



## TECHNICAL SUPPORT AGREEMENT

**IMPORTANT – READ CAREFULLY:** This Technical Support Agreement (“Agreement”) is a legal agreement between you and Visibility Software, LLC for technical support for the version of Cyber Recruiter that you purchased (“Software”). By accessing the technical support area of the website or Visibility’s technical support telephone line you accept all the terms and conditions of this Agreement. You agree that this Agreement is enforceable like any written negotiated agreement signed by you.

**IF YOU DO NOT AGREE, DO NOT ACCESS THE TECHNICAL SUPPORT AREA OF THE WEBSITE OR THE TECHNICAL SUPPORT TELEPHONE LINE. VISIBILITY WILL RETURN ALL SUPPORT FEES PAID BY YOU UPON YOUR REQUEST.**

### 1. DEFINITIONS.

(a) **“Contact Persons”** means up to three (3) individuals designated by you who will coordinate all Support requests to Visibility.

(b) **“Documentation”** means the user manuals and other documentation provided to you with respect to the Software.

(c) **“Error”** means a reproducible defect in the Software, which causes the Software not to operate substantially in accordance with the Documentation.

(d) **“EULA”** means your End User License Agreement under which you have licensed the Software.

(e) **“Software”** means the specific Visibility software provided to you in connection with this Agreement, and any modified, updated, or enhanced versions of the software in object code form, including, without limitation, all modifications, bug fixes, updates, upgrades, or other maintenance releases that may be provided to you pursuant to the EULA or this Agreement.

(f) **“Support Period”** means the twelve (12) month period during which you are entitled to receive Support, beginning on the date Visibility receives payment of the applicable fees.

(g) **“Support”** means ongoing support services provided by Visibility under this Agreement.

(h) **“Update”** means a new version of the Software that contains patches, bug fixes, error corrections, minor enhancements and other maintenance releases, but does not contain major enhancements or significant new functionality. Updates may be designated by a change in the version number of the Software to the right of the decimal (e.g., Version 2.1 to Version 2.2).

### 2. SERVICES PROVIDED.

(a) **Technical Support via Website.** Visibility will provide technical support to you via the technical support area of the website.

(b) **Technical Support via Telephone.** Visibility will provide technical support to you through the technical support telephone line. Telephone support is available to the Contact Persons from **9:00 a.m. to 5:00 p.m. (Eastern time), Monday through Friday, excluding holidays.** Telephone technical support is limited to the following: (1) clarification of functions and features of the Software; (2) clarification of the Documentation; (3) assistance in identifying and verifying the causes of suspected Errors in the Software; and (4) advice on bypassing identified Errors in the Software, if reasonably possible. Telephone technical support expressly excludes training, repairs to data files, renaming of databases or servers, disaster recovery services, wiring diagnostics, support related to network problems, or changes to operating environments.

(c) **Resolution of Errors.** After you notify Visibility of an Error, Visibility will initially respond to you within the time periods specified below:

- (1) Software fails to function and/or crashes – one (1) business day;
- (2) Software is operable but fails to operate in a material manner – two (2) business days;
- (3) Software is operable but has substandard or erratic performance – three (3) business days;
- (4) Software has a minor or cosmetic error, but otherwise has standard performance – five (5) business days;
- (5) You have an informational question or feature request – ten (10) business days.

Thereafter, Visibility will use commercially reasonable efforts to resolve the Error.

**(d) Exceptions.** Visibility has no obligation to fix any Errors arising out of or related to the following causes: (1) you or any third party modifies or combines the Software (in whole or in part) not in accordance with the Documentation, (2) you use the Software in an environment not described in the Documentation or in a location with adverse environmental factors; (3) there is an accident; physical, electrical or electromagnetic stress; neglect; misuse; failure or fluctuation of electric power, air conditioning or humidity control; or failure of media not furnished by Visibility; (4) there is excessive heating; or fire and smoke damage; (5) you operate the Software with other media and hardware, software, or telecommunication interfaces not meeting or not maintained in accordance with the manufacturer's specifications; or (6) there has been other than ordinary use. If you desire Visibility to correct Errors due to any of these causes and Visibility agrees, you must pay Visibility for the work performed at Visibility's then current time and material rates.

**3. EXPENSES.** If you require on-site service, you agree to pay the actual costs for travel, lodging, and meals reasonably incurred by Visibility. You also agree to pay the actual costs for supplies and materials reasonably incurred by Visibility in connection with the service.

