

## Vocate, Inc. Terms of Service

Last Updated 10/23/2017

Welcome to Vocate, Inc. (or as also used herein: “Vocate”, “we”, “our”, or “us”). When you (or as also used herein “your”, “yours”, or “yourself”) or the entity that you represent use our website (the “Site”) or the Vocate service (the Site and service collectively, the “Service”), you are agreeing to our terms, so please review these Terms of Service (the “Agreement”). Vocate and you may be referred to individually as a “party” or collectively as “parties” to this Agreement.

By accessing the Service you agree to be bound by this Agreement, and any additional terms referenced herein, including our applicable Privacy Policy which sets out the terms in which we process any Personal Data collected from you, or provided to us. By using our Service, you consent to such processing and warrant that all data provided by you is accurate, current and complete. If you do not agree to this Agreement and the Privacy Policy, and any other referenced agreements, documents, or terms, you must not access the Service. In agreeing, you also represent that you are of legal age to form such agreement, have the authority to bind yourself or the entity you represent, and have disclosed all information to Vocate as necessary to perform the Services, including the name of all companies with which you are associating. The Service is not intended for any person under the age of 18 years old.

### **1. Registration**

In registering for an account on the Site, you agree to (1) provide true, accurate, current, and complete information about yourself, and (2) maintain and promptly update your account information to keep it true, accurate, current and complete. You are responsible for all activities that occur under your account whether performed by you or a third party.

“Content” means any information that you post, transmit or submit through our Service. If you provide any Content that is untrue, inaccurate, not current, or incomplete, or Vocate has reasonable grounds to suspect that such Content is untrue, inaccurate, not current or incomplete, Vocate has the right to suspend or terminate your account and refuse any and all current or future use of the Site and/or Service. You agree not to create an account using a false identity or information, or on behalf of someone other than yourself. You agree that you shall not have more than one account, unless agreed in writing by an authorized representative of Vocate. You agree not to create an account or use the Site or Service if you have been previously removed by Vocate, or if you have been previously banned from the Site or Service.

We are not required to or under any obligation to review, screen, edit, monitor or remove any content or Content posted on our Site, although we reserve the right to do so, and to take any other action, in Vocate’s discretion, with or without notice, to prevent any violation, enforce any provision, or rectify any alleged violations of this Agreement or any applicable law.

### **2. Your Responsibilities**

You are responsible for your use of the Site and Service and for any use of the Site or Service made using your account. You agree not to access, copy, or otherwise use the Site or the Service, including our intellectual property and trademarks, except as authorized by this Agreement or as otherwise authorized in writing by an authorized representative of Vocate. We may suspend or terminate your access to the Service if you violate, or we suspect that you are violating, any of the terms and conditions of this Agreement or any applicable laws. When using our Site and Service you agree that you will not (1) copy, distribute, or disclose any part of the Site, including by way of automated or non-automated “scraping” (2) use any automated systems including “robots” and “spiders” (3) interfere with or compromise our systems’ integrity or decipher any server transmissions (4) impose any unreasonably large load on our

infrastructure (5) upload viruses, worms, or invalid data to the Service (6) collect or retain any personally identifiable information contained in the Service (7) access the Service by any means other than authorized herein, including virtual private networks which are expressly forbidden (8) stalk, harass, bully or harm others (9) impersonate any person or entity (10) hack, spam, phish, or otherwise provide untruthful, false, fraudulent, manipulative, or inflammatory content.

### **3. Third Party Agents**

You may permit third party agents to access, use and/or operate the Service on your behalf ("Third Party Agents") for the sole purpose of delivering services to you, provided that you will be fully responsible for your Third Party Agents' compliance with terms and conditions of this Agreement and any breach of this Agreement by a Third Party Agent shall be deemed to be a breach by you.

### **4. Third Party Services**

Vocate may provide to you, or provide your Content to, certain third party services or providers (collectively, "Third Party Service(s)") which may provide to you links to sites, job postings, email and telephone correspondence and other offers outside of the Vocate network. Such Third Party Services are provided "AS IS" without indemnification, support, or warranty of any kind, and this Agreement does not apply to your use of any such provided Third Party Services. You are responsible for evaluating whether you want to access or use such Third Party Services. In certain circumstances where required or applicable, you may opt-out from such Third Party Services available outside of the Vocate network, or may choose to not utilize such Third Party Services at any time. We reserve the right to suspend Third Party Services at any time. You should review any applicable terms and/or privacy policies of a Third Party Service before using it or sharing any information with it, because you may give the operator permission to use your information outside of what you have agreed to herein. Vocate is not responsible for, nor endorses any features, content, advertising, products or other materials on or available from such Third Party Services.

### **5. General Interview and Hiring Process**

Vocate does not act as an agent for the Client or Candidate. Vocate provides Candidates a location and the software tools to enable them to find and connect with Clients. Vocate provides Clients a location and the software tools to enable them to find and connect with Candidates. Candidates and Clients are solely responsible for any issues arising from the use of the Vocate software or their use of Service. Any agreements created between a Client and a Candidate are not binding on us. We are not liable for, or obligated to enforce, any agreements between a Client and a Candidate. You will not consider Vocate, nor will Vocate be construed as, a party to such transactions, whether or not Vocate receives some form of remuneration in connection with the transaction, and Vocate will not be liable for any costs or damages arising out of or related to such transaction. No contractual obligations are created between the Candidate and Client through the use of the Service.

