

Master Subscription Agreement

Last modified on 1st December 2017

This master subscription agreement (“MSA”) between SmartRecruiters and the Customer identified on the applicable Order Form sets out the terms and conditions applicable to the customer’s use of the services provided by SmartRecruiters. By executing an Order Form, the Customer agrees to the terms of this MSA. Customers not subscribed to a paid plan are not governed by this MSA.

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Definitions:

“**Agreement**” means this Master Subscription Agreement; any Order Form(s), the Description, the DPA, the SLA and any Schedules or documents further attached to or referred in this Agreement;

“**Candidate Content**” means any Content provided by a candidate to the Customer that is uploaded to the Services by the Candidate;

“**Confidential Information**” means any non-public or proprietary information or material relating to a Party, whether orally, in writing disclosed to the receiving Party, in electronic, tape, disk, or any other physical or visual form, by or on behalf of the disclosing Party, that is marked or designated as confidential or might reasonably be considered as confidential, including without limitation, all know-how, trade secrets, scientific, technical, statistical, strategic, financial or commercial information;

“**Content**” means any and all content, information, data, images, photos, video, sound, notes, and works of authorship, articles, or other materials;

“**Customer**” means the customer as set out in the Order Form;

“**Customer Content**” means any Content provided, imported or uploaded to the Services by Customer or Users or on Customer’s behalf;

“**Data Processing Agreement**” or “**DPA**” means if applicable, the data processing agreement attached to the Agreement, which is hereby incorporated by reference;

“**Description**” means the description of the features subscribed at the Effective Date, as updated from time to time and attached to the Agreement or made available at <https://help.smartrecruiters.com/>;

“**Effective Date**” means the date of signature of the Order Form by the Customer;

“**Feedback**” means all comments and suggestions, whether written or oral, furnished by Customer or Users to SmartRecruiters in connection with the Services;

“**Fees**” means the Subscription Fees, the Professional Services Fees and any other fees set out in an Order Form signed by both Parties;

“**Force Majeure**” means an event, or a series of related events, that is outside the reasonable control of the Party affected including failures of the internet or any public telecommunications network, virus or other malicious software attacks, disasters, explosions, fires, floods, riots, terrorist attacks and wars;

“**Individual**” means any individual, candidate, employee or referrer, who leverages their own data to assist in the sourcing of candidates or applies or is sourced as a potential applicant to jobs or companies hosted on the SmartRecruiters Platform;

“**Intellectual Property Rights**” or “**IPR**” means all intellectual property rights wherever in the world, whether registered or not registered, including: (a) all patent and patent applications; (b) trademarks, business names and logos (registered or not registered); (c) trade secrets; (d) copyrights; (e) proprietary and confidential information, ideas, inventions, techniques, sketches, drawings, works of authorship, models, inventions, know-how, processes, apparatuses, equipment, algorithms, software programs, software source documents; and (f) all other similar proprietary and confidential rights;

“Order Form” means the order form and any additional orders signed by the Parties;

“Party“ or “Parties” Means the Customer contracting party and the SmartRecruiters company as set forth in the Order Form;

“Personal Data” means any Content or information which related to an identified or identifiable Individuals and protected by the SmartRecruiters Data Privacy policy at <https://www.smartrecruiters.com/privacy-policy/>;

“Professional Services” means the professional services as described in the package specified in the Order Form or in a statement of work (as applicable);

“Professional Services Fees” means the fees for the Professional Services as set out in the Order Form(s);

“Schedules” means any schedule attached to the main body of this Agreement;

“Services” Means the Subscription Services, the Professional Services and any further Services mentioned in the Order Form(s);

“Service Level Agreement” or “SLA” means the Service Level Agreement, available at <https://www.smartrecruiters.com/sla/>

“SmartRecruiters” means the SmartRecruiters company mentioned in the Order Form;

“SmartRecruiters Content” means any content, data, or recommendations that are provided by SmartRecruiters to the Customer;

“SmartRecruiters Site” means the website located at www.smartrecruiters.com and any other URLs owned or operated by SmartRecruiters and designated by SmartRecruiters for use hereunder;

“SmartRecruiters Platform” means the Talent Acquisition Platform as described in the Description;

“SmartRecruiters Technology” means the Services and all intellectual property rights in the Services, the SmartRecruiters Content and any of the SmartRecruiters’ proprietary technology, including software, hardware, products, processes, algorithms, user interfaces, know-how, technologies, designs and other tangible or intangible technical material or information made available to Customer by SmartRecruiters in providing the Services;

“Statement of Work” or “SOW” means an agreement specifying the details for the performance of the Professional Services and signed by both Parties;