**4. UPDATES.** Visibility will provide you with Updates for the Software when developed for general release. Visibility will continue to support the immediately preceding version of the Software for a period of twelve (12) months thereafter.

**5. YOUR RESPONSIBILITIES.**

**(a) Supervision and Management.** You are responsible for the proper use of the Software, including, but not limited to: (1) assuring proper configuration, installation, and operating methods; and (2) following industry standard procedures for the security of data, accuracy of input and output, and back-up plans, including restart and recovery in the event of hardware or software error or malfunction.

**(b) Training.** You are responsible for the proper training of your personnel in the operation and use of the Software.

**(c) New Contact Persons.** You must notify Visibility if you wish to change the Contact Persons.

**(d) Access to Personnel and Equipment.** You must provide Visibility with access to your personnel and equipment, including the ability to remotely access the Software and to obtain the same access to the Software as your employees having the highest privilege or clearance level. Visibility will inform you of the specifications of the remote access methods available and associated software needed, and you will be responsible for the costs and use of said equipment.

**6. EXPRESS WARRANTY & EXCLUSIVE REMEDY.** Visibility warrants that it will perform the Support in a professional and workmanlike manner. Visibility does not represent or warrant that any and/or all Errors can or will be corrected. Visibility's sole obligation and your exclusive remedy with respect to this warranty is for Visibility to re-perform any work not in compliance with this warranty which is brought to the attention of Visibility by written notice within thirty (30) days after such services were performed. **THE REMEDY SET FORTH IN THIS SECTION 6 IS VISIBILITY'S SOLE OBLIGATION, AND YOUR SOLE AND EXCLUSIVE REMEDY, FOR ANY BREACH OF THIS WARRANTY OR FOR ANY OTHER BREACH OF THIS AGREEMENT OR FOR ANY OTHER LIABILITY RELATING TO THIS AGREEMENT.**

**7. DISCLAIMERS OF WARRANTIES.**

**(a)** THE EXPRESS WARRANTY IN SECTION 6 IS IN LIEU OF ALL OTHER WARRANTIES, EXPRESS, IMPLIED, OR STATUTORY, REGARDING THE SUPPORT, AND VISIBILITY SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING, WITHOUT LIMITATION, ALL WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND ANY WARRANTIES ARISING FROM COURSE OF DEALING, COURSE OF PERFORMANCE, OR TRADE USAGE, AND ANY WARRANTIES REFERRED TO IN SECTION 7(b).

**(b)** THERE IS NO WARRANTY AGAINST INTERFERENCE WITH YOUR ENJOYMENT OF THE INFORMATION OR AGAINST INFRINGEMENT REGARDLESS OF WHETHER THE ACTION AROSE INSIDE OR OUTSIDE THE UNITED STATES. THERE IS NO WARRANTY AGAINST INACCURACY. THERE IS NO WARRANTY OF SYSTEMS INTEGRATION. THERE IS NO WARRANTY THAT THE SUPPORT OR VISIBILITY'S OBLIGATIONS UNDER THIS AGREEMENT WILL FULFILL ANY OF YOUR PARTICULAR PURPOSES OR NEEDS.

(c) YOU ACKNOWLEDGE THAT YOU HAVE RELIED ON NO WARRANTIES OTHER THAN THE EXPRESS WARRANTY IN THIS AGREEMENT AND THAT NO WARRANTIES ARE MADE BY ANY OF VISIBILITY'S RESELLERS.

## 8. LIMITATION OF LIABILITY AND REMEDIES.

(a) IN NO EVENT WILL VISIBILITY OR ITS RESELLERS BE LIABLE FOR ANY CONSEQUENTIAL, INDIRECT, EXEMPLARY, SPECIAL, PUNITIVE, OR INCIDENTAL DAMAGES, OR FOR ANY LOST DATA OR CONFIDENTIAL INFORMATION, LOST PROFITS OR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR SERVICES, OR BUSINESS INTERRUPTION ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SUPPORT, HOWEVER CAUSED AND UNDER ANY THEORY OF LIABILITY (INCLUDING NEGLIGENCE), EVEN IF VISIBILITY OR ITS RESELLERS HAVE BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING THIS SECTION, VISIBILITY DOES NOT EXCLUDE OR LIMIT LIABILITY IN RESPECT OF PERSONAL INJURY OR DEATH TO THE EXTENT SUCH LIABILITY CANNOT BE EXCLUDED OR LIMITED UNDER APPLICABLE LAW.

