

Framework Agreement EasyCruit

In consideration of you, the Customer agreeing to abide by the terms of this Agreement, the Company hereby grants to you the limited licence to use the Solution and Services as set out in and subject to terms below.

A. GENERAL

1. Definitions

In this Agreement the following terms shall have the following meanings:

‘Agreement’	means this Framework Agreement including the SLA (Schedule 1) and the Documentation (Schedule 2) and any Order Forms,
‘Additional Services’	means any additional services which have been included on the Order Form and/or any Additional Order Form;
‘API’	means the Companies application programming interface;
‘Business Day’	means Monday to Friday excluding any holidays in the country in which the Company has its registered address;
‘Company’	means the company set out in the Order Form;
‘Confidential Information’	means any and all information in any form relating to either party (including any affiliates, holding companies or subsidiaries), or the business, prospective business, technical process, computer software (both source code and object code), IPR or finances of the Company or the Customer (as the case may be), or compilations of two or more items of such information, whether or not each individual item is in itself confidential, which comes into a party’s possession by virtue of its entry into this Agreement or provision of the Solution or Services, and which is marked or designated as ‘confidential’ or which the party regards, or should reasonably be expected to regard, as confidential and any and all information which has been or may be derived or obtained from such information and shall include but not be limited to the terms of this Agreement, names, addresses and CVs of current or prospective employees, mailing lists, organisation charts, information relating to products, services, research, technology, customers, business plans, promotional and marketing materials, financial information and business information;
‘Customer’	means the party set out in the Order Form;
‘Disclosure Request’	means a request under the Freedom of Information Act 2000 or similar legislation, including without limitation the Environmental Information Regulations 2004 or the Data Protection Act 1998 for a party to disclose Confidential Information, including for the avoidance of doubt a request to disclose whether or not such information is actually held by a party;
‘Documentation’	means the description of the Solution available through the URL set out in the Order Form;
‘Effective Date’	means the date the Customer completes and accepts an Order Form in respect of the Solution and Services for the first time or the date on which the Trial Period starts;

'Fees'	means the Subscription Fee, Travel Fees and Professional Services Fees set out in the Order Form and/or added to this Agreement during the Term as set out in any Additional Order Form(s);
'Force Majeure'	means anything outside the reasonable control of a party, including but not limited to acts of God, fire, storm, flood, earthquake, explosion, accident, acts of the public enemy, war, rebellion, insurrection, sabotage, epidemic, quarantine restriction, labour dispute, labour shortage, power shortage, access to the internet being restricted, suspended or blocked, transportation embargo, failure or delay in transportation, any act or omission (including laws, regulations, disapprovals or failure to approve) of any government or government agency;
'Hosting Services'	means the services set out in the SLA for hosting the Solution;
'Illegal Content'	means any data or content which is defamatory, constitutes a breach of the IPR and/or legal rights of any third party;
'Implementation Period'	means the implementation period set out in the Implementation Plan;
'Implementation Plan'	means the written document setting out the detailed configuration of the Solution and agreed with the Customer after the Effective Date;
'IPR'	means all copyrights, patents, utility models, trade marks, service marks, registered designs, moral rights, design rights (whether registered or unregistered), technical information, know-how, database rights, semiconductor topography rights, business names and logos, computer data, generic rights, proprietary information rights and all other similar proprietary rights (and all applications and rights to apply for registration or protection of any of the foregoing) as may exist anywhere in the world;
'Maintenance and Support Services'	means the maintenance and support services set out in the SLA for maintenance and support of the Solution;
'Multiposting Function'	means an Additional Service that enables the Customer to publish its job listings on third-party systems, such as an online job board, as part of the Solution;
'Order Form'	means any Order Form agreed by the parties setting out the Solution, Services or Additional Services to be provided by the Company to the Customer incorporating the terms of and forming part of this Agreement;
'Organisations'	means the entities entitled to use the Solution and Services as set out in the Order Form;
'Professional Services'	means consulting and configuration services;
'Professional Services Fees'	means the fees set out in any Order Form for Professional Services;
'Schedules'	means the SLA, and Documentation set out at Schedules 1 and 2 together;
'Scope of Use'	means the number of full-time employees of the Customer and/or Organisations having use of the Solution and/or Services as set out in an Order Form;

‘Services’	means the maintenance and support Services, the hosting Services, any Additional Services and any Professional Services as set out in any Order Form;
‘SLA(s)’	means the Service Level Agreement available through the URL set out in the Order Form;
‘Solution’	means the software application(s) specified in the Order Form;
‘Subscription Fee’	means the annual fee due for the use of the Solution and Services (not including Professional Services) as set out in the Order Form and/or any Additional Order Form;
‘Terms and Conditions’	means the terms set out in the main body of this Agreement excluding the Order Form and any Schedules or otherwise referred to in or attached to this Agreement;
‘Term’	means the period starting on the Effective Date until this Agreement is terminated in accordance with section 5;
‘Territory’	means the territory set out in the Order Form and any Additional Order Form in which the Solution and Services may be used;
‘Third Party Services’	means third party sites, systems or services;
‘Time and Materials Basis’	means the Company’s standard daily consultancy rates set out in an Order Form or any Additional Order Form, as the context requires;
‘Travel Fees’	means all costs associated with any travel and subsistence expenses incurred by the Company (or its employees, permitted subcontractors and agents) in performing its obligations under this Agreement at the rates set out in the Customer’s travel policy, provided that such costs are approved in advance by the Customer. Such costs shall specifically include any non-refundable travel costs payable to third parties by the Company which result from a cancellation or change to any travel plans requested by the Customer; and
‘Trial Period’	means a one off period of thirty (30) calendar days starting from the Effective Date during which the Customer may use the Solution free of charge for evaluation purposes only as set out in section 4.

