

# JazzHR Terms of Service

Effective September 1, 2022

These JazzHR Terms of Service (the “Terms”) apply to and are incorporated by reference into the ordering document(s), including but not limited to any sales quotes or online orders for JazzHR subscriptions or free trials (the “Order”) made by and between Hireku, Inc. (d/b/a JazzHR), (“JazzHR”) and the Customer identified in the Order. Each person accepting and/or executing these Terms represents and warrants that he or she has the power and authority to accept and bind Customer entity to these Terms.

## 1. DEFINITIONS

- a. “**Authorized Users**” means individual employees and independent contractors of Customer who have a need, and are authorized by Customer, to use the Services.
- b. “**Basic Information**” means a job applicant’s name, address, telephone number, and email address.
- c. “**Customer Data**” shall mean any and all content and materials that Customer and its Authorized Users create through features of the Service, as well as any content or materials uploaded to the Service by Customer and/or its Authorized Users.
- d. “**Documentation**” means the user guides, technical documentation, and systems requirements, as updated by JazzHR from time to time, generally made available by JazzHR to its customers for use in connection with the Services.
- e. “**Personally Identifiable Information**” is any data that can be used to identify a specific individual, including but not limited to, a person’s first name and last name or first initial and last name in combination with any one or more of the following data elements that relate to such person:
  - a. Social Security number or other government issued identification number; or
  - b. Driver’s license number; or
  - c. Financial account information, including any account number, or credit or debit card number, with or without any required security code, access code, personal identification number or password, that would permit access to a person’s financial account; or
  - d. IP or other geolocation data; or
  - e. biometric and health data.
  - f. any other sensitive information, as determined by JazzHR.  
provided, however, that “Personally Identifiable Information” shall not include information that is lawfully obtained from publicly available information, or from federal, state, local or other government records lawfully made available to the general public.

- f. **“Platform”** shall mean JazzHR’s proprietary, Internet-delivered platform of servers, software, and related technology through which JazzHR provides the Services.
- g. **“Services”** shall mean JazzHR’s software-as-a-service (SaaS) applicant tracking and recruiting services (including all features and modules) which it makes available on a subscription basis to customers through its Platform.

## 2. USE OF SERVICES

- a. Right of Access. Subject to Customer’s full payment of the applicable fees, JazzHR grants to Customer a limited, non-exclusive, non-transferable, worldwide right for Customer to access and use, and to permit its Authorized Users to access and use, the Platform and Services, as described in an Order, solely for internal business purposes, in accordance with the Documentation during the Term (as defined below).
- b. Limited Trial Access. Where Customer has elected to participate in a trial of the JazzHR Platform, JazzHR grants to Customer a limited, non-exclusive, non-transferable, worldwide right for Customer to access and use, and to permit its Authorized Users to access and use, certain features of the Platform and Services, as described in an Order, solely for internal business purposes, in accordance with the Documentation (“Limited Trial Access”) for the period specified in the Order but in no event longer than Forty-Five (45) calendar days (the “Limited Trial Access Period”). For Customers with Limited Trial Access, Sections 4(a) and 8(b) of these Terms do not apply.
- c. Restrictions. Customer shall not permit use of or access to the Platform by anyone other than its Authorized Users. Without limitation, Customer shall not, and shall not attempt or permit its Authorized Users or any third party to: (a) use the Platform for the benefit of anyone other than Customer; (b) copy, transfer, sell, resell, license, sublicense, distribute, rent or lease the Platform or any part, feature, function or user interface thereof, or include the Platform in a service bureau or outsourcing offering; (c) frame or mirror any part of the Platform; (d) use the Platform in a way that circumvents a contractual usage limit; (e) use the Platform to store or transmit infringing, libelous, defamatory, obscene or otherwise unlawful or tortious material, or to store or transmit material in violation of third-party rights or applicable laws or regulations, or for any illegal, harmful or fraudulent use or activities, (f) upload to the Platform, or use the Platform to store or transmit, malware or other code that may damage, interfere with, surreptitiously intercept or expropriate any system, program or data; (g) violate, interfere with, alter, harm, destroy or disrupt the security, integrity or performance of, or attempt to gain unauthorized access to, the Platform or Services, any data contained therein, or any related or other software, service, systems or network of any third party; (h) access the Platform in order to build a competitive product or service; (i) perform or disclose any benchmark, performance or security tests on the Platform, or access the Platform with an intention to probe, scan or test the vulnerability of any systems or networks, or to breach or circumvent any security or authentication measures; (j) modify, adapt, translate or create derivative works of the Platform; (k) reverse engineer, decompile, disassemble, translate or convert or otherwise attempt to derive the source code or structure of the Platform or any related software or other technology; (l) remove, relocate, alter or obscure any trademark, copyright or other proprietary or restrictive marking or legend on the Platform or (m) take any action that (i) creates any obligation with respect to the Platform or Services, including the obligation to disclose or distribute its source code, or (ii) grants to any third party any rights to the Platform or Services.
- d. Suspension of Services. JazzHR may immediately suspend Customer’s access to or use of the Services and/or Platform without notice if: (i) Customer or any of its Authorized Users is suspected of violating any provision of Section 2(c); (ii) if JazzHR determines, in its sole

