - (i) any legally binding request for disclosure of the personal data by a law enforcement authority unless otherwise prohibited, such as a prohibition under criminal law to preserve the confidentiality of a law enforcement investigation,
 - (ii) any accidental or unauthorised access, and
 - (iii) any request received directly from the data subjects without responding to that request, unless it has been otherwise authorised to do so;
- (e) to deal promptly and properly with all inquiries from the data exporter relating to its processing of the personal data subject to the transfer and to abide by the advice of the supervisory authority with regard to the processing of the data transferred;
- (f) at the request of the data exporter to submit its data processing facilities for audit of the processing activities covered by the Clauses which shall be carried out by the data exporter or an inspection body composed of independent members and in possession of the required professional qualifications bound by a duty of confidentiality, selected by the data exporter, where applicable, in agreement with the supervisory authority;
- (g) to make available to the data subject upon request a copy of the Clauses, or any existing contract for subprocessing, unless the Clauses or contract contain commercial information, in which case it may remove such commercial information, with the exception of Appendix 2 which shall be replaced by a summary description of the security measures in those cases where the data subject is unable to obtain a copy from the data exporter;
- (h) that, in the event of subprocessing, it has previously informed the data exporter and obtained its prior written consent;
- (i) that the processing services by the subprocessor will be carried out in accordance with Clause 11;
- (j) to send promptly a copy of any subprocessor agreement it concludes under the Clauses to the data exporter.

Clause 6 ***Liability***

1. The parties agree that any data subject, who has suffered damage as a result of any breach of the obligations referred to in Clause 3 or in Clause 11 by any party or subprocessor is entitled to receive compensation from the data exporter for the damage suffered.
2. If a data subject is not able to bring a claim for compensation in accordance with paragraph 1 against the data exporter, arising out of a breach by the data importer or his subprocessor of any of their obligations referred to in Clause 3 or in Clause 11, because the data exporter has factually disappeared or ceased to exist in law or has become

insolvent, the data importer agrees that the data subject may issue a claim against the data importer as if it were the data exporter, unless any successor entity has assumed the entire legal obligations of the data exporter by contract or by operation of law, in which case the data subject can enforce its rights against such entity.

The data importer may not rely on a breach by a subprocessor of its obligations in order to avoid its own liabilities.

3. If a data subject is not able to bring a claim against the data exporter or the data importer referred to in paragraphs 1 and 2, arising out of a breach by the subprocessor of any of their obligations referred to in Clause 3 or in Clause 11 because both the data exporter and the data importer have factually disappeared or ceased to exist in law or have become insolvent, the subprocessor agrees that the data subject may issue a claim against the data subprocessor with regard to its own processing operations under the Clauses as if it were the data exporter or the data importer, unless any successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law, in which case the data subject can enforce its rights against such entity. The liability of the subprocessor shall be limited to its own processing operations under the Clauses.

Clause 7
Mediation and jurisdiction

1. The data importer agrees that if the data subject invokes against it third-party beneficiary rights and/or claims compensation for damages under the Clauses, the data importer will accept the decision of the data subject:

- (a) to refer the dispute to mediation, by an independent person or, where applicable, by the supervisory authority;
- (b) to refer the dispute to the courts in the Member State in which the data exporter is established.

2. The parties agree that the choice made by the data subject will not prejudice its substantive or procedural rights to seek remedies in accordance with other provisions of national or international law.

Clause 8

Cooperation with supervisory authorities

1. The data exporter agrees to deposit a copy of this contract with the supervisory authority if it so requests or if such deposit is required under the applicable data protection law.
2. The parties agree that the supervisory authority has the right to conduct an audit of the data importer, and of any subprocessor, which has the same scope and is subject to the same conditions as would apply to an audit of the data exporter under the applicable data protection law.
3. The data importer shall promptly inform the data exporter about the existence of legislation applicable to it or any subprocessor preventing the conduct of an audit of the data importer, or any subprocessor, pursuant to paragraph 2. In such a case the data exporter shall be entitled to take the measures foreseen in Clause 5 (b).

Clause 9

Governing Law

The Clauses shall be governed by the law of the Member State in which the data exporter is established.