### **6. Limitation of Liability**

Vocate is not liable for (1) any content posted by Clients or Candidates on our Site or Service; (2) contracts, contractual obligations, or other obligations that may arise from an employment, contractor, or other relationship between Client and Candidate; (3) any review of content posted on our Site or Service; (4) any damages that result through the use of our Service; (5) any negative or critical comments that may be posted by Client, Candidate, or other third party through the Service; or (6) any of the Third Party Service(s) you may be provided pursuant to your use of the Service.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, YOU UNDERSTAND AND AGREE THAT IN NO EVENT SHALL VOCATE BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY, OR

CONSEQUENTIAL DAMAGES ARISING OUT OF OR IN CONNECTION WITH THE SITE AND/OR SERVICE, WHETHER OR NOT VOCATE HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, OR FOR ANY DAMAGES FOR PERSONAL OR BODILY INJURY OR EMOTIONAL DISTRESS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, OR FROM ANY COMMUNICATIONS, INTERACTIONS OR MEETINGS WITH OTHER USERS OF THE SITE OR SERVICE, ON ANY THEORY OF LIABILITY (INCLUDING BUT NOT LIMITED TO CONTRACT, TORT INCLUDING BUT NOT LIMITED TO NEGLIGENCE, OR OTHERWISE) ARISING OUT OF, IN CONNECTION WITH, OR RESULTING FROM (1) THE USE OR INABILITY TO USE THE SITE AND/OR SERVICE; (2) STATEMENTS OR CONDUCT OF ANY THIRD PARTY ON THE SITE AND/OR SERVICE; OR (3) ANY OTHER MATTER RELATED TO THE SITE AND/OR SERVICE.

TO THE MAXIMUM EXTENT PERMITTED BY LAW, UNDER NO CIRCUMSTANCES WILL VOCATE BE LIABLE TO A CANDIDATE, (REGARDLESS OF WHETHER THE CLAIM IS BASED IN CONTRACT, TORT INCLUDING BUT NOT LIMITED TO NEGLIGENCE, STRICT LIABILITY, OR OTHERWISE) FOR MORE THAN \$100, AS A RESULT OF THE CANDIDATE'S USE OF THE SITE AND/OR SERVICE. IN NO EVENT WILL VOCATE BE LIABLE TO A CLIENT FOR MORE THAN THE FEES PAID BY THE CLIENT TO VOCATE FOR THE TWELVE MONTH PERIOD PRECEDING THE DATE ON WHICH CLIENT FIRST ASSERTS A CLAIM ARISING OUT OF OR RELATED TO AN EMPLOYMENT OFFER OR CONTRACTOR OFFER MADE BY CLIENT TO A CANDIDATE OR CLIENT'S USE OF THE SERVICE.

THE LIMITATIONS OF THIS SECTION WILL NOT APPLY TO ANY LIABILITY THAT CANNOT BE EXCLUDED OR LIMITED BY LAW.

#### **6.1. Further Limitations**

Our licensors and service providers will have no liability of any kind under this Agreement. You may not bring any claim under this Agreement more than eighteen (18) months after the cause of action arises.

### **7. Confidentiality**

#### **7.1. Confidential Information**

"Confidential Information" means non-public technical, business or other information or materials disclosed or otherwise made available by one party to the other party ("recipient") in connection with the Service that are labeled "confidential" or the like, or are provided under circumstances reasonably indicating their confidentiality. Our Confidential Information includes: (1) Login Credentials; and (2) any information or materials relating to the Service. Your Confidential Information does not include your Content.

#### **7.2. Protection**

A recipient may use Confidential Information of the other party solely to exercise its rights and perform its obligations under this Agreement or as otherwise permitted under this Agreement. Each recipient will disclose the Confidential Information of the other party only to the employees, service providers or contractors of the recipient who have a need to know the Confidential Information for purposes of this Agreement and who are under a duty of confidentiality no less restrictive than each party's duty under this Agreement. Each party will use reasonable care to protect the confidentiality of the other party's Confidential Information.

#### **7.3. Exceptions**

The recipient's obligations under this section with respect to any Confidential Information will terminate if the recipient can show by written records that the information: (a) was already rightfully known to the recipient at the time of disclosure by the other party; (b) was disclosed to the recipient by a third party who had the right to make the disclosure without any confidentiality restrictions; (c) is, or through no fault of the recipient has become, generally available to the public; or (d) was independently developed by the recipient without access to, or use of, discloser's Confidential Information. The recipient may disclose Confidential Information to the extent the disclosure is required by law or regulation. The recipient will provide the other party notice, when practicable, and will take reasonable steps to contest and limit the scope of any required disclosure.

#### **7.4. Continuing Obligations**

You agree to keep all information gained from using our Site confidential; you agree that (1) you will use any content submitted by Candidates or Clients in accordance with applicable privacy and data protection laws; (2) you will not disclose the names or identities of any Candidates; and (3) you will take appropriate physical, technical and administrative measures to protect content you obtain through use of the Site and/or Service from loss, misuse, unauthorized access, disclosure, alteration or destruction. You also agree not to post, publicly or privately disclose or disseminate any job offers, or contractor opportunities which you become aware of through our Site or Service.

#### **8. Intellectual Property Rights**

The design of the Service along with Vocate created text, scripts, graphics, interactive features and the trademarks, service marks and logos contained therein, are owned by or licensed to Vocate, subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Vocate reserves all rights in and to the Service and the Site. You agree to not engage in the use, copying, or distributing any content contained within the Site or through the Service unless we have given you express written permission to do so.

#### **9. Licensing**

You hereby grant to Vocate and its owners, affiliates, representatives, licensees, licensors and assigns (the "Vocate Parties") a non-exclusive, fully-paid, royalty-free, world-wide, universal, transferable license to: (1) display, publicly perform, distribute, store, broadcast, transmit and reproduce your logo(s), service marks, trademarks and trade names through the Site, the Service and/or any other medium currently invented or invented in the future; and (2) display, publicly perform, distribute, store, broadcast, transmit, reproduce, modify, prepare derivative works and otherwise use and reuse all or any part of the Content and anything we may make with the Content through the Site, the Service and/or any other medium currently invented or invented in the future. Further, you waive and agree never to assert any and all moral rights in and to all of the materials licensed in this section. We reserve the right to display advertisements in connection with the Content. We are not required to host, display, or distribute any of the Content and we may refuse to accept or transmit the Content, and may remove or delete all or any portion of the Content from Vocate or the Service at any time. By submitting any Content to us, you hereby represent and warrant that you own all rights to the Content or, alternatively, that you have the right to give us the license described above. You represent and warrant that the Content does not infringe on the intellectual property rights, privacy rights, publicity rights, or other legal rights of any third party. You understand that when using the Site and/or the Service you will be exposed to content from a variety of sources, and that Vocate is not responsible for the accuracy, usefulness, safety, or intellectual property rights of or relating to such content, and that such content is not the responsibility of Vocate. You further understand and acknowledge that you may be exposed to content that is inaccurate, offensive, indecent, or objectionable, and you agree to waive, and hereby do waive, any legal or equitable rights or remedies you have or may have against the Vocate Parties with respect thereto, and agree to indemnify and hold the Vocate Parties harmless to the fullest extent allowed by law regarding all matters related to your use

of the Site.