“Subscription Fees” means the fees for the Subscription Services as set out in the Order Form(s);

“Subscription Services” means the usage of SmartRecruiters Talent Acquisition platform (access, hosting, maintenance and support) available and subscribed at the Effective Date;

“Term” means the term as defined in section 4 hereunder;

“Third-party Add-on Services” means the third-party add-on services as set out in section 6 hereunder;

“Travel Fees” means all reasonable travel, accommodation and out-of-pocket expenses incurred in connection with the performance of the obligations under this Agreement. The Travel Fees shall include any non-refundable travel fees payable to third parties by SmartRecruiters resulting from a cancellation or change requested by the Customer;

“Users” means Customer’s employees, contractors, consultants and representatives who are authorized by Customer to utilize the Services and who are provided with access to the Services by virtue of a password or the equivalent thereof. Users shall not be competitors of SmartRecruiters;

Unless other specified herein: (i) the word “including” means “including but not limited to”; and (ii) any reference to days will mean calendar days. For the avoidance of doubt the word “ensure” as used in this Agreement does not constitute a guarantee, but (only) a contractual obligation.



Provision of the Services by SmartRecruiters

- 2.1 SmartRecruiters will provide access to the SmartRecruiters Platform and the Services subscribed by the Customer as specified in one or more Order Forms signed by the Parties.
- 2.2 SmartRecruiters will make the Subscription Services for the Term available to the Customer via Internet. Availability of the Subscription Services is governed by the terms of the Service Level Agreement, available at <https://www.smartrecruiters.com/sla/>.
- 2.3 The Customer must ensure that a valid Order Form properly covers its use of the Services at all times.
- 2.4 In the event that use or size of Customer (i.e. total Customer's full time employees) exceeds the amount specified in the Order Form, Customer will be responsible for upgrading Customer's subscription promptly and pay any additional Subscription Fees accordingly. SmartRecruiters is entitled to monitor the number of Customer's full time employees and shall invoice any increase of the original full time employees number specified in the Order Form(s) at the next invoicing interval.



Fees, Invoicing and Payment

- 3.1 The Customer agrees to pay SmartRecruiters all Fees set forth in each Order Form.
- 3.2 Unless otherwise specified in the Order Form, the Subscription Fees shall be invoiced annually in advance at each anniversary date. The first invoice shall be issued on the Effective Date. The Subscription Fees cannot be decreased during the Term.
- 3.3 The Professional Fees are provided on either a fixed fee basis or a time and materials basis as set out in the Order Form.
 - 3.3.1 The Professional Fees on a fixed fee basis shall be invoiced upfront on the Effective Date or from the effective date if any additional Order Form is signed. Once the fixed Professional Fees defined in the Order Form are consumed, SmartRecruiters is entitled to invoice additional Professional Fees on a time and materials basis as defined in the purchased Package.
 - 3.3.2 The Professional Fees on a time and materials basis shall be invoiced monthly in arrears. The Professional Fees on a time and materials basis are based on an estimate and SmartRecruiters cannot guarantee that the Professional Services will be completed for that amount. If the estimated amount of Professional Services is exceeded, SmartRecruiters is entitled to invoice the Customer under the same rates and terms.
- 3.4 Travel Fees shall be invoiced monthly in arrears together with 5% standard administration fee. On request SmartRecruiters will provide the Customer with relevant receipts.
- 3.5 All other Fees shall be invoiced as defined in the relevant Order Form(s).
- 3.6 Payment obligations are based on the Services subscribed in the relevant Order Form(s). All Fees shall be paid within thirty (30) days from date of the invoice. If the Customer has specified a credit card or direct withdrawal from a bank account as an applicable payment mechanism under this Agreement, the Customer authorizes SmartRecruiters to charge the credit card or debit the bank account provided to SmartRecruiters for all Fees incurred under this Agreement.
- 3.7 Except as expressly set forth herein, all Fees will be non-refundable once paid to SmartRecruiters (including upon any termination or suspension of this Agreement). Until paid in full, all past due Fees not subject to a good faith dispute will bear an additional charge of the lesser of eight tenths of one percent (0.8%) per month or the maximum amount permitted under applicable law. SmartRecruiters may condition provision or renewal of Services upon payment of past-due Fees, subject to the cure period set forth in section 4.2.
- 3.8 At each renewal term SmartRecruiters may increase any portion of the Fees, provided that such increase does not exceed seven percent (7%) of the Fees paid for the comparable period during the immediately preceding term.

