

VIVIAN HEALTH CUSTOMER TERMS AND CONDITIONS
Updated July 21, 2025

By signing an Order Form referencing these Terms and Conditions, Customer agrees to the following Terms and Conditions and Data Processing Agreement which form a valid and binding contract between Customer and Vivian.

TERMS AND CONDITIONS

1) Definitions.

"Agreement" means the Order Form(s), any Statement(s) of Work, and these Customer Terms and Conditions.

"AI Assistant" means a feature or tool made available by Vivian that utilizes artificial intelligence, machine learning, or similar technologies to analyze Job Posting and Candidate profile information for the purpose of generating communications such as the AI-powered chatbot that enables Customer communicate with Candidates via the Platform.

"Authorized User" means Customer's employees, consultants, contractors, and agents (i) who are authorized by Customer to access and use the Services under the rights granted to Customer pursuant to this Agreement and (ii) for whom access to the Services has been purchased hereunder.

"Candidate" shall mean a healthcare professional who has created an account with the Platform and who has applied to or expressed interest in a Job Posting.

"Customer" means the legal entity named on an Order Form.

"Customer Data" means, other than Platform Usage Data, information, data, and other content, in any form or medium, that is submitted, posted, uploaded to the Platform, or otherwise transmitted by or on behalf of Customer or an Authorized User through the Services including information relating to Candidates and to Authorized Users.

"Data Processing Agreement" means the [data processing agreement](#) that governs Vivian's processing of personal information.

"Documentation" means Vivian's end user documentation relating to the Services available at <http://Vivian.com> and/or otherwise made available by Vivian.

"Job Posting" means a job posting published by Customer on the Platform.

"Order Form" means a Subscription order form signed by both Parties.

"Party" means Vivian and Customer, as applicable, and **"Parties"** means both Vivian and Customer.

"Platform" means the Vivian.com website and mobile applications.

"Platform Usage Data" means any information, analysis, statistics, metrics, or data regarding Customer's use of the Services.

"Services" means the software-as-a-service offering made available via the Platform that matches healthcare professionals with placement opportunities made available by employers or their agencies, and as may be further described in an Order Form and/or Statement of Work and including Customer Job Postings publication, job proposals to Candidates, receiving Candidate applications, two-way chat, document and information exchange between Customer and Candidates, the AI Assistant, and other recruiting functions involving the Vivian "Talent Pool" of healthcare professionals.

"SOW" or "Statement of Work" means one or more statements of work signed by both Parties referencing an Order Form, if any.

"Terms of Services" means the Vivian terms of service including the acceptable use policy therein (viewable at <https://www.Vivian.com/terms-of-service.html>), which may be updated from time to time.

"Third-Party Products" means any third-party products available via the Platform or provided with or incorporated into the Services.

"Vivian" means Vivian Health, Inc.

"Vivian IP" means the Platform, Services, the Documentation, and any and all deliverable provided to Customer or any Authorized User under a Statement of Work. For the avoidance of doubt, Vivian IP includes Platform Usage Data and any information, data, or other content derived from Vivian's monitoring of Customer's access to or use of the Services, but does not include Customer Data.

2) Access and Use.

- a) Provision of Access. Subject to and conditioned on Customer's payment of Fees and compliance with all other terms and conditions of this Agreement, Vivian hereby grants Customer a non-exclusive, non-transferable (except as otherwise provided herein) right to access and use the Services during the Term, solely for use by Authorized Users in accordance with the terms and conditions herein. Such use is limited to Customer's internal use. The Services are subject to, and Customer and Authorized Users shall comply with, the Terms of Service. Vivian reserves the right, in its sole discretion, to make any changes to the Services and Documentation that it deems necessary or useful to: (i) maintain or enhance the quality, delivery, competitive strength, marketability, cost efficiency or performance of the Service; or (ii) to comply with applicable law.
- b) Documentation License. Subject to the terms and conditions contained in this Agreement, Vivian hereby grants to Customer a non-exclusive, non-sublicensable, non-transferable (except as otherwise provided herein) license to use the Documentation during the Term solely for Customer's internal business purposes in connection with its use of the Services.
- c) Use Restrictions. Customer may use the Services solely within the United States for placements of health care professional candidates in positions/jobs within the United States. Customer shall not use the Services for any purposes beyond the scope of the access granted in this Agreement. Customer shall not at any time, directly or indirectly, and shall not permit any Authorized Users to: (i) copy, modify, or create derivative works of the Services or Documentation, in whole or in part; (ii) rent, lease, lend, sell, license, sublicense, assign, distribute, publish, transfer, or otherwise make available the Services or Documentation; (iii) reverse engineer, disassemble, decompile, decode, adapt, or otherwise attempt to derive or gain access to any software component of the Services, in whole or in part; (iv) remove any proprietary notices from the Services or Documentation; (v) use the Services or Documentation in any manner or for any purpose that infringes, misappropriates, or otherwise violates any intellectual property right or other right of any person, or that violates any applicable law; (v) monitor, gather, copy, or distribute any content or data included in the Services by using any robot, rover, "bot," spider, scraper, crawler, spyware, engine, device, software, extraction tool, or any other automatic device, utility, or manual process of any kind; (vi) insert any code or product to manipulate the Services in any way; or (vii) circumvent, disable or otherwise interfere with the security features of the Services, or any features that prevent or restrict use or copying of any portion of the Services.
- d) Reservation of Rights. Vivian reserves all rights not expressly granted to Customer in this Agreement. Except for the limited rights and licenses expressly granted under this Agreement, nothing in this Agreement grants, by implication, waiver, estoppel, or otherwise, to Customer or any third party any intellectual property rights or other right, title, or interest in or to the Vivian IP.

