



Terms & Conditions

These Terms & Conditions as amended from time to time in accordance herewith (these "T&Cs"), the Order Form in which these T&Cs are incorporated by reference (the "Order Form"), the Privacy Policy of Motive8, LLC ("Promotive"), as amended from time to time (the "Privacy Policy"), and each other written agreement duly signed by or on behalf of the customer set forth in the Order Form ("Customer") and Promotive (collectively the "Supplemental Agreements", and together with these T&Cs, the Order Form, and the Privacy Policy, the "Agreement") constitute an agreement and binding contract between Promotive and Customer and set forth the terms and conditions pursuant to which Promotive and Customer (collectively the "Parties" and individually a "Party") are willing to enter into the Agreement. By signing the Order Form, Customer agrees to be bound by and subject to these T&Cs, the Privacy Policy, and all Supplemental Agreements. The Agreement is effective as of the date the Order Form is executed by each of the Parties (or such other date specifically identified in the Order Form as the Effective Date, if any) (the "Effective Date"), provided, however, that there will be no obligation for Promotive to perform any services until the start date set forth in the Order Form. All capitalized terms used but not defined in these T&Cs will have the meanings provided for such terms in the Order Form and additional documents acknowledged during the ordering process. Please carefully read these T&Cs, the Privacy Policy, the Order Form, and all Supplemental Agreements prior to executing the Order Form or, if applicable, any Supplemental Agreements, as they are binding on the Parties.

Promotive reserves the right to change or modify these T&Cs at any time and in our sole discretion. If we make changes to these T&Cs, we will provide you with notice of such changes by updating the "Last Modified" date at the end of these T&Cs. If you do not agree with any modification of these T&Cs, you have a right to terminate the Agreement by providing notice to Promotive within thirty (30) days of such change, in accordance with the termination right set forth in Section 12. Failure to terminate within such thirty (30) day period will constitute acceptance of the modification and waiver of the termination right. We encourage you to review these T&Cs frequently to ensure that you understand the terms and conditions that apply with respect to the Agreement. If you have any questions about these T&Cs, please contact us at kat@gopromotive.com.

1. **SERVICES.** Customer hereby engages Promotive to perform those services designated in the Order Form, which may include but are not limited to the provisions of ongoing search, placement, and recruitment services whereby Promotive will search for and identify prospective Candidates (defined below) and refer certain Candidates selected by Promotive to Customer, for consideration by Customer, for a Service Relationship (defined below). To facilitate provision of such services, Customer will promptly and accurately inform Promotive: (a) of any openings or hiring plans of Customer; (b) the positions, titles, compensation arrangements, benefits, anticipated hours and scheduling for each opening or prospective hire; (c) such other information as Promotive may reasonably request in connection with identifying and recruiting a prospective Candidate for any such opening or potential position; or (d) any such other information relevant to, or determined appropriate by Promotive for, the provision of the services set forth in the Order Form. Unless a different process is agreed between Customer and Promotive, if Customer elects to hire any Candidate it will submit the offer and all associated hiring information and documentation to Promotive. Customer and Promotive will work together to determine who contacts and conveys the offer to such Candidate with such information and documentation. Promotive makes no representation or warranty that any hiring offer will be accepted or that any Candidate that is hired will remain with Customer, and it is the sole responsibility of Customer to make an offer (including without limitation to provide compensation, benefits, and scheduling) that is sufficient and satisfactory to entice the Candidate to accept such offer and to remain employed with Customer. If any position that Customer informed Promotive about has been filled, Customer will promptly notify Promotive that such position is no longer vacant.