## **10. Disclaimer of Warranties**

THE SITE AND SERVICE ARE PROVIDED TO YOU AS IS. VOCATE PARTIES EXPRESSLY DISCLAIM ALL WARRANTIES, REPRESENTATIONS, AND CONDITIONS OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, THE IMPLIED WARRANTIES AND/OR CONDITIONS OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, AND NON-INFRINGEMENT.

THE VOCATE PARTIES MAKE NO WARRANTY, REPRESENTATION OR CONDITION THAT: (1) THE SITE AND/OR SERVICE WILL MEET YOUR REQUIREMENTS; (2) YOUR USE OF THE SITE AND/OR SERVICE WILL BE UNINTERRUPTED, TIMELY, SECURE OR ERROR-FREE; (3) THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE SITE AND/OR SERVICE WILL BE ACCURATE OR RELIABLE; OR (4) ANY ERRORS IN THE SITE AND/OR SERVICE WILL BE CORRECTED.

YOU AGREE THAT YOU ARE SOLELY RESPONSIBLE FOR ALL OF YOUR COMMUNICATIONS AND INTERACTIONS WITH OTHER USERS OF THE SITE AND/OR SERVICE.

IF YOU ARE A RESIDENT OF A JURISDICTION THAT REQUIRES A SPECIFIC STATEMENT REGARDING RELEASE, THEN THE FOLLOWING APPLIES. FOR EXAMPLE, CALIFORNIA RESIDENTS MUST, AS A CONDITION OF THIS AGREEMENT, WAIVE THE APPLICABILITY OF CALIFORNIA CIVIL CODE SECTION 1542, WHICH STATES, "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH IF KNOWN BY HIM OR HER MUST HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR." YOU HEREBY WAIVE THIS SECTION OF THE CALIFORNIA CIVIL CODE. YOU HEREBY WAIVE ANY SIMILAR PROVISION IN LAW, REGULATION, OR CODE THAT HAS THE SAME INTENT OR EFFECT AS THE AFOREMENTIONED PROVISION.

VOCATE MAKES ABSOLUTELY NO WARRANTY AS TO THE DETERMINATION OF A CANDIDATE'S WORK AUTHORIZATION. CANDIDATE AND CLIENT ASSUME ALL LIABILITY FOR COMPLIANCE WITH FEDERAL/STATE WORK AUTHORIZATION REGULATIONS.

CANDIDATE AND CLIENT EXPRESSLY AGREE THAT NO JOINT VENTURE, PARTNERSHIP, EMPLOYMENT, OR AGENCY AGREEMENT EXISTS BETWEEN THEM AND VOCATE AS A RESULT OF THIS AGREEMENT OR ANY USE OF THE SERVICE, AND THAT VOCATE IS NOT A JOINT EMPLOYER FOR PURPOSES OF THIS AGREEMENT.

Candidate and Client acknowledges that Vocate does not, in any way, supervise, direct, or control the manner, means, or conditions of any work or services performed by Client or Candidate. Vocate does not set work hours or location of any work pursuant to a Candidate's engagement (whether as an employee or otherwise). Vocate will not provide either party with training or any equipment, labor or materials needed, or supervision of a Client or Candidate for a particular engagement (whether as an employee or otherwise). Vocate will not set the rate or method of employee or contractor payment, process contractor invoices, nor will it provide benefits or deduct from Candidate any amount for withholding, unemployment, Social Security, or other taxes. Client and Candidate will be solely responsible for all tax returns and payments required to be filed with or made to any federal, state, or local tax authority, in any nation, with respect to Candidate's engagement (whether as an employee or otherwise). Vocate makes no warranty as to the exclusivity of relationships between Client and Candidate.

## **11. Indemnity**

You agree to defend and indemnify the Vocate Parties from and against any third party claim, including

reasonable attorney's fees, court costs, settlements, and disbursements, from or relating to (a) your Content (b) your use of the Service (c) your violation of any term of this Agreement (d) your violation of any third party rights, including privacy rights, (e) your violation of law or your users' violation of law (f) use of any services provided by Third Party Service Providers (g) any findings that the Vocate Parties are employers or related employers of any Candidate, contractor employed, or retained by a Client. You may not settle or compromise any infringement claim without our prior written consent.

## **12. Other General Information**

### **12.1. Communications Decency Act**

Vocate is not and will not be liable for any content posted on our Site. Vocate may, but has no obligation to, monitor or review any content on the Site. Although we may choose to edit or delete any content we determine to be defamatory, we are not required to, and reserve all defenses for such content made available to us by Section 230 of the Communications Decency Act, the First Amendment to the Constitution of the United States of America, and any other applicable laws, rules, or regulations.

### **12.2. DMCA Notices**

While we are not required to do so, it is our policy to terminate the account of any user who repeatedly infringes copyright upon prompt notification to Vocate by the copyright owner or the copyright owner's legal agent. Without limiting the foregoing, if you believe that your work has been copied and posted on the Site and/or Service in a way that constitutes copyright infringement, please provide us with the following information: (1) an electronic or physical signature of the person authorized to act on behalf of the owner of the copyright interest; (2) a description of the copyrighted work that you claim has been infringed; (3) a description of the material that you claim is infringing and a description of the location on the Site and/or Service of the material that you claim is infringing; (4) your address, telephone number and e-mail address; (5) a written statement by you that you have a good faith belief that the disputed use is not authorized by the copyright owner, its agent or the law; and (6) a statement by you, made under penalty of perjury, that the above information in your notice is accurate and that you are the copyright owner or authorized to act on the copyright owner's behalf. Contact information for notice of claims of copyright infringement is as follows: Vocate, Inc., 655 4<sup>th</sup> Street, San Francisco, CA 94107, ATTN: Legal.