- 3.9 If SmartRecruiters requires use of collection agencies, attorneys, or a court of law for collection on Customer's account, the Customer will be responsible for those expenses.
- 3.10 All Fees stated in or in relation to this Agreement are exclusive of any applicable value added taxes imposed by all local, state, federal or foreign authorities, which will be added to the Fees. All taxes imposed by all local, state, federal or foreign authorities shall be paid by the Customer. The Customer will be responsible for all use, sales, and other taxes imposed on the Services provided under this Agreement other than taxes on SmartRecruiters' income, employees or similar taxes.

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Term and Termination

- 4.1 This Agreement starts on the date of execution of the Order Form and remains in effect as long as an Order Form is in effect under this Agreement (“Term”). Except as otherwise specified in the Order Form, Subscription Services will automatically renew for additional periods equal to the expiring term or one year (whichever is shorter), unless either Party gives the other notice of nonrenewal at least thirty (30) days before the end of the relevant Term. At that time, the Customer authorizes SmartRecruiters to collect the applicable Fees, allowing SmartRecruiters to use any valid payment source of yours that SmartRecruiters has on record.
- 4.2 Either Party may terminate this Agreement immediately upon written notice in the event that the other Party materially breaches the Agreement and thereafter: (a) in the case of material breach resulting from non-payment of amounts due hereunder, has failed to pay such amounts within thirty (30) days after receiving written notice thereof; or (b) has failed to cure any other material breach (or to commence diligent efforts to cure such breach that are reasonably acceptable to the terminating party) within thirty (30) days after receiving written notice thereof.
- 4.3 Each Party may terminate this Agreement if the other Party becomes the subject of a voluntary petition in bankruptcy, any voluntary proceeding relating to insolvency or liquidation or any other proceeding relating to insolvency or liquidation.
- 4.4 Upon termination or expiration of this Agreement for any reason: (a) all rights and subscriptions granted to the Customer under this Agreement will terminate; (b) the Customer will immediately cease all use of and access to the Services; (c) all Fees then owed by the Customer will become immediately due and payable; (d) SmartRecruiters may delete any of the Customer’s content held by SmartRecruiters within thirty (30) days after the date of termination and (e) if such termination is due to breach of the Agreement by SmartRecruiters, then SmartRecruiters shall promptly refund to the Customer all prepaid unearned Subscription Fees.
- 4.5 Upon written request by the Customer within 30 days from effective date of termination or expiration of this Agreement, SmartRecruiters will leave - with no charge - access to Customer’s public API, so that the Customer can retrieve their data, including, without limitation, Customer Content, Candidate Content, in a format described on <https://dev.smartrecruiters.com/customer-api/overview/>. Upon the expiration of the 30 days’ period mentioned above, the Customer agrees and acknowledges that no access to the Customer’s public API will be granted to the Customer anymore and SmartRecruiters is entitled to delete Customer’s access and data.

The Customer agrees and acknowledges that SmartRecruiters will delete such Customer Content, Candidate Content at any time on or after the thirty-first (31st) day following termination or expiration of this Agreement.

- 4.6 If the Customer fails to pay undisputed amounts in accordance with this Agreement or, if and as necessary to protect the Candidate Content, Customer Content in the event of a threat to the security of the Services, SmartRecruiters will have the right, in addition to any of its other rights or remedies, to immediately suspend the provision of the Services to Customer or any particular User without liability to the Customer until such amounts are paid in full or such breach is cured, as applicable. In the event of any suspension for the purpose of protecting Candidate Content or Customer Content from unauthorized third-party access, SmartRecruiters shall provide notification in advance to the Customer and in agreement with the Customer, SmartRecruiters may suspend the service. SmartRecruiters will commit to re-activating the service as quickly as possible assuming the access issues are resolved and will still honor the terms of its SLA with the Customer.
- 4.7 The sections “Fees and Payment”, “Representations and Warranties”, “Confidentiality”, “Intellectual Property Rights”, “Indemnification”, “Liability”, “Priority among the documents”, “Severability”, “Governing Law and Jurisdiction”, “Miscellaneous” shall survive any termination or expiration of this Agreement.

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Access Grant and Restrictions

- 5.1 Subject to the terms and conditions of the Agreement, SmartRecruiters grants Customer a worldwide, non-exclusive, non-transferable right to permit the Customer and the Users to do the following solely for the purposes of locating and hiring potential employees for the Customer:
- a) access the features and functions of the Services ordered under an Order Form and subscribed solely for Customer's internal business purposes during the Term; and
 - b) view, download, reproduce, and print job & Candidate Content made available to Customer through the Services.
- The Customer shall undertake reasonable efforts to make all Users aware of the provisions of this section 5. SmartRecruiters may suspend access for any User who violates this Agreement, provided that such violation is not cured within thirty (30) days of the Customer receiving written notice thereof as set forth in section 4.2.
- 5.2 The Customer agrees that the Customer will not: (a) permit any third party to access and/or use the Services, other than the Users authorized under the Agreement or in the case of application programming interface access granted by a third party; (b) rent, lease, loan, or sell access to the Services to any third party; (c) interfere with, disrupt, alter, translate, or modify the Services or any part thereof, or create an undue burden on the Services or the networks or services connected to the Services; (d) reverse engineer, decompile, disassemble or otherwise attempt to obtain or perceive the source code from which any software component of the Services are compiled or interpreted, and the Customer acknowledges that nothing in this Agreement will be construed to grant the Customer any right to obtain or use such code; (e) access the Services in order to build or create a derivative, competitive or similar product or service or copy any ideas, features, functions or graphics of the Services; or (f) introduce software or automated agents or scripts to the Services so as to produce multiple accounts, generate automated searches, requests and queries, or to strip or mine data from the Services.
- 5.3 The Customer agrees not to attempt to access any of the Services by any means other than through the interface that is provided by SmartRecruiters nor to engage in any activity that interferes with or disrupts the Services or infringes on SmartRecruiters' and/or its third-party vendors' brand or intellectual property rights. The Customer will use the Services and all Candidate Content in conformance with all applicable laws.
- 5.4 In addition, the Customer agrees not to use, or encourage or permit others to use, the Services to: (a) stalk and/or harass another; (b) harm minors in any way; (c) impersonate any person or entity, or falsely state or otherwise misrepresent the Customer's affiliation with a person or entity; (d) forge headers or otherwise manipulate identifiers to disguise the origin of any Content posted on or transmitted through the Services; (e) use the Services or Content such that it will mislead a third party into believing that he or she is interacting directly with SmartRecruiters or the Services; (f) engage in

any chain letters contests, junk email, pyramid schemes, spamming, surveys or other duplicative or unsolicited messages (commercial or otherwise); (g) access or use the Services in any manner that could damage, disable, overburden or impair any SmartRecruiters server or the networks connected to any SmartRecruiters server; (h) harvest, collect, gather or assemble information or data regarding other users without their consent; or (i) market any goods or services for any business purposes (including advertising and making offers to buy or sell goods or services), unless specifically allowed to do so by SmartRecruiters.

- 5.5 The Customer agrees not to store any illegal content or content which violates applicable law, or material rights of third parties within the provided storage space. The Customer is obliged to scan the Customer Content and the content for viruses and other harmful components before storing them on the server and to use appropriate virus protection programs.
- 5.6 The Customer shall ensure that each username and password issued to a User will be used only by that User. The Customer is responsible for making commercially reasonable efforts to maintaining the confidentiality of all Users' usernames and passwords. The Customer agrees (a) other than third parties who are authorized pursuant to the definition of "Users" as set forth in section 1 (Definitions), not to allow a third party to use Customer's account, usernames or passwords at any time; and (b) to notify SmartRecruiters promptly of any actual or suspected unauthorized use of the Customer's account, usernames or passwords. SmartRecruiters reserves the right to terminate any username and password, which SmartRecruiters reasonably determines may have been used by an unauthorized third party or for an unlawful purpose. SmartRecruiters shall notify the Customer of any actual or suspected unauthorized use of the Customer's account, usernames or passwords.

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Integrations – Third-party Add-on Services

- 6.1 The Order Form may include the provision of integrations to third-party services. SmartRecruiters shall make all reasonable efforts to ensure the successful operation of the integration. However, as the integration to third-party services is dependent upon the technical setup of third-party systems, which are not under SmartRecruiters' control, SmartRecruiters shall not be liable for any failures relating to the integration resulting from actions or omissions of the Customer or this third-party.
- 6.2 The Subscription Services are pre-integrated with a number of Third-party Add-on Services. These Third-party Add-on Services are provided by third party vendors on their own behalf and on their own accounts, i.e. such third-party vendors are not acting as SmartRecruiters' subcontractors or sub-processors. When the Customer purchases such Third-party Add-on Services through the SmartRecruiters Platform, the terms and conditions of those third-party vendors including the data protection terms apply to the Customer.

The Customer agrees that SmartRecruiters (i) is not responsible for the content and the operation of any Third-party Add-on Services and makes no representation and (ii) has no liability whatsoever to the Customer.

The Customer is urged to review such terms and conditions before purchasing or otherwise accessing any such Third-party Add-on Services. Such Third-party Add-on Services' terms and conditions, and not this Agreement, will govern the Customer's use of such Third-party Add-on Services. SmartRecruiters cannot and does not take any responsibility for, nor makes any warranty on behalf of, such Third-party Add-on Services. If a third-party vendor ceases to make them or any data or functions therein available for interoperation with the Subscription Services on reasonable terms, SmartRecruiters may cease providing those features without entitling Customer to any refund, credit, or other compensation (except for a refund of third-party services purchased in the situation where Customer has pre-bought Third-party Add-on Services that are no longer available). The Customer acknowledges that any prepaid but unused Third-party Add-on Services purchased on the SmartRecruiters Platform will expire 1-year from the date of purchase of the Third-party Add-on Services. In addition, Customer agrees and acknowledges that the third-party vendor may change or amend its guidelines or functionality and/or the Subscription Services' interface with it at any time, and SmartRecruiters will not be liable to the extent any resulting issue is outside SmartRecruiters' reasonable control. Per Customer's request, SmartRecruiters may act on the Customer's behalf to procure Third-party Add-on services.

6.3 Job Distribution

As set forth in the Order Form, the Customer may elect to subscribe to SmartRecruiters "advanced job distribution" services to (i) manage job posting online and (ii) distribute jobs to third party job boards and aggregators supported by SmartRecruiters (<https://marketplace.smartrecruiters.com/category/job-boards/>). In either case, SmartRecruiters will not be liable to the extent any resulting issue is outside SmartRecruiters' reasonable control or may be able to remove supported job boards if the third-party job board or aggregator ceases to provide these job distribution services.

6.4 Any exchange of data between the Customer and Third-party Add-on Services' vendors (including job boards and aggregators) is solely between the Customer and Third-party Add-on Services' vendor and SmartRecruiters is not responsible for any disclosure, modification or deletion of the Customer's data resulting from access by such Third-party Add-on Services' vendor.



Customer Content

- 7.1 Customer grants SmartRecruiters a non-exclusive, worldwide, royalty-free and fully paid license to:
 - (a) use, reformat, display, modify and create derivative works of the Customer Content solely for the purpose of and to the extent necessary to provide the Services hereunder to the Customer (including, where applicable, sharing and providing such Customer Content with candidates & employees); and
 - (b) use Customer's trademarks, service marks, and logos to provide the Services to Customer and the candidates as set forth hereunder. All rights in and to the Customer Content not expressly granted to SmartRecruiters in this Agreement are reserved by the Customer. As between the Parties, Customer retains all right, title and interest in and to the Customer Content and SmartRecruiters acknowledges that it neither owns nor acquires any additional rights in and to the Customer Content not expressly granted by this Agreement. SmartRecruiters further acknowledges that Customer retains the right to use the Customer Content for any purpose in the Customer's sole discretion.
- 7.2 The Customer shall be responsible for and assumes the risk, responsibility and expense of: (i) any problems resulting from, the accuracy, quality, integrity, legality, reliability, and appropriateness of all such Customer Content; and (ii) acquiring, installing and maintaining all connectivity equipment, hardware, software and other equipment as may be necessary for it and its Users to connect to, access, and use the Services.
- 7.3 SmartRecruiters and the Customer acknowledge and agree that Individuals own and control certain Personal Data, and SmartRecruiters' use thereof, and may have certain rights in such Personal Data (as opposed to Customer or SmartRecruiters having such rights), notwithstanding anything to the contrary in this Agreement.



Representations and Warranties

- 8.1 Each Party warrants and represents that it has legal rights and authority to enter into this Agreement and to perform the obligations herein.
- 8.2 Each Party warrants and represents that it shall respect all applicable laws and regulations (including any export laws and regulations and customs regulations) related to this Agreement.
- 8.3 SmartRecruiters represents and warrants that it has all rights to license the Services to the Customer and it has and will maintain all necessary third-party licenses necessary for the performance of the Services.
- 8.4 SmartRecruiters represents and warrants that, during each subscription Term under this Agreement, it will: (a) provide the Services substantially in accordance with the Agreement and the Description; and (b) implement and maintain backup, security and business continuity measures, in accordance with industry practices.
- 8.5 The Customer represents and warrants that it shall own all right, title and interest in and to all of the necessary Customer content, copyrights and IPR required for it to comply with its obligations under this Agreement.
- 8.6 The Customer represents and warrants not to use the Services for any purpose that is unlawful and prohibited by this Agreement and by any regulations.
- 8.7 EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE SERVICES ARE PROVIDED “AS IS,” AND SMARTRECRUITERS MAKES NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NONINFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE, WITH RESPECT TO THE USE, MISUSE, OR INABILITY TO USE THE SERVICES (IN WHOLE OR IN PART) OR ANY OTHER PRODUCTS OR SERVICES PROVIDED TO CUSTOMER BY SMARTRECRUITERS. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, SMARTRECRUITERS DOES NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.



Confidentiality

- 9.1 Each Party agrees to: (a) use the Confidential Information of the other Party only for the purposes described and as permitted herein; and (b) restrict access to the Confidential Information to such of its personnel, agents, and/or consultants, if any, who have a need to have access and who have been advised of and have agreed in writing or are otherwise bound to treat such information in accordance with the terms of this Agreement.
- 9.2 The foregoing provision will not apply to Confidential Information that (a) is publicly available or in the public domain at the time disclosed; (b) is or becomes publicly available or enters the public domain through no fault of the recipient; (c) is rightfully communicated to the recipient by persons not bound by confidentiality obligations with respect thereto; (d) is already in the recipient's possession free of any confidentiality obligations with respect thereto at the time of disclosure; (e) is independently developed by the recipient; or (f) is approved for release or disclosure by the disclosing party without restriction.
- 9.3 Notwithstanding the foregoing, each Party may disclose Confidential Information to the limited extent required (a) 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 will first have given written notice to the other Party and made a reasonable effort to obtain a protective order; or (2) to establish a Party's rights under this Agreement, including to make such court filings as it may be required to do.

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Data Protection

- 10.1 Each Party undertakes to comply with its obligations under the applicable Data Protection regulations with respect to its activities under this Agreement.
- 10.2 To the extent that is requested by the Data Protection legislation, the terms of the DPA shall apply and the Parties agree to comply with the terms.
- 10.3 The Customer (data controller) is responsible for the assessment of the legitimacy of the data collection, processing, use and for the protection of the rights of the Individuals. To the extent that SmartRecruiters (data processor) processes Personal Data disclosed by the Customer, SmartRecruiters will act only on instructions from the Customer in relation to the processing of that personal data.
- 10.4 Notwithstanding the foregoing, each Individual has the option to set up a personal account. With this personal account, the Individual controls and is able to coordinate different application profiles and application processes for different job offerings of the Customer and of other companies. The collection, processing and use of data for creating and using this personal account is not done on behalf of the Customer, but lies in the sole responsibility of the Individual and SmartRecruiters and is therefore not regulated by this Agreement.

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Intellectual Property Rights

- 11.1 Nothing in this Agreement shall operate to assign or transfer any Intellectual Property Rights from a Party to the other Party.
- 11.2 SmartRecruiters Technology is the exclusive property of SmartRecruiters or its suppliers. Except as expressly set forth herein, no express or implied license or right of any kind is granted to the Customer regarding the Services or the SmartRecruiters Technology, or any part thereof, including any right to obtain possession of any source code, data or other technical material relating to the SmartRecruiters Technology. All rights not expressly granted to the Customer are reserved to SmartRecruiters. Ownership of all work product, developments, inventions, technology or materials provided by SmartRecruiters under this Agreement will be solely owned by SmartRecruiters. SmartRecruiters, in its sole discretion, may utilize the Feedback furnished by either the Customer or the Users to SmartRecruiters in connection with the Services. The Customer hereby grants SmartRecruiters a worldwide, non-exclusive, irrevocable, perpetual, royalty-free right and license to incorporate the Feedback into SmartRecruiters products and services.
- 11.3 For any inventions or others made within the frame of this Agreement which are patentable or which can be registered otherwise, only SmartRecruiters shall be entitled to undertake the respective registrations in its own name.
- 11.4 For the avoidance of doubt, know-how such as procedures, methodologies, processes used for the performance of the Services which exist at SmartRecruiters before Effective Date as well as know-how which exists before but was further developed by SmartRecruiters during the Term of this Agreement shall be and remain the sole ownership of SmartRecruiters.

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Open Source Software

The Services provided by SmartRecruiters include certain free and/or open source software (components) (hereinafter together referred to as “Open Source Software”). The Open Source Software are governed by the respective/relevant Open Source Software terms. The license terms of the Open Source Software that are included in SmartRecruiters’ Services, and the relevant categories and components, are available under the following link: Open Source Projects available at <https://www.smartrecruiters.com/terms-and-conditions/FOSS/>. Customer is obliged to comply with the Open Source Software terms.