2. **FEES.**

(a) **Subscription Fee.** Customer shall pay Promotive a monthly subscription fee ("Subscription Fee") indicated in the subscription section of the Order Form. If applicable, the Subscription Fee is for the non-placement services designated on the Order Form as to be provided in connection with the Subscription Fee, which may include but are not limited to advertisement, sourcing, vetting and communication of applicable candidates based on the business needs and positions communicated by Customer in accordance herewith. This fee is not related, in any way, to the successful placement of candidates. For the avoidance of doubt, it will not be a breach of the Agreement for Promotive to: (i) not perform the services applicable to the Subscription Fee if Customer fails to communicate the relevant business need, qualifications, positions, or other information appropriate for or requested by Promotive with respect to the performance of such services; or (ii) not perform any services that are not specifically required by the Order Form, even if previously provided by Promotive with respect to prior placements or positions. Promotive retains the right to modify the Subscription Fee from time to time upon notice to Customer, provided, however that if Promotive increases the Subscription Fee at a time other than at the renewal of the Agreement and as a result of such increase Customer provides a termination notice in accordance with and as permitted pursuant to Section 12 below, then at Promotive's sole election: (I) Promotive may elect to cancel such increase to Customer, in which case the increase will not occur, the termination notice will be void, and the Agreement will remain in effect and binding on Promotive and Customer with the Subscription Fee unchanged; or (II) Promotive may permit the termination of the Agreement in accordance with such termination right. Promotive may increase the Subscription Fee upon renewal of any Order Form, in which case we will provide reasonable prior notice of such increase and the increased fees will apply at the start of the next renewal term. If Customer does not agree to an increase that is effective upon renewal of any Order Form, Customer can terminate the Agreement at the end of the then-current term by giving the notice required for non-renewal of the Agreement in accordance with Section 12 below.

(b) Placement Fee. Customer shall pay Promotive a fee ("Placement Fee") for each Candidate referred to Customer by Promotive that enters into a Service Relationship with Customer (or an affiliate of Customer) within the Referral Period (defined below) equal to the percentage indicated on the Order Form of the First Year Base Compensation (defined below) of the Candidate. The Placement Fee payable for a Candidate shall be fully earned by and owed to Promotive in alignment with the billing frequency for said Candidate. To the extent that a Candidate is terminated and/or is no longer employed by the Customer within the first 12 months of employment, only the prorated portion of the Placement Fee for the time the Candidate worked shall be due. Customer agrees not to structure Candidate's compensation in a way to circumvent the Placement Fee and, in the event such compensation is structured in such a way for valid business purposes, Customer agrees to notify Promotive of such structure and the Placement Fee shall be determined by Promotive based on its assessment of the First Year Base Compensation that would have been paid if such alternative structure were not utilized. Upon renewal of the Order Form, we may increase the applicable Placement Fee. If this increase applies to Customer, we will provide reasonable prior notice of the increased Placement Fee and such increased Placement Fee will apply upon such renewal. If Customer does not agree to an increase that is effective upon renewal of any Order Form, Customer can terminate the Agreement at the end of the then-current term by giving the notice required for non-renewal of the Agreement in accordance with Section 12 below.

(c) Cessation of Services. Customer may request that Promotive stop performing the services set forth in the Order Form at any time, provided, however, that such request will not relieve Customer of its obligation to pay, and Customer shall still pay, to Promotive all Subscription Fees for the remainder of the Term. The Parties acknowledge and agree that Promotive would not have entered into the Order Form, engaged or employed the resources necessary, incurred the costs associated with onboarding and handling Customer's account, or undergone the efforts to perform the services contemplated by the Order Form without the certainty of receiving the Subscription Fees for the entirety of the Term, whether or not the services contemplated by such Order Form are performed for the entirety of the Term or only a portion thereof.