- e) Suspension. Notwithstanding anything to the contrary in this Agreement, Vivian may temporarily suspend Customer's and any Authorized End User's access to any portion or all of the Services if: (i) Vivian reasonably determines that (A) there is a threat or attack on any of the Vivian IP; (B) Customer's or any Authorized End User's use of the Services disrupts or poses a security risk to the Vivian IP or to any other customer or vendor of Vivian; (C) Customer, or any Authorized End User, is using the Services for fraudulent or illegal activities or in violation of this Agreement, including violation of the compliance requirements set forth in Section 3(b); (D) subject to applicable law, Customer has ceased to continue its business in the ordinary course, made an assignment for the benefit of creditors or similar disposition of its assets, or become the subject of any bankruptcy, reorganization, liquidation, dissolution, or similar proceeding; or (E) Vivian's provision of the Services to Customer or any Authorized End User is prohibited by applicable law; (ii) any vendor of Vivian has suspended or terminated Vivian's access to or use of any third-party services or products required to enable Customer to access the Services; or (iii) in accordance with Section 5(b) (any such suspension described above in subclause (i), (ii), or (iii), a "**Service Suspension**"). Vivian shall use commercially reasonable efforts to provide written notice of any Service Suspension to Customer and to provide updates regarding resumption of access to the Services following any Service Suspension. Vivian shall use commercially reasonable efforts to resume providing access to the Services as soon as reasonably possible after the event giving rise to the Service Suspension is cured. Vivian will have no liability for any damage, liabilities, losses (including any loss of data or profits), or any other consequences that Customer or any Authorized User may incur as a result of a Service Suspension.
- f) Platform Usage Data. Vivian shall own all right, title, and interest in and have the right to use, collect, distribute, market, exploit and display Platform Usage Data.

3) Customer Responsibilities.

- a) General. Customer is responsible and liable for all uses of the Services and Documentation resulting from access provided to the Services to Customer, whether such access or use is permitted by or in violation of this Agreement. Without limiting the generality of the foregoing, Customer is responsible for all aspects of its Job Postings and all acts and omissions of Authorized Users. Customer shall make all Authorized Users aware of this Agreement's provisions as applicable to such Authorized User's use of the Services, and shall cause Authorized Users to comply with such provisions.
- b) AI Assistant. Customer is solely responsible for its Authorized Users' use of the AI Assistant. Customer acknowledges that the AI Assistant is a new technology and its output is generated automatically and may contain inaccuracies, errors, or undesired material. Vivian disclaims any liability with respect to the output of the AI Assistant and Customer agrees to review and independently verify any output from the AI Assistant before relying on it, acting on it, or communicating it to Candidates or any other person. Customer is solely responsible for ensuring its use of the AI Assistant, including any hiring decisions influenced by the AI Assistant's output, complies with all applicable laws, including but not limited to anti-discrimination and employment laws.
- c) Compliance. In using the Platform and Services and interacting with the Candidates, Customer must comply, and shall ensure that Authorized Users comply, with the following requirements.
- (i) All Job Postings must be legitimate, correspond to real and existing job opportunities, with a genuine intent to hire for the specific position listed. Job Postings may not be posted for the purpose of self promotion, user acquisition, or harvesting personal information (including but not limited to directing job seekers to sign up for an external platform or service), or any purpose other than hiring a Candidate for the position described in the Job Posting.
- (ii) Each Job Posting must be for a single open position. General postings for potential positions may not be posted on the Platform.