discretion, that an attack on the Platform, breach of the account of any Authorized User, or similar incident, may create a risk to the Platform or other JazzHR customers; or (iii) if Customer breaches the payment terms set forth in Section 10 below. All fees shall continue to accrue during the period of any suspension under these Terms, until such breach is cured. JazzHR shall have no liability whatsoever for any damage, liabilities, losses, or any other consequences that Customer may incur because of any suspension of services.

- e. Authorized Users. Upon full payment for a subscription hereunder, or upon activation of Limited Trial Access, JazzHR will create a master account (“Master Account”) that allows Customer to access the Platform and create individual accounts (pursuant to the Master Account) for Authorized Users. Individual user accounts are for designated Authorized Users only and may not be transferred, shared, used by more than one Authorized User, or used by any employee or independent contractor who is no longer engaged by Customer. Customer shall, and shall cause its Authorized Users to: (i) access and use the Platform in a professional manner only for the internal business purposes of Customer, and only in accordance with these Terms, the applicable Orders, the Documentation and applicable law; and (ii) use commercially reasonable efforts to prevent unauthorized access to or use of the Platform; and (iii) ensure that any Authorized User accounts are terminated immediately upon the Customer’s cessation of its employment, consulting, or other arrangement with such individual.
- f. Product Usage Limitations. Customers may be subject to usage limitations for certain services (such as texting, emailing, job board postings, eSignatures) and use in excess of the usage limitations will be subject to additional fees. Any usage limitation(s) are accepted by Customer and Customer hereby acknowledges that these limitations may impact the Subscription Fees paid by the Customer.
- g. Customer’s Hiring Policies. Customer acknowledges that it is responsible and liable for its employment, hiring or recruitment policies and any hiring or employment decisions. The Services do not include, and JazzHR has no responsibility or liability with respect to: (i) verifying any information, including any job applicant information; (ii) advising Customer with respect to its employment, hiring or recruitment policies in general or any hiring or employment decision; and/or (iii) any determination of the legality of any questions asked, or the type of information requested of, applicants.

### 3. WARRANTIES.

- a. JazzHR Warranty. JazzHR warrants that, subject to the terms hereof: (i) it owns or has the right to use all intellectual property required by the Platform, including but not limited to any necessary trademark, copyright or patent rights; and (ii) it will use reasonable commercial efforts to provide the Platform and Services in all material respects in accordance with the applicable specifications in the Documentation.
- b. Warranty Disclaimer. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, JAZZHR DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT (A) THE PLATFORM WILL RUN PROPERLY ON ALL HARDWARE OR ALL ENVIRONMENTS, (B) THE PLATFORM WILL MEET CUSTOMER OR USER NEEDS OR REQUIREMENTS, (C) THE PLATFORM WILL PERFORM UNINTERRUPTED OR BUG OR ERROR-FREE, OR (D) THAT ANY OR ALL DATA PROVIDED THROUGH THE SERVICE WILL BE ACCURATE, UP-TO-DATE, OR COMPLETE, OR (E) THAT ANY DATA WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED. As an Internet-delivered software application, the Platform may experience periods of downtime, including but not limited to scheduled maintenance, and third-party service outages. ACCORDINGLY, EXCEPT AS EXPRESSLY WARRANTED IN THESE