3. PAYMENT TERMS. The Subscription Fee due to Promotive pursuant to Section 2 above will be paid by the client based on the billing frequency and method indicated on the order form, with the first such payment being due on the Effective Date and the payment for each subsequent period within five (5) days of the anniversary of the Effective Date. The Placement Fee due to Promotive pursuant to Section 2 above with respect to each Candidate will be paid by Customer to Promotive, in alignment with the billing frequency and method indicated on the order form. Unless otherwise agreed to by Customer and Promotive, all amounts owed to Promotive with respect to the Agreement will be promptly charged to Customer's Credit card or withdrawn from Customer's bank account via ACH transaction and Customer hereby agrees to: (a) maintain a bank account or credit card in good standing and with sufficient funds at a financial institution that accepts Credit card or ACH transactions; (b) provide to Promotive its then-current Credit Card and bank account information, including without limitation the bank name, bank address, account number, routing number, name on the account, account type, and such other information necessary or appropriate for Promotive to initiate such ACH transactions; (c) promptly, and in all cases within two (2) days of any change in Customer's Credit Card or bank account or the information related thereto, notify Promotive of such change and provide all additional information requested by Promotive in connection therewith; (d) maintain sufficient funds in its bank account at all times to pay all amounts due and payable pursuant to the Agreement; (e) execute such documents and instruments requested by Promotive for purposes of enabling it to withdraw amounts owed hereunder from Customer's bank account (including without limitation Promotive's then-current ACH Enrollment Form); and (f) refrain from reversing, contesting, rejecting, charging back, or otherwise blocking or undoing any Credit Card or ACH transaction contemplated by the Agreement or initiated by Promotive hereunder. Customer hereby authorizes Promotive to charge Customer's Credit card or withdraw from Customer's bank account any amounts owed or payable by Customer hereunder via Credit Card charge or ACH transaction. The failure of any ACH transaction, credit card transaction or any chargeback, reversal, rejection, or other blocking or undoing of any Credit Card or ACH transaction, will not relieve Customer of its payment obligations hereunder, and Customer agrees to immediately pay a fifty dollar (\$50) fee for each ACH transaction that is blocked, reversed, or otherwise unsuccessful (including without limitation due to insufficient funds). To the extent any amount owed to Promotive hereunder is not paid to Promotive in full when due, until such time as the unpaid balance is paid in full, interest shall accrue, and Customer will pay to Promotive interest, on such unpaid balance at a rate equal to the lesser of (i) five (5.0%) per month or (ii) the maximum interest rate permitted by applicable law. The Subscription Fee, Placement Fee, and all other amounts owed hereunder shall be paid (I) without setoff or withholding, (II) in United States dollars, and (III) in immediately available funds. Customer shall be responsible for, and shall promptly reimburse Promotive for, any and all expenses incurred for the collection of any unpaid balance, including, but not limited to, court costs and attorney fees. The Placement Fee will be payable by Customer with respect to all Candidates, even if Customer knows of, was aware of, had a prior relationship with, or had previously spoken with any Candidate.

4. TAXES. Customer shall be responsible for all applicable taxes, tariffs and duties, including withholding, value added, stamp, income (e.g., payroll and employment taxes) and any other similar charges assessed by any government authority with respect to the Agreement or the services rendered by Promotive under the Agreement. Customer shall defend, indemnify, and hold harmless Promotive from and against any tax claim or assessment associated with the Agreement and from and against any action, claim, charge, investigation, or other proceeding taken against or involving Promotive in the event any taxing authority challenges the allocation or characterization of the payment and/or seeks payment of taxes, interest, penalties, costs, fees, damages, or other assessments from it in connection with the Agreement or the services provided hereunder.

5. REPLACEMENT SERVICE. Promotive does not guarantee candidate retention or tenure. Any and all fees paid to Promotive for candidate placement will be non-refundable, regardless of the time Candidate is in a Service Relationship with Customer. Should the Service Relationship between Customer and Candidate be terminated for any reason, Promotive will, at customer's request, re-source for that role, starting over with all original payment terms, method and frequency conveying to any backfill placement.

