



# Master Services Agreement

Contract Number 23-03765

**THIS AGREEMENT** by and between Utah Transit Authority (hereinafter "Customer") and Criteria Corp (hereinafter "Provider" and collectively the "Parties") is made effective January 31, 2024.

**WHEREAS**, Provider has developed and administers a proprietary web-based human resources service known as Criteria™ that incorporates cognitive aptitude, personality, emotional intelligence, and skills assessments, (hereinafter "Service") and is accessed through [www.criteriacorp.com](http://www.criteriacorp.com) and [www.hireselect.com](http://www.hireselect.com); and

**WHEREAS**, Customer desires to use the Service as one of its methods of screening job applicants;

**THEREFORE**, the Parties mutually agree that Customer shall purchase a 36-month Service subscription to make up to 600 new hires for its organization that currently has approximately 2,700 full-time and part-time employees. The Service subscription shall begin on January 31, 2024 at a cost of US \$228,000 (plus tax if applicable) which shall be paid based on the Special Payment Terms below and renewed only upon mutual agreement between the Parties. The Service shall be the Enterprise version with Video Interviewing.

**Authority.** Each Party represents and warrants that it has the full legal power and authority to enter into this Agreement and agrees to be bound by the Terms and Conditions of Use posted online at <https://www.criteriacorp.com/terms.php> ("TCU").

**Amended Terms.** Customer has the right to exercise two additional 12-month options of this Agreement. The pricing of each option is listed below under Special Payment Terms. Furthermore, ATTACHMENT A shall be included as part of this Agreement. In the event of a conflict between Attachment A and the TCU, the terms in Attachment A shall govern, but only to the extent of the conflict.

**Special Payment Terms:** Subscription Fee shall be paid as follows:

1. US \$76,000 Due on or before January 31, 2024
2. US \$76,000 Due on or before January 31, 2025
3. US \$76,000 Due on or before January 31, 2026
4. US \$79,800 Due on or before January 31, 2027 (if Customer exercises fourth year option)
5. US \$83,790 Due on or before January 31, 2028 (if Customer exercises fifth year option)

**Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall be considered one and the same instrument. The exchange of copies of this Agreement by facsimile or other electronic transmission shall constitute effective execution and delivery of this Agreement and may be used in lieu of an original for all purposes.



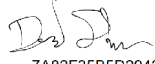
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement in duplicate in West Hollywood, California, on the date written above.

**“CUSTOMER”**  
**Utah Transit Authority**

**“PROVIDER”**  
**Criteria Corp**

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10/26/2023



## Attachment A

2.1 Use of Information. Criteria may (without limiting Criteria's rights): (a) use PII and Test Response Data to create score reports and other analyses for Customer's use; (b) internally use Test Response Data and Optional Data for item analysis and to further refine and validate normative data ; and (c) use, distribute, publicize, sell, and otherwise exploit Test Response Data and Optional Data, excluding PII, in aggregate anonymized form for the sole purpose of updating and improving the Service, including limiting adverse impact. For purposes of this of this Section 2.1, the parties agree and acknowledge that Criteria's right to sell or distribute Test Response Data and Optional Data is limited to aggregated anonymized Test Response Data and Optional Data sold or distributed as an integrated part of the Services which also include all similar data collected from other Criteria customers surveys. Customer may at any time withdraw Criteria's right to share Customer's job opportunities by changing the settings in Customer's online account.

3. Pricing & Payment. Customer shall pay Criteria the applicable fees on the Order on or before the start of the Term but in no case more than 30 days after Criteria's invoice date. Criteria may issue invoices at any time. All payments shall be in U.S. dollars without any deductions. Unless Customer is a verified tax-exempt entity, Customer is responsible for payment of all applicable duties and taxes related to the Order (including reimbursement to Criteria of any amounts paid by Criteria on its behalf). However, under no circumstances in UTA responsible for payment of state or federal income or sales taxes imposed by statute on Criteria as the seller of services.