2. Services and Solution

The Customer engages the Company and the Company agrees to provide the Solution and the Services in accordance with the terms of this Agreement from the Effective Date for the Term. Hosting Services and Maintenance and Support Services are further described in the SLA(s) and shall be provided in compliance with the SLA(s).

3. Licence to use the Solution and Services

- 3.1 Subject to section 4, the Customer is granted a non-exclusive, non-transferable licence to use the Solution and Services (including any associated IPR and Confidential Information) from the Effective Date for the Term in the Territory on condition of paying the Fees. No additional implied rights are granted beyond those specifically set out in this section 3.
- 3.2 Unless otherwise specified in this Agreement, the Solution and Services are provided and may only be used by the Organisations within the Scope of Use. The Customer may not (i) lease, loan, resell, assign, license, distribute or otherwise permit access to the Solution and Services; or (ii) use the Solution or Services to provide ancillary services related to the

Solution or Service; or (iii) permit access to or use of the Solution or Services by or on behalf of any third party, except as permitted in this Agreement.

- 3.3 All IPR and title to the Solution and Services (save to the extent these incorporate any Customer or third party owned item) shall remain with the Company and/or its licensors and subcontractors and no interest or ownership in the Solution, Services, the IPR or otherwise is transferred to the Customer under this Agreement. Notwithstanding the Customer's statutory rights, or any rights that may be granted to the Customer under an escrow agreement, no right to modify, adapt, or translate the Solution or Services or create derivative works from the Solution or Services is granted to the Customer. Nothing in this Agreement shall be construed to mean, by inference or otherwise, that the Customer has any right to obtain any source code for the software comprised within the Solution or Services.
- 3.4 Disassembly, decompilation or reverse engineering and other source code derivation of the software comprised within the Solution or Services is prohibited. To the extent that the Customer is granted the right by law to decompile such software in order to obtain information necessary to render the Solution or Services interoperable with other software, the Company will provide access to any relevant source code or information provided that the Customer makes a written request identifying the relevant details of the Solution or Services with which operability is sought and the nature of the information needed. The Company has the right to impose reasonable conditions including but not limited to the imposition of a reasonable fee for providing such access and information.
- 3.5 The Customer shall not remove any copyright notices from the Solution or Services.
- 3.6 Any code, interfaces or metadata (including timestamps, IP addresses and communication data) created in connection with or as a result of the Solution shall become or remain, as the case may be, ownership of the Company and/or its licensors.

4. Trial Period

- 4.1 The Customer acknowledges and agrees that notwithstanding any provision to the contrary in this Agreement, during the Trial Period the Solution and Services are provided for evaluation purposes on an "AS IS" basis and, for the duration of the Trial Period only, such use will be free of charge. Accordingly, and to the maximum extent permitted by applicable law, the Company hereby disclaims all warranties and conditions, whether express, implied or statutory, regarding the Solution and Services, including, but not limited to, any warranty of merchantability, satisfactory quality or fitness for a particular purpose and non-infringement of third party rights. The Customer acknowledges and agrees that it shall be solely responsible for the use of the Solution and Services during the Trial Period and may, at any time, terminate this Agreement during the Trial Period.
- 4.2 To the extent the Customer terminates this Agreement during the Trial Period or does not wish to continue using the Solution after the Trial Period then the Customer may, prior to such termination or expiry, download and/or export a copy of their data from the Solution. The Company shall use reasonable commercial endeavours to permit the Customer to use the export function in the Solution for a limited period of ten (10) days after such termination or expiry.
- 4.3 The Company reserves the right to delete Customer data ten (10) days after termination or expiry of the Trial Period and is not obligated to store any Customer data after such time.

5. Term and Termination

- 5.1 This Agreement shall commence on the Effective Date and continue for the Trial Period and thereafter subject to a relevant Order Form being executed by the Customer (the "**Service Start Date**") for the period set out in such Order Form. After any this initial term set out in the Order Form the Agreement shall renew for additional one (1) year terms unless either party terminates by giving three (3) full calendar months' written notice prior to the anniversary of the Effective Date.

- 5.2 Either party may terminate this Agreement immediately, with cause, if the other party (i) ceases or threatens to cease to carry on business; (ii) is unable to pay its debts; (iii) enters into compulsory insolvency or voluntary liquidation; (iv) has an administrator, receiver, manager or similar official appointed; (v) is affected by a similar event under the law of any other jurisdiction; and/or (vi) a Force Majeure event lasts for more than twenty-eight (28) Business Days.
- 5.3 Either party may terminate this Agreement for material breach of any term by giving the breaching party written notice. However, where the breach is capable of remedy, provided that the breach is specified and remedy of the breach is requested, the notice shall only be effective if the breaching party fails to remedy the breach within ten (10) Business Days of receipt of the notice.
- 5.4 The Company may terminate this Agreement with five (5) Business Days' notice if the Customer has used or permitted use of the Solution or Services other than in accordance with this Agreement and which, in the reasonable opinion of the Company, is considered an unauthorised breach or disclosure of the Company's Confidential Information and/or Intellectual Property Rights.
- 5.5 Termination of this Agreement for any reason shall not affect the accrued rights of the parties arising under this Agreement and in particular without limitation the right to recover damages against the other. The following sections shall survive the expiry or termination of this Agreement: 3, 4.3, 8, 9, 11, 12, 13, 20.3 to 20.5 (both inclusive), 21 to 28 (both inclusive) and this section 5.5, together with all other sections that are intended, either expressly or impliedly, to survive the expiry or termination of this Agreement.