TERMS OR IN A WRITTEN ADDENDUM BETWEEN THE PARTIES, THE PLATFORM IS PROVIDED "AS IS" AND JAZZHR MAKES NO WARRANTIES OF ANY KIND, WHETHER WRITTEN OR ORAL, EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING BUT NOT LIMITED TO IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT, TITLE, SECURITY, QUIET ENJOYMENT, RELIABILITY, TIMELINESS, AND PERFORMANCE<sup>[L]</sup><sub>[SEP]</sub> OF THE PLATFORM, OR ARISING FROM A COURSE OF DEALING, USAGE OR TRADE PRACTICE, ALL OF WHICH ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, JAZZHR DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS ANY REPRESENTATION OR WARRANTY THAT (A) THE PLATFORM WILL RUN PROPERLY ON ALL HARDWARE OR ALL ENVIRONMENTS, (B) THE PLATFORM WILL MEET CUSTOMER OR USER NEEDS OR REQUIREMENTS, (C) THE PLATFORM WILL PERFORM UNINTERRUPTED OR BUG OR ERROR-FREE, OR (D) THAT ANY OR ALL DATA PROVIDED THROUGH THE SERVICE WILL BE ACCURATE, UP-TO-DATE, OR COMPLETE, OR (E) THAT ANY DATA WILL BE SECURE OR NOT OTHERWISE LOST OR DAMAGED.

- c. Customer Warranties. Customer represents and warrants that: (i) Customer has the legal right to copy, publish, share, store, or otherwise use any Customer Data used, uploaded, or obtained in connection with the Platform; (ii) Customer either owns or otherwise possesses, and has obtained, all rights, approvals, licenses, consents, and permissions as are necessary to perform Customer's obligations hereunder, exercise Customer rights hereunder and to grant any licenses granted by Customer under these Terms, (iii) the Customer Data and Customer's use of the Platform, directly or indirectly, does not, and shall not, infringe, violate or misappropriate any third party's rights, (iv) Customer shall comply with all applicable laws, regulations and industry standards in the course of using the Platform, including but not limited to any data protection, privacy, security, or non-discrimination laws, (v) Customer will give all required notices and appropriate disclosures to all job applicants and employees, regarding Customer (and any third parties acting on Customer behalf, such as JazzHR) use, processing and transfer of any personal data (as defined under applicable law), and (vi) Customer will obtain any and all necessary rights and valid consents from its job applicants and employees to permit use, processing and transfer of personal data by JazzHR for the purposes of its fulfilling its obligations under these Terms or as may be required by applicable law (including any opt-in consents required under applicable U.S. state or European data protection laws).
- d. Mutual Warranties. JazzHR and Customer each represents and warrants to the other that it has the right and authority to enter into this Terms and to perform all of its respective obligations and undertakings.

#### 4. INDEMNIFICATION

- a. JazzHR Indemnification. Provided that complete payment from Customer has been received, JazzHR shall: (i) defend Customer, and its directors, officers, employees and agents against any third-party suit, claim, or demand (each a "Claim") that the Services and Platform, a portion thereof, or Customer's use thereof in accordance with this Terms, infringe or misappropriate a third-party patent, copyright, trademark, or other proprietary right of any third party; and (ii) shall pay any court-ordered award of damages or any settlement agreed to by JazzHR. If the Platform become, or in JazzHR's opinion are likely to become, the subject of a claim of infringement or injunction, JazzHR shall have the right, at its sole option and expense, to: (i) procure a license to enable Customer's continued use of the Platform as set forth in these Terms; (ii) replace or modify the infringing functions of the Platform with

substantially equivalent functions and efficiency that are not subject to any known Claims of infringement; or (iii) modify the Platform features so they are no longer infringing, provided that such modification does not materially and adversely affect the functional capabilities of the Platform as set out herein or in the applicable Order. If (i), (ii), and (iii) above are not available on commercially reasonable terms in JazzHR's judgment, JazzHR may terminate Customer's use of the Platform and refund to Customer the Subscription Fees paid by Customer covering the remaining portion of the applicable Subscription Period for the affected portion of the Platform after the date of termination. JazzHR and its licensors and other providers shall have no liability for any infringement which arises out of or relates to: (i) use or combination of the Platform or Services with any third party software, hardware, application, content or service; (ii) use of the Platform or Services in a manner that does not comply with these Terms or for which it was not designed; (iii) any modification not made by JazzHR or its representatives; or (iv) Customer Data. THIS SECTION STATES CUSTOMER'S SOLE AND EXCLUSIVE REMEDY, AND JAZZHR'S SOLE AND EXCLUSIVE LIABILITY, REGARDING INFRINGEMENT OR MISAPPROPRIATION OF ANY THIRD-PARTY INTELLECTUAL PROPERTY RIGHTS OR TRADE SECRETS.