(iii) Customer shall remove a Job Posting immediately from the Platform upon becoming aware that the corresponding position has been filled.

(iv) Job Postings may not be misleading, deceptive or fraudulent. All Job Postings must contain truthful, accurate, and complete information about the positions they promote including the title, responsibilities, required qualifications, position type (e.g., travel, full-time, part-time, contract), health facility location, compensation, and all other material conditions.

(v) Customer's Job Postings and hiring practices must comply with all applicable laws including local laws where the job is to be performed and pay transparency laws that require the inclusion of pay ranges or pay scales in job listings. Customer must not engage in any discriminatory practice or behavior based on any legally protected characteristics, including but not limited to age, gender, gender identity, religion, ethnicity, race, national origin, disability, and/or sexual orientation.

Vivian reserves the right to remove any Job Posting at its sole discretion upon becoming aware (including via Candidate feedback) that such Job Posting does not comply with the requirements of this Agreement. Vivian may further suspend or terminate Customer accounts upon material and/or repeated violations of this Agreement or high number of complaints from candidates.

- d) Security. Customer will keep confidential, and will ensure that all Authorized Users keep confidential and do not disclose to any third parties, any user IDs, passwords or other similar login authentication information for accessing the Services. Customer shall be and remain responsible for the security of all systems that it uses in connection with the Services or makes available to Vivian.
- e) Third-Party Products. Vivian may from time to time make Third-Party Products available to Customer, accessible from within the Services. Such Third-Party Products are subject to their own terms and conditions. If Customer does not agree to abide by the applicable terms for any such Third-Party Products, then Customer should not access, install or use such Third-Party Products.

4) Service Levels, Support and Professional Services.

- a) Service Levels. Subject to Customer's compliance with this Agreement, Vivian shall use commercially reasonable efforts to make the Services available in accordance with the service levels that it makes generally available to its customers ("Standard SLA"). Customer may request and receive higher SLA levels if stated in an Order Form or SOW, and Vivian reserves the right to charge additional fees for such higher SLA levels.
- b) Support. Subject to Customer's compliance with this Agreement, Vivian shall respond to incidents and provide support for error fixes in the same manner as it generally does for its other customers. Customer may purchase additional support services via an Order Form or SOW, and Vivian reserves the right to charge additional fees for such additional support services.
- c) Additional Features and Services. Vivian may provide integration, data conversion, consulting, training and other services (for example integrations to third party job feeds, ATS, VMS and/or other vendor systems of Customer). Such additional services or features shall be provided under a separate order form or addendum and Vivian reserves the right to charge additional fees for such additional services or features.

5) Fees and Payment.

- a) Fees. Customer shall pay Vivian the fees ("**Fees**") as set forth in an Order Form without offset or deduction, except as otherwise provided in an Order Form. Customer authorizes charges to Customer's checking/savings account or credit card of all amounts owed to Vivian pursuant to Order Forms. No notification will be provided to Customer prior to collecting payments under an Order Form for each billing period other than as set forth in an Order Form. At the Customer's request, a receipt for each payment received will be emailed to Customer detailing the charges for monthly subscriptions and additional fees per an Order Form.