6. LIMITATION OF LIABILITY.

(a) **Disclaimers and Limitations.** Following a reasonable request from Customer, and if included within the scope of services contemplated in the Order Form, Promotive shall search for and refer prospective Candidates to Customer in accordance with Promotive's standard processes, procedures, and using such efforts as Promotive deems reasonable under the circumstances, provided, however, that: (a) Promotive does not guarantee that a search will be successful; and (b) Promotive reserves the right to refuse to engage in any requested search in its sole discretion. Promotive makes no representation, warranty, or guarantee with respect to any referred Candidate or any information provided with respect to such referred Candidate. Customer is solely responsible for investigating, evaluating, and determining a Candidate's background, experience, and qualifications (including, if and to the extent applicable, by conducting background checks, credit checks, financial verification, accreditation verification, income verification, skillset testing, reference checks, and such other checks and verifications deemed appropriate by Customer) and while Promotive will, to the best of its ability, source, validate, and evaluate a candidate based on their standard processes, with additional input from Customer, Promotive will have no liability or responsibility if any information provided with respect to any Candidate or prospective Candidate is incorrect, incomplete, or misleading. In furtherance of, and not in limitation of, the foregoing, Promotive shall have no liability or responsibility for the actions or omissions of a Candidate either before or after entering into a Service Relationship with Customer (including without limitation any false or misleading information provided with respect to any such Candidate).

(b) **Additional Limitations.** In no event will Promotive be liable for any indirect, special, punitive, incidental, or consequential damages in any action arising from or related to the Agreement or any services provided in connection herewith, whether based in contract, tort (including without limitation negligence), intended conduct, or otherwise, including without limitation damages relating to loss of profits, income, or goodwill, regardless of whether it has been advised of the possibility of such damages. In no event will Promotive's aggregate liability, including without limitation pursuant to the Agreement and with respect to any services provided in connection herewith, exceed the amount of Subscription Fees actually paid by Customer to Promotive pursuant to the Agreement over the six (6) month period prior to the claim.

7. **DISCLOSURE OF INFORMATION.** Customer represents and agrees that, except as provided hereinafter, all information it provides to Promotive in connection with Customer, a search, or a position is public, non-proprietary, and non-confidential and may be disclosed and disseminated by Promotive to potential Candidates or otherwise as Promotive considers advisable (including without limitation as Promotive determines necessary or appropriate to provide or facilitate the services hereunder), and Promotive shall have no liability for the subsequent use or disclosure of such information by any third-party. Customer represents and warrants that all information it provides to Promotive, including without limitation open positions, salary ranges, location information, and other data and information is true, accurate, complete, correct, and is not misleading as of the time provided (and Customer will promptly, and in all cases within two business days, notify Promotive if any such information becomes false, inaccurate, incomplete, or misleading). For purposes of verifying Customer's compliance with the Agreement, including without limitation proper calculation and payment of the Placement Fees, Customer agrees to: (a) allow Promotive or its representatives to inspect, review, and/or audit Customer's payroll or employment related books and records upon request; and (b) provide to Promotive copies of its payroll or employment related books, records, and other information and materials related to the Agreement, any offers extended hereunder, or any actual or potential Candidates referred upon Promotive's request. To the extent any such inspection, review, or audit reveals Customer's non-compliance with the terms of the Agreement, in addition to paying any such amounts owed pursuant to the terms of the Agreement, Customer will reimburse Promotive for all costs, fees, and expenses incurred in performing (or having performed) such inspection, review, or audit.

8. **CANDIDATE EXCLUSIVITY.** Customer shall not refer, recommend, or in any way direct a Candidate to another company or other third-party without the prior written consent of Promotive, which consent may be withheld or conditioned in Promotive's sole discretion. In addition to all other remedies available to Promotive, if Customer, with or without the consent of Promotive, refers, recommends, or in any way directs a Candidate to another company or third-party and such Candidate enters into a Service Relationship with such other company or third-party (or an affiliate thereof) within the Referral Period, Customer shall be responsible for the payment of the full Placement Fee due Promotive for such Candidate as provided herein as if Customer had directly entered into such Service Relationship with such Candidate.