- b. Customer Indemnification. To the extent permitted by applicable law, Customer shall indemnify and hold harmless JazzHR, its directors, officers, employees, agents, and providers from and against any and all third-party claims, damages, fines, penalties, assessments, liabilities, losses, costs, and expenses (including, but not limited to, attorneys' fees, expert fees, and out-of-pocket expenses) arising out of or relating to: (i) Customer Data, including any processing of Customer Data by or on behalf of JazzHR in accordance with these Terms, (ii) any breach by Customer or Authorized Users of Sections 2(c), 2(e), or 3(c).

## 5. CONFIDENTIALITY.

- a. Obligations. "Confidential Information" means any software, inventions, know-how, business plans, product designs, technical and financial information exchanged under these Terms, that is identified as confidential at the time of disclosure or should reasonably be considered confidential based on the circumstances surrounding the disclosure, or the nature, of the information disclosed. Each party (as the receiving party) must: (i) hold in confidence and not disclose the other party's Confidential Information to third parties except as permitted by these Terms; and (ii) use the other party's Confidential Information only to fulfill its obligations and exercise its rights under these Terms. Each party may share the other party's Confidential Information with its employees, agents or contractors having a legitimate need to know (which, for JazzHR, may include subcontractors), provided that such party remains responsible for any recipient's compliance with the terms of this Section.
- b. Exceptions. These confidentiality obligations do not apply to (and Confidential Information does not include) information that: (i) is or becomes public knowledge through no fault of the receiving party; (ii) was known by the receiving party prior to receipt of the Confidential Information; (iii) is rightfully obtained by the receiving party from a third party without breach of any known confidentiality obligation; or (iv) is independently developed by the receiving party without using or accessing the disclosing party's Confidential Information. A party may also disclose the other party's Confidential Information to the extent required by law or court order, provided it gives advance notice (if permitted by law) and cooperates in any effort by the other party (at the other party's expense) to obtain confidential treatment for the information. The parties acknowledge that unauthorized disclosure or use of Confidential Information may cause substantial harm for which damages alone may be an insufficient remedy, and so upon breach of this Section, each party is entitled to seek appropriate equitable relief in addition to any other remedies it may have at law.



## 6. DATA COLLECTION AND SECURITY.

- a. Data Security. JazzHR deploys commercially reasonable security precautions intended to protect against unauthorized access to Customer data stored by JazzHR, including use of firewalls, encryption, and authentication technologies.
- b. Customer Data. Customer agrees that to the extent that the Platform allows Customer to create content, including but not limited to formulating questions for applicant, Customer is solely responsible for the design, creation, and use of all such content and any content or answers provided by job applicants in response. JazzHR does not supervise or oversee such content creation and disclaims all liability therefor.
- c. Applicant Data. The Service also permits job applicants to upload applicant data to the Platform to the extent requested by Customer. JazzHR shall make such applicant data available to Customer through the Platform and any applicant data shall be deemed Customer Data.
- d. Personally Identifiable Information ("PII"). Customer is responsible for ensuring that other than the "Basic Information," it uses commercially reasonable efforts not to request any Personally Identifiable Information ("PII") from job applicants in connection with the Platform. Customer further agrees to ensure that it regularly removes any PII uploaded to the Platform other than the Basic Information. Customer is responsible at all times for ensuring the protection, security, and destruction of any PII contained in applicant data which is in its possession through its use of the Platform, as well as any data privacy consents that may be required from job applicants. JazzHR strives to keep information on its Platform secure but does not monitor what type of data or information Customer requests or obtains from job applicants. Accordingly, JazzHR cannot agree that it will be successful at keeping any such job applicant data secure and Customer acknowledges that it bears sole responsibility for adequate security, protection, and backup of such data, and JazzHR will have no liability to Customer for any unauthorized access, use, destruction, or loss of any PII uploaded to the Platform.
- e. License to Customer Data. Customer owns the Customer Data. However, during the term of this Terms and subject to Section 6(e) below, Customer grants JazzHR a non-exclusive, worldwide, royalty-free right to copy, cache, publish, display, perform, distribute, translate and store Customer Data, and to allow others to do so as JazzHR's agents solely for the purpose of providing the Services via the Platform, and any other activities expressly agreed to by Customer.
- f. Use of De-Identified, Aggregated Data. To the extent permitted by applicable law, Customer grants JazzHR the perpetual right to (i) use, process, transfer, and store any Customer Data, applicant data, user statistics and quantitative data in an anonymous (or pseudonymous) and aggregated manner, and (ii) combine Customer Data, user statistics and quantitative data with other information, collected online and offline by JazzHR, including information from third party sources. Further, Customer grants JazzHR the right to collect, use, share and store anonymized (or pseudonymized) aggregated data collected through the Platform for benchmarking, analytics, A/B testing, metrics, research, reporting, machine learning and other business purposes, including the foregoing grants shall include the right to collect, use and disclose quantitative data derived from the use of the Platform for industry analysis, benchmarking, analytics, marketing, and any other lawful purposes.