- b) Payment Default. Customer shall make all payments hereunder in US dollars on or before the due date set forth in an Order Form. If Customer fails to make any payment when due, Vivian will implement its escalation policy including email warnings, telephone calls, attempting to charge Customer's credit card, and referring to a collections agency. Without limiting Vivian's other rights and remedies: (i) Vivian may charge interest on the past due amount at the rate of 1.5% per month calculated daily and compounded monthly or, if lower, the highest rate permitted under applicable law; (ii) Customer shall reimburse Vivian for all costs incurred by Vivian in collecting any late payments or interest, including attorneys' fees, court costs, and collection agency fees; and (iii) if such failure continues for 5 days or more, Vivian may suspend Customer's and its Authorized Users' access to any portion or all of the Services until such amounts are paid in full.
- c) Taxes. All Fees and other amounts payable by Customer under this Agreement are exclusive of taxes and similar assessments. Customer is responsible for all sales, use, and excise taxes, and any other similar taxes, duties, and charges of any kind imposed by any federal, state, or local governmental or regulatory authority on any amounts payable by Customer hereunder, other than any taxes imposed on Vivian's income ("Taxes"). Unless Customer provides Vivian a valid state sales/use/excise tax exemption certificate, Customer will pay and be solely responsible for all Taxes. Vivian may invoice Taxes in accordance with the applicable law together on one invoice or a separate invoice. Vivian reserves the right to determine the Taxes for a transaction will be based on applicable requirements based on Customer's billing address, or other information provided by Customer on the location of Customer's use of the Services. Customer will be responsible for any Taxes, penalties or interests that might apply based on Vivian's failure to charge appropriate tax due to incomplete or incorrect location information provided by Customer.
- d) Auditing Rights and Required Records. Customer agrees to maintain complete and accurate records in accordance with generally accepted accounting principles during the Term and for a period of the later of (i) two years after the termination or expiration of this Agreement or (ii) with respect to contingent fees set forth in an Order Form, two years after the final Fee amount owed has been paid, with respect to matters necessary for accurately determining amounts due hereunder and compliance with its other obligations. Vivian may, at its own expense, on reasonable prior notice, periodically inspect and audit Customer's records with respect to matters covered by this Agreement (e.g., payment and accuracy of Customer Data and Job Postings), provided that if such inspection and audit reveals that Customer has underpaid Vivian with respect to any amounts due and payable during the Term, Customer shall promptly pay the amounts necessary to rectify such underpayment, together with interest in accordance with Section 5(b). Customer shall pay for the costs of the audit if such audit determines that Customer's underpayment equals or exceeds 5% for any quarter. Such inspection and auditing rights will extend throughout the Term of this Agreement and for a period of two years after the later of (i) termination or expiration of this Agreement or (ii) with respect to contingent fees set forth in an Order Form, two years after the final Fee amount owed has been paid.
- e) Verification. Prior to delivering any Services under an Order Form or SOW, Vivian reserves the right to perform certain verifications to verify Customer's credit history, including a credit check. Customer consents to Vivian's verification of Customer's credit and shall provide Vivian with all information reasonably requested by Vivian to perform such verifications.

6) Confidential Information.

From time to time during the Term, either Party may disclose or make available to the other Party information about its business affairs, products, confidential intellectual property, trade secrets, third-party confidential information, and other sensitive or proprietary information, whether orally or in written, electronic, or other form or media, that is marked, designated or otherwise identified as "confidential" (collectively, "**Confidential Information**"). Confidential Information does not include information that, at the time of disclosure is: (a) in the public domain; (b) known to the receiving Party at the time of disclosure; (c) rightfully obtained by the receiving

Party on a non-confidential basis from a third party; or (d) independently developed by the receiving Party. The receiving Party shall not disclose the disclosing Party's Confidential Information to any person or entity, except to the receiving Party's employees who have a need to know the Confidential Information for the receiving Party to exercise its rights or perform its obligations hereunder. Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (i) in order to comply with the order of a court or other governmental body, or as otherwise necessary to comply with applicable law, provided that the Party making the disclosure pursuant to the order shall first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (ii) to establish a Party's rights under this Agreement, including to make required court filings. On the expiration or termination of the Agreement, the receiving Party shall promptly return to the disclosing Party all copies, whether in written, electronic, or other form or media, of the disclosing Party's Confidential Information, or destroy all such copies and certify in writing to the disclosing Party that such Confidential Information has been destroyed. Each Party's obligations of non-disclosure with regard to Confidential Information are effective as of the Effective Date and will expire five years from the date first disclosed to the receiving Party; provided, however, with respect to any Confidential Information that constitutes a trade secret (as determined under applicable law), such obligations of non-disclosure will survive the termination or expiration of this Agreement for as long as such Confidential Information remains subject to trade secret protection under applicable law.

7) Intellectual Property Ownership; Feedback.