6. Fees And Invoicing

- 6.1 The Company shall invoice the Customer the Fees.
- 6.2 The Professional Services Fees shall be invoiced in advance as a lump sum following the end of the Trial Period if the Agreement has continued to remain in full force and effect pursuant to section 5.1, or on the effective date of any other Order Form (for Additional Services or otherwise), as applicable.
- 6.3 The Subscription Fee shall be invoiced annually in advance on each anniversary of the Service Start Date and, for the first year, immediately following the end of the Trial Period if the Agreement has continued to remain in full force and effect pursuant to section 5.1.
- 6.4 Travel Fees shall be approved by the Customer and invoiced in arrears as and when they arise.
- 6.5 All Fees exclude any Value Added Tax legally payable on the date of the invoice, which shall be paid by the Customer. If a withholding tax deduction is required by law to be made by the Customer, the amount of the payment due from the Customer shall be increased to an amount which (after making the tax deduction) leaves an amount equal to the payment which would have been due if no withholding tax deduction had been required.

7. Fee Increases

- 7.1 During the Term, the Company may on the first and each subsequent anniversary of the Service Start Date, increase the Fees by 2 % above the UK Retail Price Index.
- 7.2 The Company will reflect in the Fees any increase in the Scope of Use. The Customer is obliged to inform the Company within three (3) months of any increase or decrease of the number of employees in their workforce exceeding 10% of the last agreed Scope of Use, To the extent particular events like mergers and acquisitions, or restructuring have an impact on the Scope of Use or to the extent this leads to a material increase in workforce the Company may increase the Fees proportionate to such increase at the time that such change occurs.

8. Payment Terms

- 8.1 The Customer shall pay the Company the Fees for the provision of the Solution and Services under this Agreement.
- 8.2 Payment of all Fees is due within thirty (30) days of the date of a correctly rendered and undisputed invoice and shall be without prejudice to any claims or rights which the Customer may have against the Company.
- 8.3 Where payment of Fees is late by more than thirty (30) days the Company reserves the right to suspend the provision of the Solution and Services by giving the Customer seven (7) calendar days' written notice.
- 8.4 Where payment of any Fees is late the Company reserves the right to charge the Customer interest on such unpaid amounts at a rate of 4 % per annum above the base rate of the Bank of England.

9. Data Protection and Storage

- 9.1 Each party undertakes to comply with its obligations under relevant applicable data protection laws, principles and agreements.
- 9.2 To the extent that personal data is processed using the Solution and Services and any Other Services, the parties acknowledge that the Company is a data processor and the Customer is a data controller and the parties shall comply with their respective statutory data protection obligations. The Company agrees that it will only process personal data on behalf of, and in the name of, the Customer.
- 9.3 The Customer shall ensure that the personal data, which it supplies or discloses to the Company, has been obtained fairly and lawfully and that it will obtain all necessary approvals from persons whose data is being processed and registrations with authorities to permit the Company to transfer personal data to third parties pursuant to its obligations under this Agreement.
- 9.4 The Company confirms that it (i) merely acts as a data processor; (ii) will only process data in accordance with the instructions of the data controller; and (iii) has taken, as well as its subcontractors, licensors and hosts, sufficient technical and organisational measures to safeguard personal data.
- 9.5 If a third party alleges infringement of its data protection rights, the Company shall be entitled to take measures necessary to prevent the infringement of a third party's rights from continuing.

10. Representations and Warranties

- 10.1 Each party warrants and represents that: (i) it has full corporate power and authority to enter into this Agreement and to perform the obligations required hereunder; (ii) its execution and performance of its obligations under this Agreement does not violate or conflict with the terms of any other agreement to which it is a party; and (iii) it shall respect all applicable laws and regulations, governmental orders and court orders, which relate to this Agreement.
- 10.2 The Company warrants and represents that it has the right to license the Solution and Services to the Customer.
- 10.3 The Company warrants and represents that the Services shall be performed with reasonable skill and care and in a professional manner in accordance with good industry practice and that the Services will comply with the SLA.
- 10.4 The Company warrants and represents that the Solution will operate to provide in all material respects the facilities and functions set out in the Documentation . If there is a breach of this section, the Company shall use reasonable commercial endeavours to correct any material defect or to replace the defective Solution, at the Company's option. Notwithstanding the

aforesaid, the Company shall only be obliged to remedy any material defect if (i) the Customer notifies the Company in writing as soon as reasonably possible upon discovering the defect; (ii) following the Company's examination of the Solution, it is established that such a defect exists; and (iii) Customer provides all the information that may be necessary to assist the Company in resolving the defect.