9. **EQUAL OPPORTUNITY; COMPLIANCE; INDEMNIFICATION.** Promotive adheres to an equal employment opportunity policy. All applicants are referred based on their qualifications only, without regard for their race, gender, sex, age, religion, national origin, sexual orientation, marital status, veteran status, or disability. Customer will ensure that its business, including without limitation its hiring and employment practices, at all times are in compliance with all applicable laws, rules, requirements, and regulations, including but not limited to wage and hour (state and federal), paid sick leave, employment-related laws, worker classification laws, workers' compensation, and all laws relating to the Candidates (such as hiring, termination, compensation, leaves of absence, benefits, and health and safety). Promotive will not be liable for, and Customer will indemnify, defend, and hold harmless Promotive from and against, any actual or alleged: (a) violation of law, breach of contract, tortious action, loss, damage, liability, or other claim, dispute, or proceeding, in each case with respect to the handling, hiring, employment, non-employment, or termination of employment (whether voluntary or involuntary) of any actual or prospective Candidate; or (b) breach of the Agreement.

10. **INSURANCE.** Customer represents, warrants, and covenants that it has, and will maintain for the term of the Agreement, commercially reasonable insurance coverage with deductibles, policy limits, and terms that are reasonable based on the size, nature, and potential exposure of Customer's business, including without limitation reasonable directors and officers coverage, workers compensation, errors and omissions coverage, and employment practice liability insurance coverage.

11. **TERM OF AGREEMENT.** The Agreement shall commence on the Effective Date and remain in effect until terminated by either Party in accordance with Section 12 below, or in accordance with such other termination rights, if any, explicitly set forth in the Order Form or a Supplemental Agreement. The initial term of the Agreement will be the term set forth in the Order Form (the "Initial Term"). Unless the

Agreement is terminated as of or prior to the end of the then-current Term in accordance with Section 12 below, as of the end of the then-current Term the Agreement shall automatically renew for an additional period equal to the Initial Term (each a "Renewal Term"). The "Term" means the Initial Term and each Renewal Term.

12. **TERMINATION OF AGREEMENT.** The Parties will have the following rights and obligations with respect to the termination of the Agreement:

(a) **Non-Renewal.** Either Party may elect not to renew the Agreement by providing the other Party with notice of such election not to renew the Agreement at least thirty (30) days prior to the end of the then-current Term, in which case the Agreement will not renew and will instead terminate upon the conclusion of the then-current Term.

(b) **Mutual Agreement.** The Parties may terminate the Agreement upon mutual written agreement of the Parties.

(c) **Termination for Cause.** Either Party may terminate the Agreement upon thirty (30) days' prior written notice for cause if the other Party breaches the Agreement or fails to reasonably perform its obligations under the Agreement and such breach or failure is not cured by such other Party within thirty (30) days following such other Party's receipt of written notice: (i) identifying such breach with reasonable specificity; and (ii) exercising this termination right following any such failure to cure within the specified time period.

(d) **Change in Fees.** If Promotive elects to increase the Subscription Fee at a time other than the renewal of the Agreement, as permitted pursuant to Section 2 above, Customer may send a notice to Promotive specifying Customer's election to terminate the Agreement (the "Termination Election Notice") on a date thirty (30) days following Promotive's receipt of such Termination Election Notice. If, following receipt of the Termination Election Notice, Promotive elects to cancel the increase to the Subscription Fee, such Termination Election Notice shall be void, the Agreement will remain in effect and binding on the Parties, and the Subscription Fee will remain unchanged. If, following receipt of the Termination Election Notice, Promotive does not elect to cancel the increase to the Subscription Fee, the Agreement shall terminate on the date thirty (30) days following Promotive's receipt of such Termination Election Notice.

(e) **Termination for Convenience.** Promotive may terminate the Agreement upon written notice to Customer (or upon such other date as may be designated by Promotive in such notice).