7.3 Aggregate & Anonymized Data. Notwithstanding any terms to the contrary in this Agreement, Criteria may use, reproduce, sell, publicize, or otherwise exploit in any way and in its sole discretion Customer Data with the following removed: PII and the names and addresses of Customer and its Users. However, such data shall be used internally for Criteria's own product development and quality control activities, including item analysis, validation of normative data and limiting adverse impact. Furthermore, for purposes of this paragraph 7.3, the parties agree and acknowledge that Criteria's right to sell or distribute such data is limited to aggregated and anonymized Customer Data that is sold or distributed as an integrated part of the Services which also include all similar data collected from other Criteria customers surveys.

9.2 Criteria warrants that its product and service shall be reasonably functional for its intended purpose as described on its marketing site and be free of significant defects in function or availability thereof. Otherwise, the service is provided "as is," and to the maximum extent permitted by applicable law, Criteria, its Affiliates, licensors, third-party content or service providers, Distributors, dealers, and suppliers disclaim all guarantees and Warranties, whether express, implied, or statutory, regarding the Service and related materials, including without limitation any Warranty of fitness for a particular purpose, title, merchantability, and any warranty arising from statute, course of dealing, course of performance, or usage of trade.

9.3 Additional Disclaimers. Without limiting the generality of the provisions of section 9.2 above: (c) Criteria is not responsible or liable for any content posted on or linked from the service; (a) criteria does not warrant or guarantee the accuracy, reliability, completeness, usefulness, or quality of any content in the service; (b) Criteria does not warrant that the service is secure, free from bugs, viruses, interruption, errors, theft, or destruction or that the service will meet customer's requirements; ; d) Criteria is not responsible or liable for the performance of any ATS, including without limitation any ATS that Criteria integrates with the service (e) Criteria is not



responsible or liable for any injury related to data listed in section 2.4 (restrictions on the service and acceptable data); (f) Criteria is not responsible or liable for any loss arising out of or related to customer's use of job postings or other services from Ziprecruiter, inc., including without limitation job postings provided through Criteria through ZR-included orders (as defined in section 2.6, Ziprecruiter credits); (g) criteria is not responsible or liable for any customer hiring practice or employment decision, including without limitation those addressed by section 4.3 (hiring practices), or any loss resulting from use of or reliance on information gathered through the service; and (h) Criteria is not responsible or liable for any failure of the service to interface with or operate in conjunction with any third-party software or hardware. Customer recognizes and agrees that neither Criteria nor the service provides any professional, legal, or employment-related advice.

## 10. Indemnification.

10.1 Customer's Indemnifications. Customer shall defend, indemnify, and hold harmless Criteria and its Affiliates (as defined in Section 10.4) from any third-party claim, suit, or proceeding arising out or related to Customer's alleged or actual, misuse of, failure to use or wrongful use of the Service. Claims, suits, and proceedings described in the preceding sentence exclude claims listed in Section 10.2 below but include, without limitation: (a) claims by TestTakers and other Users, including without limitation claims alleging wrongful termination, discrimination in hiring, negligence, other wrongs related to employment, or violation of legal rights related to Background Checks, the U.S. Fair Credit Reporting Act, and other applicable laws; (b) claims related to Customer acts or omissions addressed above in Section 4.3 (Hiring Practices); (c) claims alleging that Customer's content/materials as uploaded to the Service by Customer infringe or violate intellectual property or privacy rights or defame or libel any person or entity; and (d) As an instrumentality of the State of Utah, Utah Transit Authority (UTA) is governed by the Utah Governmental Immunity Act (UCA 63G-7-101 et seq.) (the "Act"). Therefore, notwithstanding any other provision of this Agreement, any indemnification or other obligation with regard to assumption of liability or risk undertaken by UTA is subject to the damages recovery ceiling provided under the Act.

10.2 Company Indemnifications. Company will indemnify UTA for any third party actions claiming injury or damages caused by Company's negligent or reckless misuse of UTA provided information or data.