- 10.5 The warranties in sections 10.2 to 10.4 inclusive shall not cover deficiencies or damages relating to (i) any third party components not provided or approved in writing by the Company; (ii) any third party provided connectivity necessary for the provision or use of the Solution and Services; (iii) compliance with third party software or products, non-Company programmes or data used in combination with the Solution or Services except as set out in the Implementation Plan and the Documentation, (iv) any Third Party Services that interact with the Solution and Services, (v) a failure of the Solution to conform with the relevant Order Form caused by the use or operation of the Solution by the Customer with an application or in an environment other than that set out in the Implementation Plan and the Documentation.
- 10.6 Except as expressly stated in this Agreement, all warranties and conditions, whether express or implied by statute, common law or otherwise (including but not limited to all implied warranties of satisfactory quality and fitness for purpose) are excluded to the fullest extent permitted by law. No warranty is made regarding the results the Customer can achieve from using the Solution and Services nor that the Solution and Services will operate uninterrupted or error free.
- 10.7 The Customer warrants that it rightfully owns the necessary user rights, copyrights and ancillary copyrights and permits required for it to fulfil its obligations under this Agreement.
- 10.8 The Customer warrants and represents that it shall maintain reasonable security measures (as may change over time) covering, without limitation, confidentiality, authenticity and integrity to ensure that the access to the Solution and Services granted under this Agreement is limited as set out under this Agreement. In particular the Customer shall treat any identification, password or username or other security device for use of the Solution and Services with due diligence and care and take all necessary steps to ensure that they are kept confidential, secure and are used properly and are not disclosed to unauthorised persons. Any breach of the above shall be immediately notified to the Company in writing.

11. Liability

- 11.1 The parties do not exclude or limit their liability to each other for fraud, death or personal injury caused by any negligent act or any other liability that cannot be excluded or limited by law.
- 11.2 The parties shall not be liable for any indirect, consequential, incidental or special loss or damage arising out of or related to this Agreement (whether based on contract, tort (including negligence), breach of statutory duty, misrepresentation, liability under indemnities or other), even if the party was advised of the possibility of such damages.
- 11.3 The parties shall not be liable for any of the following types of loss or damages arising out of or related to this Agreement (whether direct or indirect, and whether based on contract, tort (including negligence), breach of statutory duty, misrepresentation, liability under indemnities or otherwise) even if a party was advised of the possibility of such damages: (i) loss of profits; (ii) losses incurred by any client of the Customer or other third party; (iii) losses arising from business interruption; (iv) loss of business; (v) loss of revenue; (vi) loss of goodwill; (vii) loss of anticipated savings; or (viii) loss of or damage to data.
- 11.4 Subject to sections 11.1 to 11.3 inclusive, the parties' total liability to each other in aggregate (whether based on contract, tort (including negligence), breach of statutory duty, misrepresentation or otherwise) for any claim or series of claims relating to or arising under this Agreement including any indemnity or contribution shall be limited to the total Fees (excluding all taxes) paid by the Customer to the Company during the twelve (12) months' period prior to the date on which such claim or series of claims arose.

11.5 The parties shall not raise any claim under this Agreement more than 1 year after (i) the discovery of the circumstances giving rise to a claim; or (ii) the effective date of termination or expiry of this Agreement.

11.6 The parties acknowledge and agree that by entering into this Agreement, each had recourse to its own skill and judgement and has not relied on any representation made by the other, their employees or agents.

12. Indemnities

12.1 Subject to section 12.3, the Company shall indemnify and hold the Customer and its employees, directors, sub-contractors and/or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising directly from any claim brought against the Customer by a third party on the basis of an infringement of any IPR by the Solution or Services (excluding any claim deriving from any Customer provided item).

12.2 Subject to section 12.3, the Customer shall indemnify and hold the Company and its employees, directors, sub-contractors and/or agents harmless from and against any costs, losses, liabilities and expenses, including reasonable legal costs arising from any claim relating to or resulting directly from any: (i) claimed infringement or violation by the Customer of any IPR with respect to the Customer's use of the Solution or Services outside of the scope of this Agreement; (ii) use by the Company of any Customer provided item or data, including in particular storage or publication on the Internet of any Illegal Content; (iii) access to or use of the Solution or Services by a third party whether directly or indirectly; and (iv) breaches of data protection law or regulations resulting from the Company processing data on behalf of and in accordance with the instructions of the Customer. Furthermore, the Company shall be entitled to take reasonable measures in order to prevent Illegal Content from being published on the Internet and breaches of third party rights from continuing.

12.3 Each party (the 'Indemnified Party') shall notify the other party (the 'Indemnifying Party') in detail in writing promptly after it becomes aware of any event or any claim against it which it believes may give rise to a claim for indemnification under the provisions of sections 12.1 or 12.2 (an 'Indemnified Claim'). The Indemnifying Party shall be given sole control of the defence and/or settlement of the Indemnified Claim and the Indemnified Party shall: (i) fully co-operate and provide all reasonable assistance to the Indemnifying Party, at the Indemnifying Party's request and expense, in the defence or settlement of such Indemnified Claim; (ii) not make any admissions (save where required by court order or governmental regulations), which may be prejudicial to the defence or settlement of any Indemnified Claim, without the prior written approval of the Indemnifying Party; and (iii) mitigate such costs, losses, liabilities and expenses, as far as reasonably possible.

12.4 If all or part of the Solution or Services becomes, or in the opinion of the Company may become, the subject of a claim or suit of IPR infringement, the Company shall at its own expense and sole discretion: (i) procure for the Customer the right to continue to use the Solution or Service or the affected part thereof; (ii) replace the Solution or Service or affected part with other suitable non-infringing service or software; or (iii) modify the Solution or Services or affected part to make the same non-infringing.