### **12.3. Compliance and Choice of Law**

Each party will comply with all laws applicable to the actions contemplated in this Agreement, including all local, state, and federal regulations and export control laws. This Agreement will be governed by and construed in accordance with the federal law of the United States if and to the extent such law is applicable, and otherwise in accordance with the laws of the State of California applicable to contracts made and to be performed entirely within such State, without giving effect to any principles that provide for the application of the law of another jurisdiction.

### **12.4. Dispute Resolution**

Any dispute (including whether the claims asserted are arbitrable) shall be referred to and finally determined by binding and confidential arbitration. Arbitration shall be subject to the Federal Arbitration Act and not any state arbitration law. The arbitration shall be conducted before one commercial arbitrator with substantial experience in resolving commercial contract disputes from the American Arbitration Association ("AAA"). The arbitration will be governed by the AAA's Commercial Arbitration Rules and, if the arbitrator deems them applicable, the Supplementary Procedures for Consumer Related Disputes (collectively "Rules and Procedures"). Each party shall bear its own costs (including attorney fees) and disbursements arising out of the arbitration. Notwithstanding the foregoing, the Company may seek

injunctive or other equitable relief to protect its intellectual property rights in any court of competent jurisdiction.

The arbitrator will not have authority to award damages in excess of the amount, or other than the types, allowed by Section 6 of this Agreement. Judgment on the award of the arbitrator may be entered by any court of competent jurisdiction. The arbitrator also shall be authorized to grant any temporary, preliminary or permanent equitable remedy or relief it deems just and equitable and within the scope of the Agreement, including, without limitation, an injunction or order for specific performance. The arbitration award shall be final and binding upon the parties without appeal or review except as permitted by California law or United States federal law.

YOU ARE GIVING UP YOUR RIGHT TO GO TO COURT TO ASSERT OR DEFEND YOUR RIGHTS. YOUR RIGHTS WILL BE DETERMINED BY A NEUTRAL ARBITRATOR AND NOT A JUDGE OR JURY. YOU ARE ENTITLED TO A FAIR HEARING, BUT THE ARBITRATION PROCEDURES MAY BE MORE LIMITED THAN RULES APPLICABLE IN COURT. ARBITRATOR DECISIONS ARE AS ENFORCEABLE AS ANY COURT ORDER AND MAY BE SUBJECT TO LIMITED REVIEW BY A COURT.

ANY CLAIMS BROUGHT BY YOU OR VOCATE MUST BE BROUGHT IN THE PARTIES' INDIVIDUAL CAPACITY, AND NOT AS A PLAINTIFF OR CLASS MEMBER IN ANY PURPORTED CLASS OR REPRESENTATIVE PROCEEDING. THE ARBITRATOR MAY NOT CONSOLIDATE MORE THAN ONE PERSON'S CLAIMS, MAY NOT OTHERWISE PRESIDE OVER ANY FORM OF A REPRESENTATIVE OR CLASS PROCEEDING, AND MAY NOT AWARD CLASS-WIDE RELIEF.

For more information on AAA, its Rules and Procedures, and how to file an arbitration claim, you may call AAA at 800-778-7879 or visit the AAA website at <http://www.adr.org>.

#### **12.5. Force Majeure**

You agree that we are not responsible to you for anything that we may otherwise be responsible for, if it is the result of events beyond our control, including, but not limited to, acts of God, war, insurrection, riots, terrorism, crime, labor shortages (including lawful and unlawful strikes), embargoes, postal disruption, communication disruption, failure or shortage of infrastructure, shortage of materials, or any other event beyond our control.

#### **12.6. Severability; Headings**

In the event that a provision of this Agreement is found to be unlawful, or otherwise unenforceable, the Agreement will remain in force as though it had been entered into without that unenforceable provision being included in it. If two or more provisions of this Agreement are deemed to conflict with each other's operation, Vocate shall have the sole right to elect which provision remains in force. Headings in this Agreement are for reference purposes only and will not be used in its construction and/or interpretation.

#### **12.7. Non-waiver**

We reserve all rights permitted to us under this Agreement as well as under the provisions of any applicable law. Our non-enforcement of any particular provision or provisions of this Agreement or the any applicable law will not be construed as our waiver of the right to enforce that same provision under the same or different circumstances at any time in the future.

#### **12.8. Termination**

We may suspend the Service or your account or any other provision of services to you, and we may terminate this Agreement, at our discretion without explanation and notice. In the event of your breach of any terms or obligations contained in this Agreement, our Privacy Policy, payment terms or obligations, or any other policy, or general terms, with respect to the use of the Service, we will notify you of such breach, and in the event the breach can be cured, provide you thirty (30) days to cure such breach. If such breach remains uncured, we will terminate this Agreement with you as set forth herein. If you wish to terminate this Agreement, you may do so by notifying Vocate at any time and closing your account for the Service. Your notice should be sent in writing, in accordance with Section 12.10 "Notice" below. Termination of the Agreement may result in the immediate deletion of any or all of the Content. Vocate will not have any liability whatsoever to you for any suspension or termination, including for deletion of the Content. All provisions of this Agreement which by their nature should survive termination shall survive termination, including, without limitation, ownership provisions, fee provisions, warranty disclaimers, indemnity and limitations of liability.

### **12.9. Assignment**

You may not sell, transfer, or assign your rights and/or obligations under this Agreement to any other party without our prior written consent. We may assign our rights and/or obligations under this Agreement to any other party at our discretion.

### **12.10. Notice**

Where Vocate requires that you provide an e-mail address, you are responsible for providing Vocate with your most current e-mail address. In the event that the last e-mail address you provided to Vocate is not valid, or for any reason is not capable of delivering to you any notices required or permitted by this Agreement, Vocate's dispatch of the e-mail containing such notice (to the last e-mail address you provided to Vocate) will nonetheless constitute effective notice. You may give notice to Vocate at the following address: Vocate, Inc., 655 4<sup>th</sup> Street, San Francisco, CA 94107, ATTN: Legal. Such notice shall be deemed given when received by Vocate by letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail at the above address.

### **12.11. Entire Agreement**

The Agreement is the final, complete and exclusive agreement of the parties with respect to the subject matter hereof and supersedes and merges all prior discussions between the parties with respect to such subject matter.

### **12.12. Electronic Communications**

The communications between you and Vocate use electronic means, whether you visit the Site or the Service or send Vocate e-mails, or whether Vocate posts notices on the Site or Service or communicates with you via e-mail. For contractual purposes, you (1) consent to receive communications from Vocate in an electronic form; and (2) agree that all terms, conditions, agreements, notices, disclosures, and other communications that Vocate provides to you electronically satisfy any legal requirement that such communications would satisfy if they were in writing. The foregoing does not affect your statutory rights.

### **12.13 California Users and Residents**

Pursuant to California Civil Code Section 1789.3, any questions about pricing, complaints, or inquiries about Vocate must be addressed to our agent for notice and sent via certified mail to: Vocate, Inc., 655 4<sup>th</sup> Street, San Francisco, CA 94107, ATTN: Legal. California users are also entitled to the following specific consumer rights notice: The Complaint Assistance Unit of the Division of Consumer Services of the



California Department of Consumer Affairs may be contacted in writing at 1625 North Market Blvd., Sacramento, CA 95834, or by telephone at (916) 445-1254 or (800) 952-5210.

#### **12.14 Modifications**

We may make changes to the content and features of the Site and Services at any time, with or without notice to you. We can change, update, or add or remove provisions of these terms, at any time by posting updated terms at <https://www.vocate.me/terms-and-conditions.html>. If we make a material modification to these terms or our Privacy Policy, we will notify you through either the display of an update notice on the Site or an email to the email associated with your account. By using the Site and/or the Services after we have updated these terms or our Privacy Policy, you are agreeing to the updated terms. If you do not agree with any of the updated terms, you must stop using the Site and the Services. You agree to regularly check the site to view the then-current terms of service.

#### **12.15. Fees and Billing**

You agree to pay any and all prices and fees due for Services purchased or obtained at this Site and/or through a validly executed subscription agreement. All prices and fees are nonrefundable, even if your Services are suspended, terminated, or transferred prior to the end of the Services term. Vocate expressly reserves the right to change or modify its prices and fees at any time, and such changes or modifications shall be posted online at this Site and effective immediately without need for further notice to you. If you have purchased or obtained Services for a period of months or years, changes or modifications in prices and fees shall be effective when the Services in question come up for renewal as further described below.

Except as prohibited in any product/servicespecific agreement, you may pay for Services by utilizing any of the following "Payment Methods": (i) by providing a valid credit card, (ii) via an electronic check from your personal or business checking account, as appropriate; or (iii) other method as approved by Vocate, each a "Payment Method". Your Payment Method on file must be kept valid if you have any active Services in your account. In addition, you acknowledge and agree that the location for the processing of your payments may change based on the type of Payment Method chosen or any changes or updates made to your Payment Method. Other than as required by applicable law, Vocate does not retain hard copy or electronic versions of mandate, standing order or standing instruction forms and/or any signed consents relating to your usage of our automatic renewal services, and we are therefore unable to provide any such document upon request. You may view or change your automatic renewal settings by sending an email to [info@vocate.me](mailto:info@vocate.me) and explaining your request in detail. Please allow 24 Hours to process such requests.

Unless specified otherwise on a validly executed Services/subscription agreement, if you are being billed on a monthly basis, your monthly billing date will be based on the date of the month you purchased the Services unless that date falls after the 28th of the month, in which case your billing date will be the 28th of each month.

Prices shown on any invoices or subscriptions agreements provided to Client do not include any taxes that may apply. Any such taxes are the responsibility of Client.

##### **12.15.1 Automatic Renewal**

IN ORDER TO ENSURE THAT YOU DO NOT EXPERIENCE AN INTERRUPTION OR LOSS OF SERVICES, SUBSCRIPTION SERVICES ARE OFFERED ON AUTOMATIC RENEWAL. EXCEPT FOR REASONS DESCRIBED BELOW IN THIS SECTION, AUTOMATIC RENEWAL

AUTOMATICALLY RENEWS THE APPLICABLE SERVICE UPON EXPIRATION OF THE THEN CURRENT TERM FOR A RENEWAL PERIOD EQUAL IN TIME TO THE MOST RECENT SERVICE PERIOD. FOR EXAMPLE, IF YOUR LAST SERVICE PERIOD IS FOR ONE YEAR, YOUR RENEWAL PERIOD WILL TYPICALLY BE FOR ONE YEAR. HOWEVER, IN THE EVENT RENEWAL WITH THE PAYMENT METHOD ON FILE FAILS, VOCATE MAY ATTEMPT TO RENEW THE APPLICABLE SERVICE FOR A PERIOD LESS THAN THE ORIGINAL SUBSCRIPTION PERIOD TO THE EXTENT NECESSARY FOR THE TRANSACTION TO SUCCEED.

UNLESS YOU DISABLE THE AUTOMATIC RENEWAL OPTION, VOCATE WILL AUTOMATICALLY RENEW THE APPLICABLE SERVICE WHEN IT COMES UP FOR RENEWAL AND WILL TAKE PAYMENT FROM THE PAYMENT METHOD YOU HAVE ON FILE WITH VOCATE AT VOCATE'S THEN CURRENT RATES, WHICH YOU ACKNOWLEDGE AND AGREE MAY BE HIGHER OR LOWER THAN THE RATES FOR THE ORIGINAL SERVICE PERIOD. IF YOU DO NOT WISH FOR ANY SERVICE TO AUTOMATICALLY RENEW, YOU MAY ELECT TO CANCEL RENEWAL, IN WHICH CASE, YOUR SERVICES WILL TERMINATE UPON EXPIRATION OF THE THEN CURRENT TERM, UNLESS YOU MANUALLY RENEW YOUR SERVICES PRIOR TO THAT DATE (IN WHICH CASE THE SERVICES WILL AGAIN BE SET TO AUTOMATIC RENEWAL). SHOULD YOU ELECT TO CANCEL YOUR PRODUCT AND FAIL TO MANUALLY RENEW YOUR SERVICES BEFORE THEY EXPIRE, YOU MAY EXPERIENCE AN INTERRUPTION OR LOSS OF SERVICES, AND VOCATE SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY REGARDING THE SAME.

IN ADDITION, VOCATE MAY PARTICIPATE IN "RECURRING BILLING PROGRAMS" OR "ACCOUNT UPDATER SERVICES" SUPPORTED BY YOUR CREDIT CARD PROVIDER (AND ULTIMATELY DEPENDENT ON YOUR BANK'S PARTICIPATION). IF WE ARE UNABLE TO SUCCESSFULLY CHARGE YOUR EXISTING PAYMENT METHOD, YOUR CREDIT CARD PROVIDER (OR YOUR BANK) MAY NOTIFY US OF UPDATES TO YOUR CREDIT CARD NUMBER AND/OR EXPIRATION DATE, OR THEY MAY AUTOMATICALLY CHARGE YOUR NEW CREDIT CARD ON OUR BEHALF WITHOUT NOTIFICATION TO US. IN ACCORDANCE WITH RECURRING BILLING PROGRAM REQUIREMENTS, IN THE EVENT THAT WE ARE NOTIFIED OF AN UPDATE TO YOUR CREDIT CARD NUMBER AND/OR EXPIRATION DATE, VOCATE WILL AUTOMATICALLY UPDATE YOUR PAYMENT PROFILE ON YOUR BEHALF. VOCATE MAKES NO GUARANTEES THAT WE WILL REQUEST OR RECEIVE UPDATED CREDIT CARD INFORMATION. YOU ACKNOWLEDGE AND AGREE THAT IT IS YOUR SOLE RESPONSIBILITY TO MODIFY AND MAINTAIN YOUR ACCOUNT SETTINGS, INCLUDING BUT NOT LIMITED TO (I) CANCELLING SERVICES/PRODUCTS AND (II) ENSURING YOUR ASSOCIATED PAYMENT METHOD(S) ARE CURRENT AND VALID. FURTHER, YOU ACKNOWLEDGE AND AGREE THAT YOUR FAILURE TO DO SO, MAY RESULT IN THE INTERRUPTION OR LOSS OF SERVICES, AND VOCATE SHALL NOT BE LIABLE TO YOU OR ANY THIRD PARTY REGARDING THE SAME.

If for any reason Vocate is unable to charge your Payment Method for the full amount owed for the Services provided, or if Vocate receives notification of a chargeback, reversal, payment dispute, or is charged a penalty for any fee it previously charged to your Payment Method, you agree that Vocate may pursue all available lawful remedies in order to obtain payment, including but not limited to, immediate cancellation, without notice to you, of any Services registered or renewed on your behalf. Vocate also reserves the right to charge you reasonable "administrative fees" or "processing fees" for (i) tasks Vocate may perform outside the normal scope of its Services, (ii) additional time and/or costs Vocate may incur in providing its Services, and/or (iii) your noncompliance with this Agreement (as determined by Vocate in its sole and absolute discretion). Typical administrative or processing fee scenarios may include, but are not limited to (i) customer service issues that require additional personal time or attention; (ii) disputes that require

accounting or legal services, whether performed by Vocate staff or by outside firms retained by Vocate; (iii) recouping any and all costs and fees, including the cost of Services, incurred by Vocate as the results of chargebacks or other payment disputes brought by you, your bank or Payment Method processor. These administrative fees or processing fees will be billed to the Payment Method you have on file with Vocate.

At this time, Vocate transaction processing is supported only in U.S. dollars.

### **12.15.2. Cancellation and Refunds**

Cancellation of Client Services and Refunds of fees for such services are governed by the terms of your specific Client Agreement.

## **13. Client Specific Terms**

### **13.1. Description of Service for Clients**

“Client” means an entity, company or individual that is registered on our Site and uses our Service in hiring, or facilitating the hiring of Candidates.

YOU UNDERSTAND THAT VOCATE DOES NOT INQUIRE INTO THE BACKGROUNDS OF ITS USERS OR CANDIDATES OR ATTEMPT TO VERIFY THE STATEMENTS OF ITS USERS (ALTHOUGH IT RESERVES THE RIGHT TO CONDUCT ANY BACKGROUND CHECK OR OTHER SCREENINGS AT ANY TIME). YOU AGREE TO (1) CONDUCT ANY BACKGROUND CHECKS, REFERENCE CHECKS, OR OTHER DUE DILIGENCE THAT YOU MAY REQUIRE BEFORE ENGAGING A CANDIDATE, AND (2) COMPLY WITH ALL LAWS AND REGULATIONS RELATING TO THE INTENDED CONTRACT OR HIRE OF ANY CANDIDATE.

YOUR USE OF VOCATE’S SERVICE DOES NOT GUARANTEE YOU A MINIMUM NUMBER OF CANDIDATES, INTERVIEWS, OR HIRES.

### **13.2. Client Registration**

In order to use Vocate as a Client you must register on our Site. Registration is free, but use of the Services may subject you to fees, as described herein. When registering we may ask you for additional information related to your company and the types of Candidates you are looking for. We may also allow you to use a third party service to register. We will review the information that you provided to us during the registration process and any other information that is publicly available. We reserve the right, in our sole discretion, to accept or reject your registration to use our Site and Service. If your registration is accepted, you will be allowed to engage with Candidates (through our Site) that have profiles on Vocate.

### **13.3. Client’s Role**

After a Client’s registration has been accepted by us, the Client will be able to browse the Candidates on our Site, communicate with Candidates, and submit preliminary non-binding interview requests to Candidates. Once a Client has discovered a Candidate on our Site or Service, the Client agrees to communicate with the Candidate exclusively through our Site and Service for the duration of the interview process. The Client and the Candidate may use other means of communication during the later stages of the hiring process, but the Client is required to continuously keep us informed of material details of such hiring process and at our request. The Client agrees not to attempt to circumvent our Site and Service by being dishonest with Vocate about whether it hired a Candidate through our Site or by independently

attempting to communicate and hire the Candidate through alternative means after discovering the Candidate on our Site or Service.