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Liability

- 13.1 TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL EITHER PARTY, OR ITS SUPPLIERS, BE LIABLE TO THE OTHER PARTY FOR ANY SPECIAL, INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS, DATA, USE OR GOODWILL, PERSONAL OR PROPERTY DAMAGE RESULTING FROM OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION OR THE THEORY OF LIABILITY, WHETHER IN TORT, CONTRACT, OR OTHERWISE, EVEN IF SUCH PARTY HAS BEEN NOTIFIED OF THE LIKELIHOOD OF SUCH DAMAGES. UNLESS OTHERWISE SPECIFIED, IN NO EVENT SHALL SMARTRECRUITERS BE LIABLE FOR COSTS INCLUDING PROCUREMENT COSTS OF SUBSTITUTE PRODUCTS OR SERVICES.
- 13.2 NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE (I) ANY LIABILITY FOR DEATH OR PERSONAL INJURY RESULTING FROM NEGLIGENCE, (II) LIMIT OR EXCLUDE ANY LIABILITY FROM FRAUD OR FRAUDULENT MISREPRESENTATION, (III) LIMIT ANY LIABILITIES IN ANY WAY THAT IS NOT PERMITTED UNDER APPLICABLE LAW, OR (IV) EXCLUDED ANY LIABILITY THAT MAY NOT BE EXCLUDED UNDER APPLICABLE LAW.
- 13.3 Each Party's aggregate liability under or in relation to this Agreement shall be limited to the Fees paid by the Customer under this Agreement for the then-current subscription year, regardless of whether such liability arises from a material breach of contract, tort breach of statutory duty or otherwise.
- 13.4 The Parties agree that the limitations of liability set forth in this section shall survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The Parties acknowledge that the Fees have been set and this Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the Parties.
- 13.5 Any damage claims or claims in reimbursement of expenses regardless of the legal grounds, shall become statute-barred no later than one year (i) after the discovery of the circumstances giving rise to the claim or (ii) from the effective date of the termination or expiration of this Agreement.

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Indemnification

- 14.1 Subject to section 14.5, SmartRecruiters will defend at its expense any suit brought against the Customer, and will pay any final written settlement or final decision SmartRecruiters makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on a claim by any third party alleging that the Services misappropriates any trade secret recognized under the Uniform Trade Secrets Act or infringes any United States copyright, patent, or other intellectual property right.
- 14.2 If any portion of the Services becomes, or in SmartRecruiters' opinion is likely to become, the subject of a claim of infringement, SmartRecruiters may, at SmartRecruiters' option: (a) procure for Customer the right to continue using the Services; (b) replace the Services with non-infringing Services which do not materially impair the functionality of the Services; (c) modify the Services so that it becomes non-infringing; or (d) terminate the Services and refund any Fees actually paid by Customer to SmartRecruiters for the remainder of the subscription Term then in effect, and upon such termination, the Customer will immediately cease all use of the Services.
- 14.3 Notwithstanding the foregoing, SmartRecruiters shall have no obligation under this section or otherwise with respect to any infringement claim based upon (a) any use of the Services not in accordance with this Agreement or the Description; or (b) Customer Content; or (c) the negligence and willful misconduct of the Customer. This subsection states the Customer's sole and exclusive remedy for intellectual property infringement claims and actions.
- 14.4 Subject to section 14.5., the Customer will defend at its expense any suit brought against SmartRecruiters, and will pay any final settlement or final decision Customer makes or approves, or any damages finally awarded in such suit, insofar as such suit is based on (i) any use of Customer data or Customer Content within the Services, (ii) any use of third party application provided by the Customer, or (iii) any use of the Services in an unlawful manner or in violation of the Agreement.
- 14.5. The indemnifying party's obligations as set forth above are expressly conditioned upon each of the following: (a) the indemnified party shall promptly notify the indemnifying party in writing of any threatened or actual claim or suit; (b) the indemnifying party shall have sole control of the defense or settlement of any claim or suit; (c) the indemnified party shall cooperate with the indemnifying party to facilitate the settlement or defense of any claim or suit; (d) the indemnified party shall not make any admissions of liability or compromise in relation to the claim without the Indemnifying party's prior consent (such consent not to be unreasonably withheld; and (e) the indemnified party shall use its reasonable endeavours to mitigate its and the indemnifying party losses, liability, costs and expenses in respect of the claim.
- 14.6 This section 14 states the exclusive right and remedy for any type of claim described in this section.

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Professional Services

- 15.1 The Customer may ask and SmartRecruiters may provide Professional Services to assist with the implementation, training and integration of the Subscription Services. Ownership of all work product created by SmartRecruiters' as part of the Professional Services will be considered SmartRecruiters Technology.
- 15.2 The Professional Services are described either in the package specified in the Order Form or in a SOW signed by both Parties.
- 15.3 SmartRecruiters will perform the Professional Services in a manner consistent with industry standards applicable to the provision thereof.
- 15.4 The Customer shall collaborate and provide SmartRecruiters with the sufficient resources, materials and other information that is required to execute the respective Professional Services.
- 15.5 Any delays caused by the Customer may result in additional applicable Professional Fees.
- 15.6 Daily rates correspond to an eight (8) hours workday. Travel time is charged at half time.