- a) Vivian IP. Customer acknowledges that, as between Customer and Vivian, Vivian owns all right, title, and interest, including all intellectual property and proprietary rights, in and to the Vivian IP and, with respect to Third- Party Products, the applicable third-party providers own all right, title, and interest, including all intellectual property rights, in and to the Third-Party Products.
- b) Customer Data. Customer hereby grants to Vivian (i) a non-exclusive, royalty-free, worldwide license to use, display and share the Customer Data and perform all acts with respect to the Customer Data as necessary for Vivian to provide the Services to Customer and improve its Services, including reproducing, modifying, making derivatives of, analyzing, parsing, categorizing, and distributing Customer Data, and (ii) a non-exclusive, perpetual, irrevocable, royalty- free, worldwide license to reproduce, distribute, modify, and otherwise use and display Customer Data that has been aggregated and de-identified and incorporated within the Platform Usage Data.
- c) Feedback. If Customer or any of its employees or contractors sends or transmits any communications or materials to Vivian by mail, email, telephone, or otherwise, suggesting or recommending changes to the Vivian IP, including without limitation, new features or functionality relating thereto, or any comments, questions, suggestions, or the like ("**Feedback**"), Vivian is free to use such Feedback irrespective of any other obligation or limitation between the Parties governing such Feedback.

8) Personal Information.

- a) Candidate Profile Data. Vivian collects personal information directly from Candidates ("Candidate Profile Data") and shares Candidate Profile Data with Customer in accordance with Vivian's [Privacy Policy](#). Customer may only access and use Candidate Profile Data to process a Candidate's application in response to a Job Posting. Customer may not use Candidate Profile Data for any other use unless Customer has received express consent from the Candidate for such use.
- b) Candidate Submission Data. Customer may not collect any additional personal information from a Candidate beyond the Candidate Profile Data unless (i) such data is required for the Candidate's submission to a Job Posting ("Candidate Submission Data") and (ii) the Candidate has expressly consented to provide Candidate Submission Data. Customer may only upload Candidate Submission Data to the Platform if Customer has obtained express consent from the Candidate to do so. In storing Candidate Submission Data, Vivian shall act as a processor/service provider to Customer.

- c) Customer ATS Data. Customers who are on a success based or “Start” plan are required to share their applicant tracking system information (“ATS”) with Vivian to enable Vivian to identify all Candidates who have been placed via the Services and who have started a position. Vivian shall only access and use Customer’s ATS data, including any personal information located therein, for the sole purpose of identifying Starts and invoicing Customer accordingly per the term of the Order Form.
- d) Data Processing Agreement. All processing by Vivian of Authorized Users personal information, Candidate Submission Data and ATS personal information shall be governed by and subject to the Data Processing Agreement. Each party shall comply with the terms of the Data Processing Agreement and with applicable privacy laws in their respective collection, storage and sharing of personal information.

9) Warranty and Warranty Disclaimer.

- a) Representations and Warranties. Customer represents and warrants that (i) it will use the Service in compliance with all applicable laws and this Agreement; (ii) it owns or has the right to use, make available to Vivian, and allow Vivian to use all of the Customer Data used in connection with the Service as contemplated herein (including all data and content used in the placement of any Job Posting and for the calculation and verification of Fees); (iii) any Customer Data used in the Service will be free of viruses and Malicious Content; and (iv) all Customer Data will be accurate, non-deceptive, non-fraudulent, and shall comply with all federal, state, and local laws and regulations (including any applicable laws relating to data privacy or security). “Malicious Content” means any downloadable software or malicious code, or content or links to web sites that contain content (or further links to content) which may be construed as illegal, unethical, defamatory, obscene, hateful, libelous, or that infringes upon the rights of any third party.
- b) THE Vivian IP IS PROVIDED "AS IS" AND VIVIAN HEREBY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE. Vivian SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON- INFRINGEMENT, AND ALL WARRANTIES ARISING FROM COURSE OF DEALING, USAGE, OR TRADE PRACTICE. Vivian MAKES NO WARRANTY OF ANY KIND THAT THE Vivian IP, OR ANY PRODUCTS OR RESULTS OF THE USE THEREOF, WILL MEET CUSTOMER'S OR ANY OTHER PERSON'S REQUIREMENTS, OPERATE WITHOUT INTERRUPTION, ACHIEVE ANY INTENDED RESULT, BE COMPATIBLE OR WORK WITH ANY SOFTWARE, SYSTEM OR OTHER SERVICES, OR BE SECURE, ACCURATE, COMPLETE, FREE OF HARMFUL CODE, OR ERROR FREE. FURTHER, CUSTOMER HEREBY CONFIRMS AND UNDERSTANDS THAT THE SERVICE IS SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. Vivian IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE THAT MAY RESULT FROM SUCH LIMITATIONS AND PROBLEMS.
- c) All candidate information provided to Customer via the Service is provided by candidates and Vivian does not review, evaluate or independently assemble any information about candidates. Customer acknowledges and agrees that Candidate information made available to Customer is in no way created, sponsored or endorsed by Vivian and that Vivian merely provides a technology platform enabling candidates to assemble and provide their professional profile information, including verification of their professional licenses and certifications, and requesting and obtaining reference checks. Candidate VIP, VIP Elite or any other designation merely reflect the completion of a candidate’s profile and the prior placement of a candidate via the Vivian platform and is not in any way an endorsement or recommendation by Vivian of any candidate. VIVIAN DISCLAIMS ALL WARRANTIES WITH RESPECT TO THE ACCURACY, TRUTHFULNESS OR COMPLETENESS OF INFORMATION PROVIDED BY CANDIDATES.