(f) **Effect of Termination.** Following the expiration or termination of the Agreement for any reason: (i) Customer shall remain responsible for paying all Placement Fees and other amounts due Promotive for the services provided or performed prior to termination of the Agreement; (ii) the remainder of the Subscription Fees owed for the then-current Term will accelerate and become immediately due and payable, and Customer shall pay the aggregate amount of all such remaining Subscription Fees, without any discount thereto, within five (5) days of the date of such termination; and (iii) the following provisions of the Agreement (and the referenced provisions or sections of the Order Form) shall survive termination and remain binding on the Parties: Sections 2, 3, 4, 6, 7, 8, 9, 10, 12(f), 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, and 29. For the avoidance of doubt, the Parties understand that the obligation to pay the Placement Fees will survive termination of the Agreement and remain binding on the Parties (even if hired or engaged following the termination hereof) with respect to any Candidates that enter into a Service Relationship during the Referral Period.

13. **MODIFICATION OF AGREEMENT.** No provision of the Agreement may be amended, deleted, supplemented, or otherwise modified except in a writing signed by the Parties. Further, the Agreement contains the entire agreement of the Parties with respect to the subject matter hereof and supersedes all other oral or written agreements, representations, and understandings.

14. **WAIVER OF PROVISIONS.** No right, remedy, or other provision of the Agreement shall be deemed to have been waived by a Party unless such Party does so in writing. Further, if a Party waives any right, remedy, or other provision hereof in a writing, such waiver shall not be deemed a continuing waiver of the same or any other provision hereof unless clearly stated in the written waiver.

15. **REPRESENTATIONS AND WARRANTIES.** In addition to any other representations and warranties made by Customer to Promotive, Customer hereby represents, warrants, and covenants to Promotive that: (a) Customer is authorized to enter into the Agreement and has all consents, authorizations, approvals necessary to execute, deliver, and perform the Agreement; (b) the signatory to the Order Form is authorized to act on behalf of, and bind, Customer to the Agreement; (c) the execution and delivery of the Agreement by Customer and the performance hereof will not conflict with or violate (whether immediately or with the passage of time) any other agreement or arrangement by which Customer is currently or at any time will be bound; (d) upon execution hereof, the Agreement will be binding upon Customer; and (e) Customer is authorized to engage in its business in each state and location in which it operates and each offer it elects to submit to any Candidate is a bona fide offer to engage in the type and nature of business set forth in the offer documents upon the terms set forth in the offer documents, none of which are incomplete or misleading.

16. **CONFIDENTIALITY AND DATA SECURITY.** All information provided between Promotive and Customer pursuant to the Agreement or any services performed hereunder will be deemed confidential information of the respective Company (Customer or Promotive) and shall not be: (a) used by either party for any purpose other than evaluating and hiring (or electing not to hire) any potential Candidates; or (b) disclosed by either party to any third party, other than for purposes of running background checks or otherwise performing services appropriate for the evaluation and hiring (or electing not to hire) any potential Candidates (and each party will ensure that prior to disclosure to any third party in accordance with the foregoing, such third party is subject to a written agreement with confidentiality obligations at least as favorable for both

parties as those set forth herein). To the extent any such information constitutes personally identifiable information, both parties will implement and use all safeguards necessary or appropriate to prevent the unauthorized access, use, or disclosure of such information.

17. **LICENSE.** For the term of the agreement, and 2 years subsequent to the termination of said agreement, Customer hereby grants to Promotive a non-exclusive, irrevocable, royalty free, worldwide license to use and display Customer's and its subsidiaries and affiliates names, logos, and materials: (a) to provide the services in connection herewith, including without limitation in posting positions and related information on social media, job boards, search sites, and Promotive's website; (b) in materials provided to Candidates, including without limitation offer materials; (c) to congratulate placed Candidates, including without limitation on social media; and/or (d) in any of its marketing materials or promotional materials, including without limitation success stories, client lists, and pitch books. Customer represents and warrants that its, and its subsidiaries and affiliates, names, logos, and other materials do not and will not infringe on or otherwise violate the intellectual property or intellectual property rights of any third party.