12.5 The Company shall have no obligations under section 12.1 or 12.4 above to the extent that a claim is based on: (i) the combination, operation or use of the Solution or Services with other services or software not provided by the Company if such infringement would have been avoided in the absence of such combination, operation or use; or (ii) use of the Solution or Services in any manner inconsistent with this Agreement; or (iii) the negligence or wilful misconduct of the Customer. This section 12 states the Company's sole and entire obligation and liability, and the Customer's sole and exclusive right and remedy, for the Solution and/or Services infringing a third party's IPR.

13. Confidential Information

- 13.1 Each party may use the Confidential Information of the disclosing party only for the purposes of this Agreement and must keep confidential all Confidential Information of the disclosing party except to the extent (if any) that the recipient of any Confidential Information is required by law or any regulatory, governmental or other authority with relevant powers to which either party is subject (except in relation to Disclosure Requests which shall be subject to sections 13.5 and 13.6 below) to disclose the Confidential Information.
- 13.2 A receiving party may disclose the Confidential Information of the disclosing party to those of its employees and agents who need to know the Confidential Information for the purposes of this Agreement.
- 13.3 Both parties agree to return or destroy all documents, materials or data containing Confidential Information to the disclosing party without delay upon completion of the Services or termination or expiry of this Agreement.
- 13.4 The obligation of confidentiality under this Agreement does not extend to information that (i) was rightfully in the possession of the receiving party before the negotiations leading to this Agreement; (ii) is, or after the Effective Date, becomes public knowledge (otherwise than as a result of a breach of this Agreement); or (iii) is required by law to be disclosed.
- 13.5 If either party receives a Disclosure Request such party shall (i) promptly consult with and take into account any comments from the other party prior to making any disclosure; and (ii) work with the other party to ensure that any exemptions or other legitimate means of preventing disclosure or limiting disclosure are used to the fullest extent possible.
- 13.6 The parties acknowledge and agree that without prejudice to the general confidentiality provisions in this section 13 and without limitation, all information falling within the definition of Confidential Information as set out in section 1 of this Agreement and any information which is supplied by the disclosing party to the receiving party pursuant to this Agreement or the negotiation thereof is (i) Confidential Information the disclosure of which by the receiving party would be an actionable breach of confidence; or (ii) a trade secret of the disclosing party; and (iii) information, the disclosure of which would be likely to prejudice the commercial interests of the disclosing party or of any other person.

14. Provision of Professional Services

- 14.1 Subject to section 14.2 the Company shall implement the Solution during the Implementation Period in accordance with the Implementation Plan.
- 14.2 The Implementation Period shall be extended by the length, and the Professional Services Fees shall be increased proportionate to such length of any delay in the implementation process if (i) the Customer changes its requirements after the Implementation Plan has been agreed; or (ii) the Company's ability to comply with the Implementation Plan is impaired by any act or omission of the Customer or breach of this Agreement, which shall include but not be limited to the Customer failing to provide timely support and resources or having a lack of bandwidth or other technical requirements; or (iii) the parties agree to extend the Implementation Period.
- 14.3 The Solution shall be deemed accepted and shall go-live if no defects are notified to the Company within two (2) days of completion of the implementation of the Solution.

15. Interfaces

- 15.1 If the Order Form includes the provision of interfaces or integrations to any third party provider or system (such as a Social Apply interface, a job board, job distribution provider, a screening/assessment provider or an HR management or ERP system) to the Customer, the Company shall make all reasonable efforts to ensure the successful operation of the interface or integration. However the successful operation of any interface or integration is dependent upon the technical set up of the third party systems, and the Customer accepts that (i) the Company cannot be held liable for any failures in the operation of the interface or

integration; and (ii) the services offered on the third party system will be complete or available on the same terms as set out in these Terms and Conditions.

- 15.2 In the event of an issue arising with the effective operation of an interface or integration the Company will use all reasonable efforts, in line with the business impact on the Customer, to resolve the issue at the earliest opportunity.
- 15.3 The Customer acknowledges that (i) it is responsible for ensuring that it has paid and instructed the third party to co-operate with the Company; and (ii) the Company has no liability whatsoever to the Customer or such third party for any problems with any interface or integration resulting from actions or omissions of the Customer or the third party.

16. Third Party Services

In circumstances where the Company enables interaction between the Solution and Services and certain Third Party Services, the parties agree that the Company only does so on the basis that: (i) the Company is not responsible for the content and operation of any Third Party Services and makes no representations in respect of the same, (ii) the Company has no liability whatsoever to the Customer for any loss, damage or claims arising out of the use by the Customer of any Third Party Services, (iii) the Customer's use of any Third Party Services may be subject to additional terms and conditions, and (iv) the Company shall be permitted to suspend or remove access to any Third Party Services at its discretion and without any liability whatsoever to the Customer, provided that the Company shall where reasonably practicable provide notice of its intention to suspend or remove access to such Third Party Services.

Additional Services

17. API

- 17.1 The Customer shall use the API in accordance with this Agreement and for the sole purpose of enabling access by the Customer to the Company's Solution via the Customer's licensed third-party software. All IPR in the API shall remain with the Company and/or its licensors.
- 17.2 The Company reserves the right to modify existing API functionality but will ensure backwards compatibility for one (1) release. The Company shall not be liable for any loss or damage arising (whether in tort (including negligence), breach of contract, misrepresentation, liability under indemnities or for any other reason) from use of the API by the Customer for integrations or any actions taken by the Customer in reliance on the API.
- 17.3 The Company may at its sole discretion immediately terminate the Customer's use of the API or its support of such use if the Customer breaches the acceptable use policy as set out in the SLA.