## 11. Limitation of Liability.

Criteria will not be responsible or liable for any of the following arising out of or related to this agreement: (a) Indirect, incidental, consequential, special, exemplary, or punitive damages; (b) damages in excess of two times (2x) the fees paid by Customer for the service during the 12-month period preceding the Injury giving rise to the claim. Or the liabilities limited by the receding sentence apply: (i) to liability for gross negligence; (ii) regardless Of the form of action, whether in contract, tort, strict product liability, or otherwise; (iii) even if criteria is advised in advance of the possibility of the damages in question and even if such damages were Foreseeable; and (iv) even if customer's remedies fail of their essential purpose. If applicable law limits the application of the provisions of this article 11, Criteria's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Criteria's liability limits and other rights set forth in this Article 11 apply likewise to Criteria's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives. Notwithstanding the foregoing, the limitations of liability contained in this provisions to not apply to Company's indemnify obligations under paragraph 10.2 above.



12. Dispute Resolution. (a) This Agreement shall be governed solely by the internal laws of the State of Utah without reference to any principle of conflicts of law that would apply the substantive laws of another jurisdiction to the parties' rights or duties. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of Salt Lake City, Utah. (b) To the extent permitted under the applicable law, the parties agree that each may bring claims against the other only in their individual capacity and not as a plaintiff or class member in any purported class action or representative action. Unless both parties agree, no judge or arbitrator may consolidate more than one person's (or entity's) claims or otherwise preside over any form of a representative or class action proceeding. The Parties agree to engage in mediation under the auspices of JAMS prior to resorting to litigation.

### 13. Termination

- a) For Convenience: UTA shall have the right to terminate the Contract at the end of the first or second subscription year by providing written notice to Contractor no later than 90 days prior to the start of the subsequent subscription year, as applicable. UTA can exercise this termination right only under the circumstances where, due to its dependence on taxpayer dollars, UTA's ability to continue forward with subsequent subscription years is constrained by a lack of appropriations, insufficient tax proceeds, or other lack of funding availability. If the Contract is terminated under these circumstances, UTA shall pay Contractor: (i) in full for Software delivered and Services fully performed prior to the effective date of termination; and (ii) an equitable amount to reflect costs incurred (including Contract close-out and subcontractor termination costs that cannot be reasonably mitigated) and profit on work-in-progress as of to the effective date of the termination notice. UTA shall not be responsible for anticipated profits based on the terminated portion of the Contract. Contractor shall promptly submit a termination claim to UTA. If Contractor has any property in its possession belonging to UTA, Contractor will account for the same, and dispose of it in the manner UTA directs. UTA shall also reimburse the contractor for the (x%) discount received on the subscription years not terminated resulting from agreeing to a 3-year subscription. In Year 1, this would be \$12,120. In Year 2, this would be \$16,526. Details about the discount are explained below.

<b>Year 1</b>	\$88,120	13.75%	<b>\$76,000</b>
<b>Year 2</b>	\$92,526	17.86%	<b>\$76,000</b>

- b) For Default: If Contractor (a) becomes insolvent; (b) files a petition under any chapter of the bankruptcy laws or is the subject of an involuntary petition; (c) makes a general assignment for the benefit of its creditors; (d) has a receiver appointed; (e) should fail to make prompt payment to any subcontractors or suppliers; or (f) fails to comply with any of its material obligations under the Contract, UTA may, in its discretion, after first giving Contractor seven (7) days written notice to cure such default:
1. Terminate the Contract (in whole or in part) for default and obtain the Software and Services using other contractors or UTA's own forces, in which event Contractor shall be liable for all incremental costs so incurred by UTA;
  2. Pursue other remedies available under the Contract (regardless of whether the termination remedy is invoked); and/or



3. Except to the extent limited by the Contract, pursue other remedies available at law.

14. Utah Anti-Boycott of Israel Act

Contractor agrees that will be not engage in any type of boycott against the State of Israel for the duration of this contract

15. Force Majeure

Neither party to the Contract will be held responsible for delay or default caused by fire, riot, acts of God and/or war which are beyond that party's reasonable control. UTA may terminate the Contract after determining such delay or default will reasonably prevent successful performance of the Contract

16. Entire Agreement

This Contract shall constitute the entire agreement and understanding of the parties with respect to the subject matter hereof, and shall supersede all offers, negotiations and other agreements with respect thereto.