(b) VISIBILITY'S AND ITS RESELLERS' TOTAL CUMULATIVE LIABILITY IN CONNECTION WITH THIS AGREEMENT AND THE SUPPORT, WHETHER IN CONTRACT OR TORT OR OTHERWISE, WILL NOT EXCEED THE AMOUNT PAID TO VISIBILITY OR ITS RESELLERS UNDER THIS AGREEMENT DURING THE SIX (6) MONTH PERIOD PRECEDING THE EVENTS GIVING RISE TO SUCH LIABILITY.

(c) You acknowledge that the limitations of Sections 6, 7, and 8 reflect the allocation of risk set forth in this Agreement and that Visibility would not enter into this Agreement without these limitations on its liability, and you agree that these limitations shall apply notwithstanding any failure of essential purpose of any limited remedy.

(d) Visibility disclaims all liability of any kind of Visibility's resellers, licensors, and suppliers.

(e) The limitations of Sections 6, 7, and 8 apply only to the extent permitted by applicable law in your jurisdiction.

## 9. TERM AND CANCELLATION.

(a) **Term.** The term of this Agreement is the Support Period.

(b) **Cancellation by Visibility.** Visibility may cancel this Agreement upon thirty (30) days written notice if you fail to comply with any term or condition of this Agreement or the EULA, and you will not be entitled to a refund of any previously paid fees.

(c) **Survival.** Sections 6 (Express Warranty & Exclusive Remedy), 7 (Disclaimers of Warranties), 8 (Limitation of Liability and Remedies), and 10 (General Provisions), shall survive the expiration, termination, or cancellation of this Agreement for any reason.

## 10. GENERAL PROVISIONS

(a) **Notices.** All notices, consents, and approvals under this Agreement must be delivered in writing by electronic mail with confirmation of receipt, courier, electronic facsimile (fax), or certified or registered mail, (postage prepaid and return receipt requested) to the other party; and will be effective upon receipt or three (3) business days after being deposited in the mail, whichever occurs sooner.

(b) **Force Majeure.** Visibility shall not be liable hereunder by reason of any failure or delay in the performance of its obligations hereunder on account of strikes, shortages, riots, insurrection, fires, flood, storm, explosions, acts of God, war, terrorism, governmental action, labor conditions, earthquakes, material shortages or any other cause which is beyond the reasonable control of Visibility.

(c) **Assignment.** You may not assign or transfer any of your rights under this Agreement, voluntarily or involuntarily, whether by merger, consolidation, dissolution, operation of law, or in any other manner. Any purported assignment or transfer of rights in violation of this section is null and void.

(d) **Waivers.** Any waiver or failure to enforce any provision of this Agreement on one occasion will not be deemed a waiver of any other provision or of such provision on any other occasion.

(e) **Severability.** If any provision of this Agreement is held by a court of competent jurisdiction to be unenforceable, such provision will be changed and interpreted to accomplish the objectives of such provision to the greatest extent possible under applicable law and the remaining provisions of this Agreement will continue in full force and effect.

(f) **Remedies.** Except as otherwise expressly provided in Sections 6, 7, and 8, the parties' rights and remedies under this Agreement are cumulative. It is understood and agreed that notwithstanding any other provisions of this Agreement, a breach by you of this Agreement will cause Visibility irreparable damage for which recovery of money damages would be inadequate, and that, in addition to any and all remedies available at law, Visibility shall be entitled to seek timely injunctive relief to protect Visibility's rights

under this Agreement. If any legal action is brought to enforce this Agreement, the prevailing party will be entitled to receive its attorneys' fees, court costs, and other collection expenses, in addition to any other relief it may receive.

**(g) Governing Law.** The laws of the Commonwealth of Virginia (without giving effect to its conflicts of law principles) govern all matters arising out of or relating to this Agreement and all of the transactions it contemplates, including without limitation, its validity, interpretation, construction, performance, and enforcement.

**(h) VENUE.** YOU HEREBY CONSENT TO THE EXCLUSIVE JURISDICTION AND VENUE OF THE STATE COURTS SITTING IN FAIRFAX COUNTY, VIRGINIA OR THE FEDERAL COURTS IN THE EASTERN DISTRICT OF VIRGINIA TO RESOLVE ANY DISPUTES ARISING OUT OF OR RELATING TO THIS AGREEMENT.

**(i) No Agency.** Nothing contained herein shall be construed as creating any agency, partnership or other form of joint enterprise between the parties.

**(j) Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding the subject hereof and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral.