



RecruitScreen, LLC

LEAD REFERRAL TERMS AND CONDITIONS

1. **DEFINITIONS**
 - (a) **“Information”** means information disclosed by or on behalf of RS that is described in this Agreement, and is marked or indicated by RS or is typically maintained in the industry, as confidential or proprietary.
 - (b) **“RS Customer”** means a party that has entered into a Client Agreement with RS for the provision by RS of Services.
 - (c) **“Lead”** means the person or entity identified by Referral Partner on a Registration (as defined below).
 - (d) **“Services”** means all services provided by RS to a RS Customer under the terms of a Client Agreement.
 - (e) **“Vendor”** means a party that supplies RS with software, information services or other items relating to the Services.
2. **BUSINESS PARTNER'S EFFORTS**
 - (a) **Referral Partner Activities.** RS will provide Referral Partner with such sales materials and marketing collateral as RS deems appropriate to assist in the lead referral effort, and Referral Partner may request additional sales assistance from RS at any time. To submit a Lead to RS, Referral Partner must provide a completed and executed Lead Registration Form (**“Registration”**) to RS.
 - (b) **Warranties and Representations.** Referral Partner will make no warranties or representations to any Lead regarding the Services.
3. **LEAD ACCEPTANCE**

By signing and returning the Registration, RS will have accepted the Lead described in the Registration. If RS does not sign and return the Registration within 15 days of its receipt, RS will be deemed to have rejected the Registration. RS may accept or reject a Registration in its sole discretion. If RS rejects the Registration, RS will not use the information from the Registration. However, RS will have the unrestricted right to use information independently developed by RS or provided to RS by any other RS Referral Partner, value added reseller, affiliate or other party, and Referral Partner will not be due any payment in connection with the use by or on behalf of RS of any such information.
4. **LEAD REFERRAL PAYMENTS**

If during the Initial Term RS enters into an Client Agreement with a Lead and Referral Partner has complied with all of its obligations under this Agreement, Referral Partner will receive compensation for its efforts as follows (**“Lead Referral Payments”**):

 - (a) **Calculation.** Lead Referral Payments will equal 10% of the total monthly fees for Services delivered and paid for under the Client Agreement between RS and the Lead during the initial term of that agreement up to twelve (12) months.
 - (b) **One Payment.** RS will not be liable for payment to more than one Referral Partner for each transaction.
 - (c) **Payments.** RS will make Lead Referral Payments to Referral Partner in U.S. dollars within 30 days after receipt of payment from the Lead.
5. **ORDERS AND AGREEMENTS**

The terms of all RS Client Agreements will be determined by RS in its discretion. RS may add, delete or change agreements, licenses, prices, specifications, versions, and other Services in its discretion.
6. **OWNERSHIP AND PROPRIETARY RIGHTS**
 - (a) **Ownership.** All right, title and interest to copyrights, trade secrets, patents, trademarks and other intellectual property rights in products and services of RS and Vendors and any materials provided by RS under this Agreement will remain the exclusive property of RS or Vendors, as applicable.
 - (b) **RS Marks and Links.** Referral Partner will have no proprietary interest in, or any right to use, RS's logo, trademarks, tradenames or websites.
 - (c) **Confusion.** Referral Partner will not use or register any trademarks, tradenames, websites, or logos containing the phrase “RecruitScreen” or confusingly similar to any trademark, tradename, website or logo used by RS.
7. **LIMITATION OF LIABILITY**

EXCEPT FOR A BREACH OF THE OBLIGATIONS SET FORTH IN SECTIONS 2(b), 6 AND 8, NEITHER PARTY WILL BE LIABLE, REGARDLESS OF THE FORM OF ACTION, FOR LOST REVENUES, PROFITS, SAVINGS, GOODWILL, OR FOR INDIRECT, CONSEQUENTIAL, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, EVEN IF THE PARTY HAS BEEN ADVISED OF THEIR POSSIBILITY. THE LIABILITY OF RS UNDER THIS AGREEMENT WILL NOT EXCEED THE AMOUNT OF LEAD REFERRAL PAYMENTS PAID OR PAYABLE TO BUSINESS PARTNER UNDER THIS AGREEMENT.
8. **CONFIDENTIALITY**
 - (a) **Duty.** Referral Partner will hold in confidence any Information that it receives from RS, not use that Information for purposes other than performance of this Agreement and not disclose the Information except to those employees and advisors who (1) have a need to know the same, and (2) are bound by law or written agreement to maintain the Information in confidence and to those potential RS Customers who have signed a written nondisclosure agreement acceptable to RS binding them to maintain the confidentiality of the Information and not use the Information except to consider doing business with RS. Information includes all aspects of the Services and the business applications covered by the Services, including programs, methodologies, processes, techniques, documentation, pricing, and costs. It also includes RS's plans for new products and services, product improvements, financials, and marketing and business strategies.
 - (b) **Improper Disclosure.** If Referral Partner discovers Information has been improperly used, disseminated or published, it will immediately notify RS and take all reasonable actions to minimize the impact of the disclosure.
 - (c) **Excluded Information.** Even if marked as confidential, the obligations in Section 8 (a) will not apply to Information generally available to or known to the public, known by Referral Partner without obligation of confidentiality before the negotiations leading to this Agreement, independently developed by Referral Partner outside the scope of this Agreement, lawfully disclosed to Referral Partner without restriction by a third party or required to be publicly disclosed to a tribunal. In the case of required disclosures to tribunals, Referral Partner will promptly notify RS and fully assist RS to obtain protective orders maintaining the confidentiality of the Information.
9. **TERMINATION**
 - (a) **Term and Termination.** The **“Initial Term”** will be one (1) year from the Effective Date, and shall thereafter automatically renew for up to three (3) successive **“Renewal Terms”** of one (1) year each unless one party notifies the other at least ninety (90) days prior to the expiration of the Initial or Renewal Term of its intention not to renew this Agreement. This Agreement will terminate on

the first to occur of the following: (1) immediately on notice from either party that the other party has breached any provision of this Agreement and that breach remains uncured 30 days after notice describing the breach; or (2) immediately if either party is the subject of a voluntary or involuntary petition in bankruptcy, becomes insolvent or makes an assignment for the benefit of its creditors. (b) Upon termination or expiration, all obligations to pay amounts owed and to discharge liabilities incurred prior to termination will survive, as will the provisions of the following Sections: 6-8, 10 and 11.

10. INDEMNIFICATION

(a) Indemnification by RS. RS will defend Referral Partner, its officers, employees and agents against any claims by, and indemnify Referral Partner against any judgments in favor of third parties to the extent they arise from or relate to any breach of this Agreement by RS or any negligent, reckless or wrongful action or omission by RS. (b) Indemnification by Referral Partner. Referral Partner will defend RS, its members and Vendors, and their officers, employees and agents against any claims by, and indemnify RS and Vendors against any judgments in favor of third parties to the extent they arise from or relate to any breach of this Agreement by Referral Partner or any negligent, reckless or wrongful action or omission by Referral Partner, its agents or contractors. (c) Cooperation by Indemnified Party. Notwithstanding the above, an indemnifying party is under no obligation to defend or indemnify another party unless: (1) the indemnifying party has been promptly notified of the claim or suit and furnished with a copy of each pleading, communication, notice and other action relating to the claim or suit; (2) the indemnified party permits the indemnifying party, at the indemnifying party's expense, to assume sole authority to conduct the trial or settlement of the claim or suit and any negotiations related to it; and (3) the indemnified party promptly provides information and assistance reasonably requested by the indemnifying party in connection with the claim or suit.

11. GENERAL

(a) Compliance with Laws. RS Services and information provided to RS Customers are subject to controls imposed by the U.S. Government, and Referral Partner will comply with all of those controls and all other applicable laws, regulations, codes and ordinances. (b) Publicity. Referral Partner will not use RS's name, customers or trademarks in any advertisement, news release or other public communication without RS's consent. (c) Notices. Notices, consents, approvals and communications given under this Agreement will be (1) in writing and sent to the address indicated in the Registration or to such other address as the affected party designates by prior notice and (2) effective on the date received unless a later date is indicated in the notice, consent, approval or communication. (d) Assignment. Referral Partner may not assign any of its rights or delegate any performance under this Agreement without the prior consent of RS. Any purported assignment or delegation in violation of this section is void. (e) Governing Law, Jurisdiction, Venue. This Agreement will be governed by and construed in accordance with the laws of the State of Colorado, excluding its conflicts of law provisions, and will be deemed to have been entered into and wholly performed in Colorado. Any dispute, controversy or claim arising out of or relating in any way to this Agreement will be resolved exclusively in the federal or

state courts located in Colorado, without a jury, and each party waives any right to a jury trial and consents to the personal jurisdiction and exclusive venue of those courts for that purpose. (f) Equitable Relief. Any breach of a party's obligations with respect to intellectual property rights or the obligation of confidentiality will cause irreparable injury for which there are no adequate remedies at law. The aggrieved party will be entitled to equitable relief in addition to all other remedies that may be available, without the posting of bond or other security, or if required, then the minimum bond or security so required. (g) Force Majeure. Neither party will be liable for any failure or delay in performing its obligations under this Agreement due to any cause beyond its reasonable control. (h) Entire Agreement. This Agreement, comprised of the Registration and these terms and conditions, constitutes the entire agreement between the parties with respect to its subject matter and supersedes all previous communications, both oral and written, between the parties. No waiver, amendment or modification of this Agreement will be effective unless in writing and signed by an authorized representative of the party against whom enforcement is sought. No waiver by a party of a breach of this Agreement will constitute a waiver of any other breach of that or any other provision of this Agreement. As used in this Agreement, the term "including" means by way of example and not limitation. Capitalized terms not defined in these terms and conditions have the meanings defined in the Registration. (i) Execution. This Agreement may be executed in multiple counterparts, each of which will be deemed an original and all of which will constitute together one agreement. A counterpart delivered to a party by facsimile or similar electronic means will be deemed an original, equivalent in all respects to a manually executed counterpart. (j) Intentional Risk Allocation. The provisions of this Agreement reflect an informed, voluntary allocation between the parties of the risks (known and unknown) that may exist in connection with this Agreement. This voluntary allocation was a material part of the bargain between the parties and the economic and other terms were negotiated and agreed to by the parties in reliance on that allocation. (k) Independent Contractors. The parties are independent contractors and not partners or joint venturers. The use of the term "partner" or "Referral Partner" is intended only to describe an arms-length business relationship, and not to make either party the legal partner of the other or to form any partnership between them. Under no circumstances will the employees of one party be deemed the employees of the other for any purpose. This Agreement does not grant authority for either party to act for the other in an agency or other capacity, or to make commitments of any kind for the account of or on the behalf of the other. (l) Severability. If any provision of this Agreement is determined to be invalid or unenforceable, it will be deemed to be modified to the minimum extent necessary to be valid and enforceable. If it cannot be so modified, it will be deleted and the deletion will not affect the validity or enforceability of any other provision unless, as a result, the fights of either party are materially diminished or the obligations and burdens of either party are materially increased so as to be unjust or inequitable. (m) Cumulative Remedies. Except as otherwise provided, the rights and remedies in this Agreement are cumulative and in addition to any other remedies available at law or equity.