## 7. OWNERSHIP.

- a. JazzHR. JazzHR and its licensors exclusively own and reserve all rights, title, and interest in and to all of the Services, Platform, and any Documentation, and all copies thereof and all

proprietary and intellectual property rights therein, including, but not limited to, copyrights, patents, trademarks, logos, domain names, and other brand features of JazzHR. The JazzHR name, logo and product names associated with the JazzHR website, Services, and Platform are trademarks of JazzHR, and no right or license is granted to use them. All rights not expressly granted to Customer hereunder are reserved by JazzHR. JazzHR alone shall own all rights, title, and interest in and to any suggestions, enhancement requests, feedback, recommendations, or other information provided by Customer or any third party relating to the Platform and the Services, and Customer hereby assigns any rights or title to any feedback or information Customer may provide to JazzHR regarding the Platform and the Services. Except with respect to the right to use the Platform as expressly provided herein, these Terms do not grant to Customer any rights to, or in, patents, copyrights, database rights, trade secrets, trade names, trademarks (whether registered or unregistered) or any other rights or licenses with respect to the Platform or the Services.

- b. Customer. Customer retains all right, title and interest in any data, files, attachments, text, images, and other content that Customer or a Customer Authorized User uploads or submits to the Platform under this Terms. In accordance with Section 11(d), Customer may receive an export of Customer Data upon termination of this Terms.

## 8. LIMITATION OF LIABILITY.

a.

1. Limitations. TO THE MAXIMUM EXTENT PERMITTED BY LAW, IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY, SPECIAL, OR ANY OTHER DAMAGES, INCLUDING, BUT NOT LIMITED TO, DAMAGES FOR PERSONAL INJURY, LOST PROFITS, LOSS OF DATA, LOSS OF BUSINESS OPPORTUNITY, LOSS OF USE, LOST REVENUE, BUSINESS INTERRUPTION, PROPERTY DAMAGE, OR LOSS, CORRUPTION OR MODIFICATION OF DATA OR COST OF COVER, ARISING OUT OF OR RELATED TO THESE TERMS (INCLUDING ANY ORDERS ISSUED HEREUNDER), EVEN IF ADVISED OF THE POSSIBILITY OF SUCH DAMAGES (HOWEVER CAUSED AND REGARDLESS OF THE THEORY OF LIABILITY, WHETHER IN WARRANTY, CONTRACT, TORT, INCLUDING, BUT NOT LIMITED TO, NEGLIGENCE, OR OTHERWISE). IN ANY CASE AND WITHOUT LIMITING THE FOREGOING, THE ENTIRE LIABILITY OF EITHER PARTY FOR ALL DAMAGES OF EVERY KIND AND TYPE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT WILL BE LIMITED TO THE LESSER OF: (A) THE FEES PAID BY CUSTOMER TO JAZZHR IN THE TWELVE (12) CALENDAR MONTHS IMMEDIATELY PRIOR TO THE DATE THE APPLICABLE CLAIM AROSE, OR (B) TEN THOUSAND <sup>11</sup>~~SEP~~ DOLLARS (\$10,000); PROVIDED THAT IN THE CASE OF LIMITED TRIAL ACCESS, SUCH LIABILITY SHALL BE CAPPED AT ONE THOUSAND DOLLARS (\$1,000).