10) Indemnification.

- a) Vivian Indemnification.

(i) Vivian shall indemnify, defend, and hold harmless Customer from and against any and all losses, damages, liabilities, costs (including reasonable attorneys' fees) incurred by Customer as a result of any third-party claim, suit, action, or proceeding or any regulatory investigation, penalty, fine or other action ("**Losses**") resulting from the Services infringing or misappropriating a third party's US patents, copyrights, or trade secrets ("infringement"), provided that Customer promptly notifies Vivian in writing of the claim, cooperates with Vivian, and allows Vivian sole authority to control the defense and settlement of such claim.

(ii) In the event of any Infringement, Vivian may, in Vivian's sole discretion (A) modify or replace the Services, or component or part thereof, to make it non-infringing, or (B) obtain the right for Customer to continue use. If Vivian determines that neither alternative is reasonably available, Vivian may terminate this Agreement, in its entirety or with respect to the affected component or part, effective immediately on written notice to Customer.

(iii) No indemnification obligation per this Section will apply to the extent that the alleged infringement arises from: (A) use of the Services in combination with data, software, hardware, equipment, or technology not provided by Vivian or authorized by Vivian in writing; (B) modifications to the Services not made by Vivian; (C) use of the Services in violation of this Agreement, (D) Customer Data; or (E) Third-Party Products.

- b) Customer Indemnification. Customer shall indemnify, hold harmless, and, at Vivian's option, defend Vivian from and against any Losses resulting from (i) Customer's non compliance with applicable laws, including requirements to provide information as required by pay transparency laws, (ii) Customer Data, or any use of the Customer Data in accordance with this Agreement, infringing or misappropriating a third party's intellectual property rights (iii) Customer's or any Authorized User's negligence or willful misconduct, (iv) Customer's or any Authorized User's use of the Services in a manner not authorized by this Agreement including in violation of the Terms of Use, use of the Services in combination with data, software, hardware, equipment or technology not provided by Vivian or authorized by Vivian in writing; or (iv) modifications to the Services not made by Vivian. Customer may not settle any Third-Party Claim against Vivian unless Vivian consents to such settlement. Vivian will have the right, at its option, to participate in the defense of any third party claim by counsel of its own choice at its own expense.
- c) Sole Remedy. THIS SECTION SETS FORTH CUSTOMER'S SOLE REMEDIES AND Vivian'S SOLE LIABILITY AND OBLIGATION FOR ANY ACTUAL, THREATENED, OR ALLEGED CLAIMS THAT THE SERVICES INFRINGE, MISAPPROPRIATE, OR OTHERWISE VIOLATE ANY INTELLECTUAL PROPERTY RIGHTS OF ANY THIRD PARTY. IN NO EVENT WILL Vivian'S LIABILITY UNDER THIS SECTION EXCEED THE TOTAL AMOUNTS PAID TO Vivian UNDER THIS AGREEMENT IN THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$1,000 WHICHEVER IS GREATER.

11) Limitations of Liability.

IN NO EVENT WILL Vivian BE LIABLE UNDER OR IN CONNECTION WITH THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE, FOR ANY: (a) CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, ENHANCED, OR PUNITIVE DAMAGES; (b) INCREASED COSTS, DIMINUTION IN VALUE OR LOST BUSINESS, PRODUCTION, REVENUES, OR PROFITS; (c) LOSS OF GOODWILL OR REPUTATION; (d) USE, INABILITY TO USE, LOSS, INTERRUPTION, DELAY OR RECOVERY OF ANY DATA, OR BREACH OF DATA OR SYSTEM SECURITY; OR (e) COST OF REPLACEMENT GOODS OR SERVICES, IN EACH CASE REGARDLESS OF WHETHER Vivian WAS ADVISED OF THE POSSIBILITY OF SUCH LOSSES OR DAMAGES OR SUCH LOSSES OR DAMAGES WERE OTHERWISE FORESEEABLE. IN NO EVENT WILL Vivian'S AGGREGATE LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT UNDER ANY LEGAL OR EQUITABLE THEORY, INCLUDING BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), STRICT LIABILITY, AND OTHERWISE EXCEED THE TOTAL AMOUNTS PAID TO Vivian UNDER THIS AGREEMENT IN THE SIX MONTH PERIOD PRECEDING THE EVENT GIVING RISE TO THE CLAIM OR \$1,000 WHICHEVER IS GREATER.