Clause 10

Variation of the contract

The parties undertake not to vary or modify the Clauses. This does not preclude the parties from adding clauses on business related issues where required as long as they do not contradict the Clause.

Clause 11

Subprocessing

1. The data importer shall not subcontract any of its processing operations performed on behalf of the data exporter under the Clauses without the prior written consent of the data exporter. Where the data importer subcontracts its obligations under the Clauses, with the consent of the data exporter, it shall do so only by way of a written agreement with the subprocessor which imposes the same obligations on the subprocessor as are imposed on the data importer under the Clauses. Where the subprocessor fails to fulfil its data protection obligations under such written agreement the data importer shall remain fully liable to the data exporter for the performance of the subprocessor's obligations under such agreement.
2. The prior written contract between the data importer and the subprocessor shall also provide for a third-party beneficiary clause as laid down in Clause 3 for cases where the data subject is not able to bring the claim for compensation referred to in paragraph 1 of Clause 6 against the data exporter or the data importer because they have factually disappeared or have ceased to exist in law or have become insolvent and no successor entity has assumed the entire legal obligations of the data exporter or data importer by contract or by operation of law. Such third-party liability of the subprocessor shall be limited to its own processing operations under the Clauses.
3. The provisions relating to data protection aspects for subprocessing of the contract referred to in paragraph 1 shall be governed by the law of the Member State in which the data exporter is established, namely the United Kingdom.
4. The data exporter shall keep a list of subprocessing agreements concluded under the Clauses and notified by the data importer pursuant to Clause 5 (j), which shall be updated at least once a year. The list shall be available to the data exporter's data protection supervisory authority.

Clause 12

Obligation after the termination of personal data processing services

1. The parties agree that on the termination of the provision of data processing services, the data importer and the subprocessor shall, at the choice of the data exporter, return all the personal data transferred and the copies

thereof to the data exporter or shall destroy all the personal data and certify to the data exporter that it has done so, unless legislation imposed upon the data importer prevents it from returning or destroying all or part of the personal data transferred. In that case, the data importer warrants that it will guarantee the confidentiality of the personal data transferred and will not actively process the personal data transferred anymore.

2. The data importer and the subprocessor warrant that upon request of the data exporter and/or of the supervisory authority, it will submit its data processing facilities for an audit of the measures referred to in paragraph 1.

On behalf of the data exporter:

Name (written out in full):

Position:

Address:

Other information necessary in order for the contract to be binding (if any):

Signature

(stamp of organisation)

On behalf of the data importer:

Name (written out in full):

Position:

Address: 60 S. Market Suite 260 San Jose, CA 95113=

Other information necessary in order for the contract to be binding (if any):

Signature

(stamp of organisation)

APPENDIX 1 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties

The Member States may complete or specify, according to their national procedures, any additional necessary information to be contained in this Appendix

Data exporter

The data exporter is (please specify briefly your activities relevant to the transfer):

The data exporter is the entity identified as Subscriber in the Addendum and in the Agreement.

Data importer

The data importer is (please specify briefly activities relevant to the transfer):

Text Recruit facilitates the ability of its subscribers to communicate with data subjects via text message during the application process or for other employment purposes.

Data subjects

The personal data transferred concern the following categories of data subjects (please specify):

Data subjects include applicants for employment to whom the Subscriber elects to use the Service to communicate with using text messages sent through the service.

Categories of data

The personal data transferred concern the following categories of data (please specify):

First name, last name, telephone numbers and information that Subscriber elects to include in text messages.

Special categories of data (if appropriate)

The personal data transferred concern the following special categories of data (please specify):

It is not anticipated that the Subscriber will process special categories of personal data using the service.

Processing operations

The personal data transferred will be subject to the following basic processing activities (please specify):

The personal data will be processed in accordance with the Agreement as provided therein.

DATA EXPORTER

Name:

Authorised Signature

DATA IMPORTER

Name:

Authorised Signature

APPENDIX 2 TO THE STANDARD CONTRACTUAL CLAUSES

This Appendix forms part of the Clauses and must be completed and signed by the parties.

Description of the technical and organisational security measures implemented by the data importer in accordance with Clauses 4(d) and 5(c) (or document/legislation attached):

The technical and organizational security measures implemented by the data importer are as set forth in the Agreement.