- b. Exceptions. The obligations and exclusions set forth in this Section shall not apply to: (i) a party's indemnity obligations under Section 4, (ii) a violation of a party's intellectual property rights by the other party or any Authorized User, or (iii) Customer's payment obligations.

## 9. THIRD-PARTY SERVICES

- a. The Platform may be available through, or in connection with, independent third-party service providers. When Customer uses such third-party services in connection with the Platform,

the third party's applicable terms of use and privacy policies will apply, and not these Terms, to Customer's use of such third-party services.

## 10. PAYMENT

- a. Fees. Customer shall pay to JazzHR the subscription fees in the amount and for the subscription duration set forth in the applicable Order (the "Subscription Fee").
- b. Payment. Customer agrees to timely pay when due all Subscription Fees as set forth in the applicable Order.
- c. Taxes. All fees are exclusive of, and Customer is responsible for, all taxes, charges, and duties applicable to each transaction relating to the Platform, including without limitation any sales, use, value added, customs, excise, withholding and similar taxes and duties ("Taxes") imposed by any government entity, excluding Taxes based on JazzHR's net income. If JazzHR is obligated to collect Taxes, then the appropriate amount will be added to the applicable invoice. If Customer is required to withhold or deduct any Taxes from any payment due hereunder, Customer will increase the sum payable to JazzHR such that JazzHR receives an amount equal to the sum it would have received had Customer made no withholding or deduction.
- d. Upgrade Fees. If Customer chooses to upgrade to access additional features of JazzHR Services for which separate or additional fees apply and for which Customer has not purchased a subscription, the applicable fees will be invoiced by JazzHR and must be paid in full prior to access to such additional features.

## 11. TERM AND TERMINATION

- a. Term and Renewal. Following expiration of the initial subscription term, whether monthly, annually, or multi-year, (the "Initial Subscription Term") and unless expressly set forth otherwise, Customer's subscription will automatically renew for successive terms of the same duration (each a "Renewal Term") unless either party provides written notice of non-renewal at least thirty (30) calendar days prior to the expiration of the Initial Subscription Term or any subsequent Renewal Term; The Initial Subscription Term and Renewal Term(s) shall be collectively referred to herein as "Term." JazzHR may raise subscription fees at any time after the expiration of the Initial Subscription Term based on the then-current List Prices, which are currently made publicly available on JazzHR's website.
- b. Termination. Either party may terminate these Terms (a) upon thirty (30) days prior written notice if the other party has materially breached these Terms (including any Order) and failed to cure within such period or (b) immediately upon written notice if the other party (i) breaches Section 10, (ii) becomes insolvent, (iii) files a petition, or has a petition filed against it, under any laws relating to bankruptcy, insolvency or liquidation, or (iv) ceases to carry on business in the ordinary course. JazzHR may also terminate these Terms by written notice to Customer as far in advance as practicable if JazzHR's third party provider which hosts the Platform terminates the agreement between JazzHR and such provider. These Terms shall also terminate upon the expiration of any Limited Trial Access Period, unless the Customer thereafter places an Order for a JazzHR subscription.
- c. Effect of Termination. Upon termination, non-renewal, cancellation or expiration of the Term or any Limited Trial Access Period, all rights granted by JazzHR under these Terms and any Orders issued hereunder shall automatically terminate, Customer and its Authorized Users shall immediately cease all use of the Platform and each party shall promptly return all Confidential Information of the other party in its possession or destroy the same and certify



such destruction in writing to the other party. If these Terms are terminated by Customer pursuant to Section 11 (b), JazzHR will refund to Customer all prepaid unused subscription fees covering the remainder of the Term. In no event will termination of these Terms relieve Customer of its obligation to pay any fees payable to JazzHR for the period prior to the effective date of termination.