18. **SEVERABILITY.** The Agreement is severable and if any provision hereof is determined by a court of competent jurisdiction to be invalid or unenforceable, the remaining provisions hereof shall be unaffected and remain in full force and effect.

19. **SUCCESSORS AND ASSIGNS; SUBCONTRACTORS.** The Agreement shall be binding upon and inure to the benefit of the Parties and each of their respective successors and assigns, including any entity that may purchase the Party or with which the Party may merge. Promotive may, but is not obligated to, engage or use one or more subcontractors for purposes of performing any services under or in connection with the Agreement or the identification, screening, and/or placement of any Candidate.

20. **GOVERNING LAW.** The Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without giving effect to any conflict of law provisions.

21. **ARBITRATION.** The Parties agree that any and all disputes, claims or controversies arising out of or relating to the Agreement that are not resolved by their mutual agreement (a) shall be brought by a Party in such Party's individual capacity, and not as a plaintiff or class member in any purported class or representative proceeding and (b) shall be submitted to final and binding arbitration before JAMS (formerly Judicial Arbitration and Mediation Services), or its successor, pursuant to the United States Arbitration Act, 9 U.S.C. Sec. 1 et seq. Either Party may commence the arbitration process called for in this [Section 21](#) by filing a written demand for arbitration with JAMS, with a copy to the other Party. The arbitration will be conducted in accordance with the provisions of JAMS' Comprehensive Arbitration Rules and Procedures in effect at the time of filing of the demand for arbitration. The Parties will cooperate with JAMS and with one another in selecting a single arbitrator from JAMS' panel of neutrals, and in scheduling the arbitration proceedings, which shall take place in San Diego, California, and in the English language. The Parties agree that they will participate in the arbitration in good faith, and that they will share equally in its costs. The arbitrators will have the authority to award fees and expenses, including reasonable attorney's fees, to a Party. The arbitration shall be governed by the Federal Arbitration Act, 9 U.S.C. §§1 et seq., and judgment upon the award rendered by the arbitrator(s) may be entered by any court having jurisdiction thereof. The Parties further agree that the arbitration shall be kept confidential and that the existence of the arbitration proceeding and any element of it (including but not limited to any pleadings, briefs or other documents submitted or exchanged, any testimony or other oral submissions, and any awards) shall not be disclosed beyond the tribunal, JAMS, the parties, their counsel, accountants and auditors, insurers and reinsurers, and any person or entity necessary to the conduct of the proceeding. The confidentiality obligations in this [Section 21](#) shall not apply (i) if disclosure is required by law, or in judicial or administrative proceedings, or (ii) as far as disclosure is necessary to enforce the rights arising out of the arbitration award. Without otherwise limiting the requirements imposed by this [Section 21](#), a Party may seek from any court having jurisdiction any interim or provisional relief that may be necessary to protect its interests hereunder, pending the resolution of any dispute in accordance with this [Section 21](#).

22. **COPIES, COUNTERPARTS.** A copy of the Agreement shall have the same force and effect as an original. The Order Form and each Supplemental Agreement may be executed by the Parties in separate counterparts and, in such case, shall be deemed one and the same agreement.

23. **INDEPENDENT CONTRACTORS.** The relationship of the Parties established under the Agreement is that of independent contractors and neither Party is a partner, employee, agent or joint venture partner of or with the other. Customer does not have the right or authority to assume or create any obligation on behalf of Promotive.

24. **FORCE MAJEURE.** Other than for the payment of the Subscription Fees, Placement Fees, and other amounts owed hereunder, neither Party shall be liable for any breach of the Agreement or for any delay or failure of performance resulting from any cause beyond such Party's reasonable control, including the weather, civil disturbances, acts of civil or military authorities or acts of God. The Party claiming relief under this Section shall promptly notify the other party in writing, but in no event later than ten (10) calendar days of the occurrence, should any such cause arise and shall promptly take reasonable steps to remedy any delay or failure in performance upon removal of the circumstances causing such delay or failure.