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Assignment / Subcontracting

- 16.1 Neither Party shall assign, subcontract, delegate, or otherwise transfer this Agreement, or its rights and obligations herein, without obtaining the prior written consent of the other Party, and any attempted assignment, subcontract, delegation, or transfer in violation of the foregoing will be null and void. However, either Party may assign this Agreement in connection with a merger, acquisition, reorganization or sale of all or substantially all of its assets, or other operation of law, without any consent of the other party provided that the assignee is not a competitor of the other Party.
- 16.2 Notwithstanding the foregoing, SmartRecruiters may subcontract any of its obligations under this Agreement. SmartRecruiters shall remain responsible to the Customer for the performance of the subcontracted obligations.
- 16.3 This Agreement shall be binding upon the Parties and their respective successors and permitted assigns.

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Anti-bribery

Neither Party shall receive or offer any bribes, gifts, things of value in connection with this Agreement.

Each Party hereby undertakes that, at the Effective Date, itself, its directors, officers or employees have not offered, promised, given, authorized, solicited or accepted any undue pecuniary or other advantage of any kind (or implied that they will or might do any such thing at any time in the future) in any way connected with the Agreement and that it has taken reasonable measures to prevent subcontractors, agents or any other third parties, subject to its control or determining influence, from doing so.

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Priority among the documents

- 18.1 This Agreement, including any Order Form(s) and the documents referred to in it, constitutes the entire agreement between the Customer and SmartRecruiters and governs the Customer's use of the Services and as of the Effective Date supersedes all prior and written agreements, arrangements, communications and representations. Any term or condition specified in a Customer's purchase order and/or any Customer's terms and conditions are void and not applicable to the Services.
- 18.2 If there is any conflict among the following documents, the order of precedence shall be (i) the Order Form(s), (ii) this MSA, (iii) this SLA, (iv) the Description, (v) the fixed package or the SOW and (vi) the DPA (if applicable).

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Severability

If any provision of this Agreement is, for any reason, held to be invalid or unenforceable, the other provisions of this Agreement will remain enforceable and the invalid or unenforceable provision will be deemed modified so that it is valid and enforceable to the maximum extent permitted by law.

Governing Law and Jurisdiction

- 20.1 This Agreement will be governed by the laws of the State of Delaware, without giving effect to any conflicts of laws principles that require the application of the law of a different jurisdiction. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement.
- 20.2 The Parties agree to submit to the exclusive jurisdiction of the courts of the State of Delaware to resolve any legal matter arising from this Agreement.

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Miscellaneous

21.1 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.

21.2 Any delay in the performance of any duties or obligations of either Party (except the payment of money owed) will not be considered a breach of this Agreement if such delay is caused by any Force Majeure event, provided that such Party uses reasonable efforts, under the circumstances, to notify the other Party of the cause of such delay and to resume performance as soon as possible.

21.3 Any modification or variation of this Agreement shall be effective unless it is in writing, refers specifically to this Agreement and is duly executed by each of the Parties.

21.4 Given the public nature of the relationship between the Parties, SmartRecruiters may refer to the Customer on its customer's list, press releases, marketing materials, and on its website.

Both Parties may agree to write a Hiring Success case study. The Customer will not unreasonably withhold or delay its consent.

Any press releases or public announcements shall be approved by the Customer. The Customer will not unreasonably withhold or delay its consent.

21.5 Each of the components that constitute the Services is a "commercial item" as that term is defined at 48 C.F.R. 2.101, consisting of "commercial computer software" and/or "commercial computer software documentation" as such terms are used in 48 C.F.R. 12.212. Consistent with 48 C.F.R. 12.212 and 48 C.F.R. 227.7202-1 through 227.7202-4, all U.S. Government end users acquire the Services with only those rights set forth herein.

21.6 Each Party's relationship to the other Party is that of an independent contractor, and neither Party is an agent or partner of the other. Neither Party will have, and will represent to any third party that it has, any authority to act on behalf of the other Party.

21.7 The Customer is responsible for updating Customer's data to provide SmartRecruiters with the Customer's most current email address.

21.8 Notices will be only validly served pursuant to this Agreement where the notice has been sent by tracked delivery and/or by email where receipt of the notice is acknowledged in writing by the other Party.

Any notice provided to the Customer pursuant to this Agreement shall be sent to the Customer's address mentioned in the Order Form.

Any notice provided to SmartRecruiters pursuant to this Agreement shall be sent to SmartRecruiters, Inc., 225 Bush Street, Suite #300, San Francisco, CA 94104, Attn: Chief Executive Officer.

SmartRecruiters

YOU ARE WHO YOU HIRE

For more information, follow us at
@SmartRecruiters, on LinkedIn
or visit us at [smartrecruiters.com](https://www.smartrecruiters.com)