12) Term and Termination.

- a) Term. This Agreement shall be in force and applicable between the parties for as long as an Order Form or SOW is in effect, unless earlier terminated pursuant to this Agreement's express provisions (the "**Term**").
- b) Termination. In addition to any other express termination right set forth in this Agreement including in an Order Form or SOW:
 - i) Vivian may terminate this Agreement, effective on written notice to Customer, if Customer: (A) fails to pay any amount when due hereunder, and such failure continues more than 15 days after Vivian's delivery of written notice thereof; or (B) breaches any of its obligations under Sections 2(c), 3(b) or 6;
 - ii) Vivian may terminate this Agreement, effective on written notice to Customer, in the event that there are any changes in law or regulations or interpretation thereof by any court of law or other governing body after that is determined by legal counsel as likely to have material adverse effect on Vivian's right to provide the Services as contemplated herein;
 - iii) either Party may terminate this Agreement, effective on written notice to the other Party, if the other Party materially breaches this Agreement, and such breach: (A) is incapable of cure; or (B) being capable of cure, remains uncured 30 days after the non-breaching Party provides the breaching Party with written notice of such breach; or
 - iv) either Party may terminate this Agreement, effective immediately upon written notice to the other Party, if the other Party: (A) becomes insolvent or is generally unable to pay, or fails to pay, its debts as they become due; (B) files or has filed against it, a petition for voluntary or involuntary bankruptcy or otherwise becomes subject, voluntarily or involuntarily, to any proceeding under any domestic or foreign bankruptcy or insolvency law; (C) makes or seeks to make a general assignment for the benefit of its creditors; or (D) applies for or has appointed a receiver, trustee, custodian, or similar agent appointed by order of any court of competent jurisdiction to take charge of or sell any material portion of its property or business.
- c) Effect of Expiration or Termination. Upon expiration or earlier termination of this Agreement, Customer shall immediately discontinue use of the Services and, without limiting Customer's obligations under Section 6, Customer shall delete, destroy, or return all copies of the Vivian IP and certify in writing to the Vivian that the Vivian IP has been deleted or destroyed. No expiration or termination of the Agreement will affect Customer's obligation to pay all outstanding Fees, including Fees with respect to any candidates introduced to Customer via the Service prior to termination pursuant to an Order Form. Notwithstanding termination of the Agreement or any Order Form, Customer shall remain liable for the payment of all Monthly Subscription Fees payable under an Order Form for the Subscription Term.
- d) Survival. Sections 1, 6, 7, 9, 10, 11, 12(c) and 13 shall survive any termination or expiration of this Agreement as well as any outstanding payment obligation at the time of termination.

13) Miscellaneous.

- a) Entire Agreement. This Agreement, together with any other documents incorporated herein by reference, constitutes the sole and entire agreement of the Parties with respect to the subject matter of this Agreement and supersedes all prior and contemporaneous understandings, agreements, and representations and warranties, both written and oral, with respect to such subject matter. In the event of any inconsistency between the statements made in the body of this Agreement and any other documents incorporated herein by reference, the following order of precedence governs: (i) first, these Customer Terms and Conditions except with respect to a provision in an Order Form or SOW that is expressly stated to supersede a conflicting provision of these Customer Terms and Conditions (in which case such provision in the Order Form or SOW shall supersede the conflicting provision of these Customer Terms and Conditions); (ii) second, the Terms of Services; (iii) third, the Order Form (with respect to a provision in an Order Form that is not stated to supersede a conflicting provision of these Customer Terms and

Conditions); (iv) fourth, the SOWs (with respect to a provision in an SOW that is not expressly stated to supersede a conflicting provision of these Customer Terms and Conditions); and (v) fifth, any other documents incorporated herein by reference.