- d. Treatment of Customer Data at Termination. Upon Customer's written request, which must be received no later than thirty (30) days prior to the effective date of termination, or upon termination, JazzHR shall make available for download a file of Customer Data in .csv format along with attachments in their native format. After termination, JazzHR will have no obligation to maintain Customer Data and will thereafter delete, destroy or otherwise render inaccessible all copies of Customer Data in accordance with its standard data destruction policies and applicable law.
- e. Survival. The following sections will survive termination or expiration of these Terms and Customer subscription: Sections 2, 4, 5, 6, 7, 8, 10, and 12.

## 12. GENERAL

- a. Federal Government End Use. JazzHR provides the Platform for ultimate U.S. federal government end use solely in accordance with the following: Government technical data and software rights related to the Platform and Services include only those rights customarily provided to the public as defined in these Terms. Government use rights are limited to those minimum rights required by the appropriate provisions of the FAR.
- b. Export Compliance. Customer may not, and shall not permit its Authorized Users to, access, use, export or re-export Customer Data, in or to any U.S.-embargoed countries or in violation of any applicable export law, regulation, order or sanction. Customer represents that neither it nor any Authorized User is named on any U.S. government denied-party list.
- c. Publicity. Customer agrees that JazzHR may list Customer and a Customer-approved logo on JazzHR's websites and marketing materials or press releases with Customer's prior written approval (which may be given by email). Any press release or other public statement by a party that refers to the other party shall require the prior written approval of the other party.
- d. No Third-Party Beneficiaries. Nothing in this Terms shall be construed as giving any right, remedy or claim hereunder to any person or entity that is not a party hereto. Any person or entity which is not a party to this Terms shall have no right to enforce any part of it. Any claim that a Customer affiliate or Authorized User (or other Customer user) may have or assert against JazzHR shall be considered a claim by Customer against JazzHR under this Terms. Any claim that JazzHR may have or assert against a Customer affiliate or Authorized User (or other Customer user) shall be considered a claim by JazzHR against Customer under this Terms.
- e. Assignment. JazzHR may freely assign or delegate all rights and obligations under these Terms, fully or partially, with or without notice to Customer. JazzHR may also substitute, by way of novation, any third party that assumes its rights and obligations under these Terms. Customer may not assign or delegate any rights or obligations under these Terms without the prior written consent of JazzHR; provided, however, that Customer may assign these Terms in its entirety (including all Orders), without consent of JazzHR, in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of Customer assets. Subject to the foregoing, these Terms shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- f. Force Majeure. Except for payment obligations, neither party shall be deemed in default under these Terms or any Order because of any delay or failure to perform due to causes

beyond its reasonable control, including for example, any act of God, act of government, flood, fire, earthquake, civil unrest, act of terror, Internet failure or delay, failure of equipment or providers or denial of service attack.

- g. Entire Agreement. These Terms together with any Order issued hereunder, and the JazzHR [Privacy Policy](#), as may be updated by JazzHR from time to time and both of which are incorporated herein by this reference, constitute the complete and entire agreement between the parties regarding the subject matter hereof and supersede all prior and contemporaneous agreements, understandings, proposals, and representations, written or oral, concerning such subject matter; provided, however, that if the parties have executed a modified version of these Terms, such modified Terms shall form an integral part of the complete and entire agreement between the parties and shall take precedence in the event of any conflict or inconsistency with the provisions of these Terms.
- h. Governing Law. These Terms shall be governed, construed, and enforced in accordance with the laws of the Commonwealth of Massachusetts without reference to conflicts of law principles. The parties agree that the exclusive jurisdiction of any actions arising out of, relating to, or in any way connected with these Terms, shall be in the state or federal courts, as applicable, located in Boston, Massachusetts. The parties disclaim application of any law based in any way on the Uniform Computer Information Transaction Act (UCITA) to the Terms or the parties.
- i. Miscellaneous. Any rule of construction to the effect that ambiguities are to be resolved against the drafting party will not be applied in the construction or interpretation of these Terms. If one or more of the provisions herein shall be held invalid, illegal, or unenforceable in any respect, the validity, legality, and enforcement of the remaining provisions shall not be affected or impaired. The failure to enforce, or the waiver by either party, of a default or breach of the other party shall not be considered a waiver of any subsequent default or breach.

For questions or other notices regarding these Terms, please email [compliance@JazzHR.com](mailto:compliance@JazzHR.com).