25. **CONSTRUCTION.** The headings used in the Agreement are for convenience or reference only and shall not affect the construction of, or be taken into consideration in interpreting, any provision of the Agreement. In the interpretation and construction of the Agreement, the acknowledgment that the terms hereof reflect extensive negotiations between the Parties and that the Agreement shall not be deemed, for the purpose of construction and/or interpretation, that either Party drafted the Agreement.

26. **NOTICES.** Unless otherwise agreed to by the Parties in writing, all notices, requests, demands, or other communications under the Agreement shall be in writing and sent via email (or as an attachment to email) and shall be deemed to have been duly given on the first business day after e-mailing if sent to the Party to whom notice is to be given (provided that if any email is returned or bounced back via an automated system due to reasonable attachment size limitations, such email will not be deemed to have been provided). Any Party may change its email address for purposes of this Section 26 by giving the other party written notice of the new address in the manner set forth above. For purposes of the foregoing, the applicable email address for Promotive is info@goPromotive.com and the applicable email address for Customer is the email address set forth for Customer on the Order Form.

27. **REMEDIES.** Except as expressly set forth in the Agreement, the exercise of any remedies hereunder shall be cumulative and in addition to, and not in limitation of, any other remedies available to such Party at law or in equity.

28. **THIRD PARTY BENEFICIARIES.** Except as expressly set forth in the Agreement, the Agreement is solely for the benefit of the Parties and there are no third party beneficiaries hereto.

29. **DEFINITIONS.** In addition to terms defined elsewhere in the Agreement, the following terms shall have the meanings set forth below when used in the Agreement:

(a) "Candidate" means a person or entity referred to Customer by Promotive. A Candidate shall be deemed to have been "referred" by Promotive to Customer if Promotive notifies Customer of the identity of Candidate by any means, whether orally or in writing, and whether immediately engaged or which later enters into a Service Relationship. A person or entity referred to Customer pursuant hereto will be deemed a Candidate even if Customer was aware of, knew of, had previously solicited, or had an existing relationship with any such person or entity, unless the Customer has had awareness and active engagement with said Candidate, related to job openings and placement, within the previous 60 days. If Customer has had an active engagement related to job openings and placement with the such person, they are obligated to notify Promotive of such at the time such person is presented as a candidate. If agreed by both Parties, such person with the relationship to the Customer will not be considered a "Candidate" and the Customer has exclusivity to work them through the hiring process on their own, without the engagement of the Promotive team.

(b) "First Year Base Compensation" means all compensation to be paid by Customer to a Candidate for the first twelve (12) months of the Candidate's Service Relationship with Customer determined as of the Start Date, including, without limitation, salary, guaranteed bonuses, service or consulting fees, but excluding bonuses or fees that are discretionary or performance based, in each case as determined by Promotive, provided, however, that: (i) if a Candidate is paid on an hourly rate, the First Year Base Compensation shall be equal to such hourly rate multiplied by 2,080; (ii) if a Candidate is paid on a salary basis, the First Year Base Compensation shall be the annual salary as reasonably determined by Promotive; and (iii) if a candidate is paid on a flat rate basis (as opposed to an hourly rate or a salary), First Year Base Compensation will be based on the flagged rate determined by Promotive multiplied by the number of hours of work completed for the applicable period, which is then annualized, in each case as determined by Promotive on a case-by-case basis.

(c) "Referral Period" means the period beginning on the date Promotive refers a Candidate to Customer and ending one (1) year after the last communication between the Parties (regardless of which Party makes the communication) about the Candidate.

(d) "Service Relationship" means any service relationship entered into between Customer and a Candidate, whether written or oral, whether at will, performance or milestone based, or for a fixed term, including, without limitation, an employment relationship or an independent contractor relationship.

(e) "Start Date" means the date a Candidate begins providing services for, or working for or with, Customer pursuant to a Service Relationship.

Date Last Modified: September 18, 2023