- b) Notices. All notices, requests, consents, claims, demands, waivers, and other communications hereunder (each, a "**Notice**") must be in writing and addressed to the Parties at the addresses set forth on the Order Form (or to such other address that may be designated by the Party giving Notice from time to time in accordance with this Section). All Notices must be delivered by personal delivery, nationally recognized overnight courier (with all fees prepaid) or email (with confirmation of transmission) or certified or registered mail (in each case, return receipt requested, postage pre- paid). Except as otherwise provided in this Agreement, a Notice is effective only: (i) upon receipt by the receiving Party; and (ii) if the Party giving the Notice has complied with the requirements of this Section.
- c) Force Majeure. In no event shall Vivian be liable to Customer, or be deemed to have breached this Agreement, for any failure or delay in performing its obligations under this Agreement, if and to the extent such failure or delay is caused by any circumstances beyond Vivian's reasonable control, including but not limited to acts of God, flood, fire, earthquake, explosion, war, terrorism, invasion, riot or other civil unrest, strikes, labor stoppages or slowdowns or other industrial disturbances, or passage of law or any action taken by a governmental or public authority, including imposing an embargo.
- d) Amendment and Modification; No waiver by any Party of any of the provisions hereof will be effective unless explicitly set forth in writing and signed by the Party so waiving. Except as otherwise set forth in this Agreement, (i) no failure to exercise, or delay in exercising, any rights, remedy, power, or privilege arising from this Agreement will operate or be construed as a waiver thereof and (ii) no single or partial exercise of any right, remedy, power, or privilege hereunder will preclude any other or further exercise thereof or the exercise of any other right, remedy, power, or privilege. Vivian may from time to time update these Customer Terms and Conditions. No material changes will be made to these Customer Terms and Conditions unless Customer has consented thereto. The version of the Customer Terms and Conditions applicable to any Order Form or SOW will be the version posted on the Vivian Service at the time of execution of such Order Form or SOW.
- e) Severability. If any provision of this Agreement is invalid, illegal, or unenforceable in any jurisdiction, such invalidity, illegality, or unenforceability will not affect any other term or provision of this Agreement or invalidate or render unenforceable such term or provision in any other jurisdiction. Upon such determination that any term or other provision is invalid, illegal, or unenforceable, the Parties shall negotiate in good faith to modify this Agreement so as to effect their original intent as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the greatest extent possible.
- f) Governing Law; Submission to Jurisdiction. This Agreement is governed by and construed in accordance with the internal laws of the State of California without giving effect to any choice or conflict of law provision or rule that would require or permit the application of the laws of any jurisdiction other than those of the State of California. Any legal suit, action, or proceeding arising out of or related to this Agreement or the licenses granted hereunder will be instituted exclusively in the federal courts of the United States or the courts of the State of California in each case located in the city of San Francisco and County of San Francisco, and each Party irrevocably submits to the exclusive jurisdiction of such courts in any such suit, action, or proceeding.
- g) Assignment. Customer may not assign any of its rights or delegate any of its obligations hereunder, in each case whether voluntarily, involuntarily, by operation of law or otherwise, without the prior written consent of Vivian. Any purported assignment or delegation in violation of this Section will be null and void. No assignment or delegation will relieve the assigning or delegating Party of any of its obligations hereunder.

This Agreement is binding upon and inures to the benefit of the Parties and their respective permitted successors and assigns.

- h) Export Regulation. The Services utilize software and technology that may be subject to US export control laws, including the US Export Administration Act and its associated regulations. Customer shall not, directly or indirectly, export, re-export, or release the Services or the underlying software or technology to, or make the Services or the underlying software or technology accessible from, any jurisdiction or country to which export, re-export, or release is prohibited by law, rule, or regulation. Customer shall comply with all applicable federal laws, regulations, and rules, and complete all required undertakings (including obtaining any necessary export license or other governmental approval), prior to exporting, re-exporting, releasing, or otherwise making the Services or the underlying software or technology available outside the US.
- i) Equitable Relief. Each Party acknowledges and agrees that a breach or threatened breach by such Party of any of its obligations under Section 6 or, in the case of Customer, Section 2(c), would cause the other Party irreparable harm for which monetary damages would not be an adequate remedy and agrees that, in the event of such breach or threatened breach, the other Party will be entitled to equitable relief, including a restraining order, an injunction, specific performance and any other relief that may be available from any court, without any requirement to post a bond or other security, or to prove actual damages or that monetary damages are not an adequate remedy. Such remedies are not exclusive and are in addition to all other remedies that may be available at law, in equity or otherwise.