18. Multiposting

- 18.1 Where multiposting is included on the Order Form, the Company shall make all reasonable efforts to ensure the successful operation of the Multiposting Function, provided always that the successful operation of the Multiposting Function is largely dependent upon the technical set up of the third-party systems. The Customer accepts that: (i) the Company cannot be held liable for any failures in the operation of the Multiposting Function or the third-party systems; (ii) the services offered on the third-party system will be subject to the relevant third party's terms and levels of service and will not be provided on the same terms and conditions as set out in these Terms and Conditions and SLA provided that, to the extent such third-party terms do not conflict with the Terms and Conditions, the Terms and Conditions shall continue to apply to such services.
- 18.2 The Customer acknowledges that: (i) it is responsible for ensuring that it has paid the relevant third-party and instructed such third party to co-operate with the Company to enable the use of the Multiposting Function on the Customer's system; (ii) the Company has no liability whatsoever to the Customer for any problems with the Multiposting Function resulting from

actions or omissions of the Customer and/or the third party; and (iii) the Multiposting Function is not an essential function of the Solution and is simply an add on; and (iv) any code, interfaces or metadata (including timestamps, IP addresses and communication data) created in connection with or as a result of the Multiposting Function shall become or remain, as the case may be, ownership of the Company and/or its licensors.

19. Anti-Bribery

Each party shall, and shall ensure that its directors, officers, employees, agents and any other third party that performs services on its behalf shall comply with all applicable laws relating to anti-bribery and anti-corruption including but not limited to the Bribery Act 2010, and shall not offer, promise or agree to give any financial or other advantage to: (i) any official or employee of (or person acting in an official capacity on behalf of) any government, governmental or regulatory agency or other public body in return for such person assisting, either directly or indirectly, in obtaining or retaining business for the other party, or (ii) any other person as an inducement or reward for the improper performance of any function or activity in relation to obtaining or retaining business for the other party. If a party does not comply with this section, such non-compliance will be considered a material breach of this Agreement incapable of remedy and the other party may terminate this Agreement with immediate effect.

20. Assignment and Relationship between Parties

- 20.1 The Customer may not assign, transfer, sub-license or subcontract its rights and obligations under this Agreement without the prior written consent of the Company, and such consent shall not be unreasonably withheld.
- 20.2 The Company may assign, transfer, sub-license or otherwise deal with any of its rights or obligations under this Agreement, provided it gives written notice to the Customer of any such assignment, transfer, sub-license or other dealing. Notwithstanding the foregoing, the Company may at its sole discretion subcontract any of its obligations under this Agreement.
- 20.3 The Company and the Customer are independent contractors and nothing in this Agreement will be construed as creating an employer-employee relationship.
- 20.4 This Agreement constitutes the whole agreement and understanding between the parties and supersedes all prior agreements, representations, negotiations and discussions (whether made negligently or innocently) between the parties relating to the subject matter thereof.
- 20.5 Nothing contained in this Agreement is intended to be enforceable pursuant to the Contracts (Rights of Third Parties) Act 1999 by any third party.

21. Severability

Should a provision of this Agreement be invalid or become invalid then the legal effect of the other provisions shall be unaffected. A valid provision is deemed to have been agreed which comes closest to what the parties intended commercially and shall replace the invalid provision. The same shall apply to any omissions.

22. Priority Among Documents

In the event of any inconsistency between the contents of the Terms and Conditions, an Order Form and the SLA, this Agreement shall prevail followed by the Order Form and the SLA.

23. Force Majeure

- 24. If a party is wholly or partially unable to comply with its obligations under this Agreement due to a Force Majeure event, then, except for payment obligations, that party's obligation will be suspended for the duration of the Force Majeure. As soon as practicable after an event of Force Majeure arises, the party affected by Force Majeure must notify the other party of the extent to which the notifying party is unable to perform its obligations under the Agreement.

25. Notices

Amendments as agreed between the parties, or notices to be sent under this Agreement, shall be in writing and shall be deemed to have been duly given if sent by registered post or acknowledged fax, to a party at the address given for that party in the Order Form. Any termination notice served by the Customer in accordance with the above must also be submitted by the Customer to creditandcontracts@lumesse.com

26. Waiver

The failure of either party to exercise any right or option that is granted in this Agreement, or to require performance of this Agreement, or the waiver by either party of any breach of this Agreement shall not prevent a subsequent exercise or enforcement of the relevant provision or be deemed a waiver of any subsequent breach of the same or any other provision.

27. Dispute Resolution

27.1 The parties will use their respective reasonable efforts to negotiate in good faith and settle any dispute that may arise out of or in relation to this Agreement and any breach of it.

27.2 If any such dispute cannot be settled amicably through ordinary negotiations of the sales/purchasing directors of each party, the dispute shall be escalated in writing to senior management of both parties who shall in good faith try and resolve the dispute. If the dispute or difference is not resolved within fourteen (14) days of the dispute being escalated the parties shall then be entitled to pursue their claim in accordance with section 28 below.

28. Governing Law and Jurisdiction

This Agreement and any dispute or claim arising out of or in connection with it (including any dispute or claim relating to non-contractual obligations) shall be governed by and construed with English law. The courts of England shall have exclusive jurisdiction for the settlement of all disputes arising under this Agreement.

LUMESSE SERVICE LEVEL AGREEMENT

1 DEFINITIONS

All defined terms in this SLA shall have the meaning set out in the Terms and Conditions and Order Form, unless specified otherwise below.