Regardless of whether the Client was identified by the Candidate through the use of our Service or the Client identified the Candidate through the use of our Service, a Client is required to promptly notify Vocate when the Client makes to a Candidate (1) an offer of employment, whether for an indefinite or fixed term or as a paid or unpaid intern, (2) an offer for hire as a contractor, whether for an indefinite or fixed term, or (3) either of the foregoing during or within twelve (12) months after termination of an engagement (whether as an employee or otherwise) with a Candidate.

As a Client who is using our Site and/or Service you agree that (1) if you make a Qualified Offer (defined in Section 14.4), you shall (a) provide Vocate with a copy of a fully executed Qualified Offer agreement, or (b) execute a document between you, Vocate and Candidate that states material employment or contractor terms, including, among other things, Start Date, key terms and compensation, promptly upon the signing of a Qualified Offer agreement between you and such Candidate, as requested by Vocate, (2) you shall promptly notify Vocate of the Candidate's Start Date and the key terms of such Qualified Offer and you will promptly notify Vocate should the Start Date or offer terms change at any time, and (3) you will promptly notify Vocate after termination of the Candidate's engagement as an employee, intern, coop employee, consultant or contractor in the event that (a) such Candidate's engagement (whether as an employee or otherwise) is terminated based on unsatisfactory performance within one hundred and eighty (180) days of the Start Date, (b) the Candidate voluntarily terminates such Candidate's engagement (whether as an employee or otherwise) within one hundred and eighty (180) days of the Start Date, or (c) before the Start Date, either Client or Candidate elect not to begin such Candidate's engagement (whether as an employee or otherwise) as contemplated by the Qualified Offer.

If a Client circumvents our Site and/or Service after discovering a Candidate through our Site or Service and subsequently hires that Candidate within twelve (12) months of the date on which the Client first discovered the Candidate on the Site, the Client will pay a fee equal to 25% of the first-year base salary or prorated contractor compensation of the Candidate and Vocate may, in its sole discretion, terminate the Client's account.

If you a Client who is using our Site and/or Service, you agree to the fee provisions, charges, and billing terms in effect at the time the fee is due and payable. If you do not agree with any of the provisions of this Agreement, please terminate your account immediately and cease using Vocate. YOUR OBLIGATION TO PAY ANY FEES SHALL SURVIVE ANY TERMINATION OF THIS AGREEMENT.

#### **13.4. Per-Hire Fees**

If a Client uses our Services on a per-hire basis (a "Per-Hire Client"), and hires a Candidate from our Site within twelve (12) months of the date on which the Client first viewed the Candidate on the Site, the Client will owe Vocate the applicable Per-Hire fee (currently 10% of such Candidate's first-year base salary or the amount otherwise stated in the applicable order form between Client and Vocate).

For fixed-term Candidates, the Per-Hire fee will be calculated based on a Candidate's yearly pay. For example (i) if such Candidate is paid on a weekly basis, such Per-Hire fee will be calculated as  $(0.1) \times (\text{Candidate weekly salary}) \times (52)$ , (ii) if such Candidate is paid on a monthly basis, such Per-Hire fee will be calculated as  $(0.1) \times (\text{Candidate monthly salary}) \times (12)$ , and so on.

Client agrees to pay the Per-Hire fees charged to Client in accordance with the fees, charges, and billing terms in effect at the time the Per-Hire fee is due and payable hereunder.

Notwithstanding the foregoing, in the event of a Per-Hire fee dispute, if a Client can establish that the

Client had an Active Process (as defined below) with the Candidate before using our Site and Service (e.g., the Candidate had already begun the interview process with the Client and such process had not been terminated, or the Client had received the Candidate's resume from an employment agency or headhunter and the Candidate was under active consideration by the Client), the Client may be exempted from paying the applicable Per-Hire fee. However, the final determination as to whether a Per-Hire fee is owed by the Client will be at the sole discretion of Vocate. For the purposes hereof, "Active Process" shall mean continuous direct, back & forth communication, in an active recruiting or hiring context where a decision to put a candidate on hold or reject has not been made, within the three (3) months prior to using the Site or Service for a Candidate that exists in Client's applicant tracking system or that was submitted by a recruiting agency.

If (1) a Per-Hire Client hires a Candidate and terminates the Candidate's engagement (whether as an employee or otherwise) based on unsatisfactory performance within one hundred and eighty (180) days of the Start Date, (2) a Candidate voluntarily terminates such Candidate's engagement (whether as an employee or otherwise) within one hundred and eighty (180) days of the Start Date, or (3) Candidate does not start such Candidate's engagement (whether as an employee or otherwise) because either Client or Candidate elects not to begin the employment or contractor relationship contemplated in the Qualified Offer (each, a "Termination Event"), upon written receipt and confirmation of such information, Vocate will fully refund to the Per-Hire Client the Per-Hire fee related to the Candidate who was the subject of the Termination Event if such Per-Hire fee was paid by Client prior to the Termination Event.

YOUR USE OF VOCATE'S SERVICE DOES NOT GUARANTEE YOU A MINIMUM NUMBER OF CANDIDATES, INTERVIEWS, OR HIRES.

### **13.5. Subscription Agreements**

Clients engaged in a mutually executed subscription agreement with Vocate (a "Subscription Client") will be charged a subscription fee for the period as agreed upon between the Subscription Client and Vocate pursuant to the applicable executed subscription agreement. During the subscription period, the Subscription Client will be able to browse, contact (through the Service) and extend offers to Candidates listed on our Site and Service. Unless otherwise agreed in writing by Vocate and a Client, all offers made to or accepted by Vocate-sourced Candidates (whether as employee, intern, coop employee, consultant, contractor or via conversion to full-time employee) that were sourced within a subscription period will not be subject to any additional fees beyond the fees as agreed upon between the Subscription Client and Vocate pursuant to the applicable executed subscription agreement. No refunds shall be due to Subscription Clients.