'Availability' means that the Solution is accessible for the Customer to use. Any planned maintenance shall be excluded from the calculation of Availability of the Solution;

'Availability of the Solution' will be calculated based on Verified Availability Transactions and Verified Non-Availability Transactions during the 'AST', according to the formula set out in section 2.1 below;

'Agreed Service Times (AST)' means 24 hours seven days a week;

'Defect' means an error that causes unexpected behaviour against the design of the Solution, in other words, a **'Bug'**;

'Disaster' means that the hosting centre where the Solution is hosted becomes unusable with no expected resolution date/time;

'Error' means a state, identified from Incidents, that indicates an *error* in the Service or Solution;

'Incident' means an event whereby the Solution is not operating as expected, and (if raised by the Customer) notified to Lumesse via the Customer Support Service Desk;

'Patch' means a mechanism for delivering a minor change to the Solution;

'Release' means a change or enhancement in the functionality of the Solution and/or the delivery of new features and functionality, or amended features and resolutions to Defects;

'Scheduled Maintenance' means the scheduled and/or preventative maintenance performed during the Scheduled Maintenance Window;

'Scheduled Maintenance Window' means the time between the hours of 00:00 and 05:00hrs (GMT/BST) every Sunday;

'Support Day(s) & Hour(s)' means Monday to Friday 08:00 to 17:00 hours GMT (excluding United Kingdom public holidays);

'Verified Availability Transaction' means the transaction defined in section 2.1 successfully returning data within the specified time;

'Verified Non-Availability Transaction' means the transaction defined in section 2.1 not returning data or not returning data within the specified time;

2 SERVICE AVAILABILITY

2.1 Service Commitment

The Company will take all reasonable measures in terms of redundancy, monitoring and platform management to provide Availability of the Solution.

The Solution shall be available through the Internet 99.8 % of the time within the AST. Availability is calculated per calendar month and measured based on the successful completion of the following transaction:

- Loading the Solution login page for user access;
- Loading to the Solution start page workspace;
- Logout from the Solution;

A transaction is deemed successful when the above is completed within 15 seconds as measured by an external automated 'end to end' transaction response time monitor.

2.1.1 Calculating Availability

$(\text{Number of Verified Availability Transactions} / (\text{Number of Verified Availability Transactions} + \text{Number of Verified Non-Availability transactions})) \times 100 \%$

For example a service that is offered 24 hours a day, 365 days per year, would have an AST of $24 \times 365 = 8,760$ hours per year.

A service that was planned to be available 24×7 , which was tested by transactions every 10 minutes and had 143 Verified Availability Transactions and one Verified Non-Availability Transaction, would have an Availability of:

$(143 / (143+1)) \times 100 \%$ or 99.3 %

Over a month of 30 days of 24×7 the target Availability would be 43,200 minutes.

Testing Availability every 10 minutes gives 4,320 separate transaction tests.

Achieving a target Availability of 99.8 % implies 4,312 successful Verified Availability Transactions during the month.

$(4,312 / (4,312 + 8)) \times 100 \% = (4,312 / 4320) \times 100 \% = 99.8 \%$

2.2 Service Credits

The following service credits shall apply if the Availability of the Solution is less than 99.8 %:

Monthly Availability Achieved	Service Credit
between 99.7 and 99.8 %	3 %
between 97 and 99.69 %	6 %
between 96 and 96.99 %	9 %
between 95 and 95.99 %	12 %
less than 95 %	15 %
less than 90 %	40 %

Service credits are expressed as a percentage of the monthly Subscription Fee. A Customer must make a claim for any service credit due within 60 days of notification of entitlement to such service credit. Service credits will be credited to the next invoice issued to the Customer after the claim.

3 INCIDENT MANAGEMENT

3.1 *Support Coverage*

Customer support for the Solution is provided during Support Days & Hours. Access to Customer support is provided for up to four named Customer contacts. Contacts can be updated or changed by contacting your account manager.

3.2 *Incident Notification*

Incidents should be reported and tracked using:

- The support community portal www.lumesse.com/community or
- Telephone <http://www.lumesse.com/contact-us/need-customer-support>
- Email: support@easycruit.com

Outside of Support Days & Hours, the Customer may, for severity 1 issues (as defined below), invoke the emergency services by telephoning the local support number for their region and following the instructions given.

The Company will review the severity level assigned and may change it in consultation with the Customer, to a higher or lower severity, if it is reasonable to do so. The Customer may track and update the progress of issues via the support community portal or by telephone.

3.3 *Security Incident Notification*

In the event of a data security breach affecting the Customer, the Company will notify the primary Customer contact noted in the community portal as soon as possible after the Company is made aware of such a breach.

3.4 Incident Commitment

All Incidents are assigned a unique case reference number and categorised by severity according to the following definitions:

SEVERITY 1 - Service unavailable	
Definition	Critical production issue affecting all users, including infrastructure failure, Solution unavailability or data integrity issues with no work-around available.
Response	The Company will respond within 1 (one) hour, emergency support will be in English.
Service level commitment	The Company will provide continuous support during Support Hours until a resolution has been provided or a work-around implemented.

SEVERITY 2 - Critical	
Definition	A severe business impact affecting many users, limiting the usage of one or more major functions of the Solution or causing performance degradation. The Solution is operational, but restricted.
Response	The Company will respond within 2 (two) Support Hours.
Service level commitment	The Company will provide continuous support during Support Hours until a resolution has been provided or a work-around implemented. If the problem is determined to be a Defect and a Patch is required, this will be progressed during the working hours of the assigned development centre, located in EMEA.

SEVERITY 3 - Major	
Definition	The Solution is operational, but there are functional limitations or errors that are not critical for daily business.
Response	The Company will respond within 1 (one) Support Day.
Service level commitment	The Company will work during Support Hours until a resolution has been provided or a work-around implemented. If the problem is determined to be a Defect, it will be targeted for correction in the next available Release.

SEVERITY 4 - Minor	
Definition	Minor Incident affecting a small number of users, technical inquiry or 'how to' question relating to Solution functionality.
Response	The Company will respond within 2 (two) Support Days.
Service level commitment	The Company will work during Support Hours until a resolution has been provided or a work-around implemented. If the problem is determined to be a Defect, this will be considered for correction in a future Release.

4 MAINTENANCE AND RELEASES

4.1 Maintenance

Resolutions to Defects and essential data centre infrastructure and/or Solution platform work will be conducted during a Scheduled Maintenance Window.

During the Scheduled Maintenance Window, the Solution and some or all Services may be unavailable. The Company reserves the right to:

- i) Change the timing of a Scheduled Maintenance Window;
- ii) Permanently change our Scheduled Maintenance Window;
- iii) Perform urgent preventative maintenance activities outside of the Scheduled Maintenance Window to ensure the continuity of the Solution.

In all cases, the Company will provide the maximum amount of advance notice possible for changes to the Scheduled Maintenance Window.

4.2 Releases

Releases contain new features and enhancements, as well as resolutions for any known software Defects. There may be some need for configuration and additional user training in order to obtain the maximum benefit of a Release. Documentation will be made available to Customers via the company community portal.

The Company reserves the right to issue Releases outside of Scheduled Maintenance. The Company agrees to provide at least 2 days' prior notice for any scheduled Release that may result in unavailability of the Solution. The Company reserves the right to issue periodic Releases that correct product defects or performance issues deemed urgent by the Company. The Company will provide the maximum amount of advance notice as possible for such periodic product Releases.

5 TECHNICAL SERVICES

5.1 *Data Centres*

The Solution is hosted from the European Economic Area (EEA). The Company reserves the right to change the data centres within the EEA, provided that any new hosting centre provides at least the same level of services and security as the current data centres and 30 days' prior notice has been provided to the Customer.

5.2 *Disaster Recovery*

In the event of a Disaster within the data centre, the Company will initiate its Disaster recovery procedure. Disasters shall be notified to the Customer within 4 (four) hours of the Company being notified by its data centre that there is a Disaster.

The Solution will be replicated at the Company's Disaster recovery centre located in the EEA.

In the event of a Disaster, recovery time is expected to be less than 48 hours. The procedures for Disaster recovery are tested by the Company once a year.

5.3 *System Backup*

The Company ensures that data is protected using backup to disk and digital vault. A full database backup is performed to digital vault and disk once every 24 hours with transaction logs being secured throughout the day. The Company uses a grandfather, father, son (GFS) backup rotation scheme. Backups are automatically transmitted to an off-site location within the EEA and kept for 6 (six) months from the termination date of the Agreement.

5.4 *Data Repatriation*

A written request for the return of Customer data stored in the Company's database will be executed (with no charge) in either CSV or XML format. This request must be received within 60 Business Days of the expiry of this Agreement, and will be delivered to the Customer within 30 Business Days of the request being made.

If a request is made for the data to be returned in a different format or later than 60 Business Days after the expiry of the Agreement, the Company reserves the right to charge for this additional service on a time and materials basis.

5.5 *Penetration Testing*

The Solution is penetration-tested annually by a third party.

On request, the Company will provide the Customer with a summary overview of all penetration tests, security and certification audits that are performed against the Company's facilities and applications or any third parties contracted by the Company as part of the Company's Services.

On request, the Company will further provide the Customer with a letter of opinion from the auditing organisation that confirms whether any material deficiencies were identified. If any material deficiencies are identified, then the Company will identify the steps and timeframes to address such deficiencies and, once such deficiencies have been remediated, provide a letter of opinion from the auditing organisation confirming that remediation has been performed and that the material deficiency is no longer a concern.

5.6 *Browser Support*

Details of supported browsers can be found at <http://trust.lumesse.com/browsers>.

6 Liability and Acceptable Use Policy

6.1 Limitation of Liability

The Company shall not be liable for any Errors, Defects, Incidents or lack of Availability due to denial of service attacks, network floods and hacking not being controllable by reasonable measures taken by the Company. In these circumstances, the Company will use commercially reasonable endeavours to resolve any issues caused by such an event.

6.2 Acceptable Use Policy

The Customer shall not use the Solution or Services:

- To threaten, violate or encourage the violation of the legal rights of others;
- For any unlawful, invasive, infringing, defamatory or fraudulent purpose;
- To intentionally distribute viruses, worms, Trojan horses, corrupted files, hoaxes or other items of a destructive or deceptive nature;
- To remove, modify or obscure any copyrights, links or notices appearing in the Solution;
- The Customer shall keep any received credentials/API keys secure and are not to be provided to any third party.

If the Customer breaches these rules, the Company may suspend or terminate the Customer's access to the Solution and the Customer will be liable for any damage caused.

The Company reserves the right to alter the above acceptable use statement with 1 (one) month's prior notice.