YOUR USE OF VOCATE'S SERVICE DOES NOT GUARANTEE YOU A MINIMUM NUMBER OF CANDIDATES, INTERVIEWS, OR HIRES.

### **13.6. Payment**

Client agrees to pay the fees charged to Client's account in accordance with the fees, charges, and billing terms in effect at the time the fee is due and payable hereunder. Clients may be required to complete the Vocate Direct Debit Authorization Form allowing Vocate to withdraw, debit or charge payments or monthly payments (if applicable) from the Client's designated bank or credit card account(s). By accepting Vocate's Terms of Service, Client agrees that Vocate is authorized to immediately withdraw fees due and payable to Vocate hereunder from Client's account and that no additional notice or consent is required. Client agrees to immediately notify Vocate of any change in its billing address or any account information provided to Vocate used for payment hereunder. **See Section 12.15 and 12.15.1 for further information on Payment, Fees, Billing and Automatic Renewal.**

## **14. Candidate Specific Terms**

### **14.1. Description of Service for Candidates**

“Candidate” means an individual who is registered on our Site and uses our Services to seek employment and/or contractor opportunities for him or herself.

### **14.2. Candidate Registration**

In order to use Vocate as a Candidate you must register and create a profile. The use of the Site and the Service is free for Candidates. When registering with Vocate, we may require you to provide us information such as your name, e-mail address, employment history, work experience, educational background and skill set. Furthermore, you agree to provide us with any other identifying documents that we may request. We may also allow you to use a third party service to register. We will review the information that you provide to us during the registration process and we may also review any other information about you that is publicly available. We reserve the right, in our sole discretion, to accept or reject your registration to use our Site and Service. If your registration is accepted, you will be allowed to use our Service.

**YOUR USE OF VOCATE’S SERVICE DOES NOT GUARANTEE YOU A MINIMUM NUMBER OF INTERVIEWS OR EMPLOYMENT OR CONTRACTOR OFFERS.**

### **14.3. Candidate’s Role**

After a Candidate has registered and created a profile on Vocate, Clients will then have the opportunity to engage with such Candidate. By creating a profile, the Candidate can see which Clients may be interested in hiring him or her. The Candidate may, but is not required to, contact any Client (through our Service) that contacted him or her. The Candidate agrees not to attempt to circumvent our Site and Service by being dishonest with Vocate about whether it met a Client through our Site or by independently attempting to communicate with a Client that contacted or communicated with him or her on our Site or Service.

### **14.4. Additional Information for Candidates**

Regardless of whether the Client was identified by the Candidate through the use of our Service or the Client identified the Candidate through the use of our Service, a Candidate is required to promptly notify Vocate when the Candidate receives from a Client (1) an offer of employment, whether for an indefinite or fixed term or as a paid or unpaid intern, (2) an offer for hire as a contractor, whether for an indefinite or fixed term, or (3) either of the foregoing during or within twelve (12) months after termination of an engagement (whether as an employee or otherwise) with a Client (each, a “Qualified Offer”). The date on which a Candidate officially commences work with a Client (whether as an employee or otherwise) is the “Start Date”.

As a Candidate who is using our Site and/or Service you agree that (1) if you receive a Qualified Offer (defined in Section 14.4), you shall (a) provide Vocate with a copy of a fully executed Qualified Offer agreement, or (b) execute a document between you, Vocate and Client that states material employment or contractor terms, including, among other things, Start Date, key terms and compensation, promptly upon the signing of a Qualified Offer agreement between you and such Client, as requested by Vocate, (2) you shall promptly notify Vocate of your Start Date and the key terms of such Qualified Offer and you will promptly notify Vocate should the Start Date or offer terms change at any time, and (3) you will promptly notify Vocate after termination of your engagement as an employee, intern, coop employee, consultant or contractor in the event that (a) your engagement (whether as an employee or otherwise) is

terminated based on unsatisfactory performance within one hundred and eighty (180) days of the Start Date, (b) you voluntarily terminate your engagement (whether as an employee or otherwise) within one hundred and eighty (180) days of the Start Date, or (c) before the Start Date, either Client or you elect not to begin your engagement (whether as an employee or otherwise) as contemplated by the Qualified Offer.

## **15. Contractor Engagements**

### **15.1. General**

Vocate makes absolutely no warranty as to the determination of a Candidate's status as an independent contractor or employee, and any such determination should be based on a separate determination as made by the Client and Candidate, and as agreed upon only between the Client and Candidate. Client and Candidate are responsible for any contracts or agreements they may form with respect to such engagements, including independent contractor agreements, confidentiality agreements, or any other agreements as may be deemed applicable between the Client and Candidate. Vocate does not control, manage, or provide any guidance with respect to the determination of independent contractor or employee status, subsequent agreements between Client and Candidate, or services performed by or payments made to the Client pursuant to an independent contractor engagement.

### **15.2. Worker Classification.**

Candidate and Client assume all liability for proper classification of Candidates as independent contractors or employees based on applicable legal guidelines.

### **15.3. Indemnification.**

In addition to the indemnification obligations set forth elsewhere in the Agreement, Client and Candidate agree to indemnify, hold harmless and defend Vocate from any and all claims, demands, causes of action, losses, damages, liabilities, costs, and expenses, including attorneys' fees, arising out of or related to their engagement, including but not limited to any breach of any of Candidate's or Client's representations and warranties, from the death or injury of any person or persons, including employees of Client or Candidate, or from damage or destruction of any work or properties, attributable to or resulting from Candidate's engagement with Client, claims misclassification of a Client as an independent contractor, any liabilities arising from a determination by a court, arbitrator, government agency or other body that Candidate was misclassified, any claim that Vocate was an employer or joint employer of Candidate, as well as breach of agreement, action, inaction, omission or any claims under any employment-related laws, such as those relating to termination of employment, employment discrimination, harassment or retaliation, as well as any claims for overtime pay, sick leave, holiday or vacation pay, minimum wages, payroll taxes, social security or unemployment taxes, or disability insurance, retirement benefits, worker's compensation benefits, unemployment benefits, or any other employee benefits required by law.