

Smarrtr

Smarrtr Services Agreement

Unless otherwise noted within your account for the Smarrtr services offerings, all Smarrtr services are provided free of charge.

PLEASE READ CAREFULLY! THIS IS A BINDING CONTRACT! YOU SHOULD READ THIS AGREEMENT IN ITS ENTIRETY BEFORE CLICKING “ACCEPT” OR PURCHASING ANY SERVICES SHOULD YOU CHOOSE TO PURCHASE SERVICES (SOME SERVICES ARE PROVIDED FREE OF CHARGE. PLEASE SEE SECTION 6 BELOW FOR HOW YOU WILL BE INFORMED IF A SERVICE REQUIRES A FEE). ANY SECTION BELOW IN ALL CAPS YOU SHOULD PAY PARTICULAR ATTENTION TO AND READ CAREFULLY.

THIS AGREEMENT INVOLVES FREE SERVICES AND SERVICES FOR WHICH YOU HAVE THE OPTION TO PURCHASE FROM SMARTRECRUITERS, AND IF YOU DO PURCHASE CERTAIN SERVICES, CONTAINS AN OBLIGATION TO PAY SMARTRECRUITERS. IF YOU DO NOT PURCHASE ANY SERVICES FROM SMARTRECRUITERS, THERE IS NO OBLIGATION TO PAY SMARTRECRUITERS. THIS AGREEMENT ALSO INCLUDES AN ARBITRATION PROVISION REQUIRING INDIVIDUAL ARBITRATION OF DISPUTES INSTEAD OF TRIALS OR CLASS ACTIONS.

This is an agreement (the “**Agreement**”) between the person purchasing the services offered by SmartRecruiters (“**You**” or “**Your**”) and SmartRecruiters, Inc. (“**We**” or “**Us**” or “**Our**”), contactable at supportfeedback@smarrtr.me, for Us to provide You certain services.

Upon clicking “Accept” this Agreement will become effective between You and Us.

YOU SHOULD NOT PROVIDE US WITH ANY SENSITIVE PERSONAL DATA SUCH AS SOCIAL SECURITY NUMBER, DRIVERS LICENSE NUMBER, OR OTHER NATIONAL IDENTIFIERS, PASSPORT INFORMATION OR OTHER ID CARDS. Other than payment information, which is not stored by US and is instead stored by Stripe.com, the personal data You provide should be limited to what a reasonable individual would include on a resume, curriculum vitae, or LinkedIn profile for example.

Any third party’s (such as stripe.com) collection, use, and disclosure of Your information will be subject to that third-party’s service’s privacy notice.

We will interpret Your compliance with this Agreement in its sole discretion.

Please also review our privacy policies at the following links which also govern Your use of the services:

- <https://www.smartrecruiters.com/legal/candidate-privacy-policy/august-13-2020/>
- <https://www.smartrecruiters.com/legal/california-privacy-policy/>



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1. Electronic Communications. When You use the services, or send e-mails, text messages, and other communications from Your desktop or mobile device to Us, You may be communicating with us electronically. You consent to receive communications from us electronically, such as e-mails, text messages, mobile push notices, or notices and messages on this site or through other means, including for marketing purposes. You agree that all agreements, notices, disclosures, and other communications that we provide to You electronically satisfy any legal requirement that such communications be in writing.

2. Intellectual Property. All content, included in or made available through the services, such as text, graphics design, logos and trademarks, button icons, images, audio clips, digital downloads, data compilations, visual interfaces, and the selection and arrangement thereof, computer code (including source or object code), and software is Our property or the property of Our affiliates or Our suppliers and is protected by United States and international intellectual property laws.

3. Services Provided by Us Under this Agreement. Subject to Your compliance with this Agreement, including the payment of any applicable fees, We will provide the services made available and/or purchased by You as applicable.

4. Scope. You may not: (1) resell or make commercial use of any of the services, or the services' contents; (2) collect and use of any product listings, descriptions, or prices for any purpose; (3) make any derivative use of the services or their contents; (4) download, copy, or use the services for the benefit of any third party; (5) engage in the use of data mining, robots, or similar data gathering and extraction tools related to the services or any Our website; or (6) use the services for anything other their intended purpose. All rights not expressly granted to You in this Agreement are reserved and retained by Us, Our affiliates, Our licensors, Our suppliers, Our publishers, Our rightsholders, or other third parties. No service, nor any part of any of Our service, may be reproduced, duplicated, copied, sold, resold, visited, or otherwise exploited for any commercial purpose without Our express written consent. You may not frame or utilize framing techniques to enclose any of Our trademarks, logos, or other proprietary information (including images, text, page layout, or form) without Our express written consent. You may not use any meta tags or any other "hidden text" utilizing Our name or trademarks without Our express written consent. You may not misuse Our services. You may use the Our Services only as permitted by law. The licenses granted by Us terminate if You do not comply with this Agreement.

5. Your Account.

5.1. You are required to have Your own account to use the services, and You may be required to be logged in to the account and have a valid payment method associated with it. You are responsible for maintaining the confidentiality of Your account and password and for



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restricting access to Your account, and You agree to accept responsibility for all activities that occur under Your account or password. If You are under 18, You may use the services only with the supervision of a parent or guardian. Parents and guardians may create profiles for teenagers. We reserve the right to refuse service, terminate accounts, terminate Your rights to use the services, remove or edit content, or cancel orders in its sole discretion.

5.2. You may use Your account to submit suggestions, ideas, comments, questions, or other information, so long as the content is not illegal, obscene, threatening, defamatory, invasive of privacy, infringing of intellectual property rights (including publicity rights), or otherwise injurious to third parties or objectionable, and does not consist of or contain software viruses, political campaigning, commercial solicitation, chain letters, mass mailings, or any form of "spam" or unsolicited commercial electronic messages. You may not use a false e-mail address, impersonate any person or entity, or otherwise mislead as to the origin of an account. We reserve the right (but not the obligation) to remove or edit such content.

5.3. If You post content, provide feedback to SmartRecruiters or its employees, or submit material, unless We indicate otherwise, then except for Your personal data, You grant Us, Our affiliates, and any applicable third parties, a nonexclusive, transferable, royalty-free, perpetual, worldwide, irrevocable, and fully sublicensable right to use, reproduce, modify, adapt, publish, perform, translate, create derivative works from, copy, distribute, and display such content throughout the world in any media. Subject to applicable law, You grant Us, Our affiliates and sublicensees the right to use the name that You submit in connection with such content. You represent and warrant that You own or otherwise control all of the rights to the content that You post; that the content is accurate; that use of the content You supply does not violate this Agreement and will not cause injury to any person or entity; and that You will indemnify Us for all claims resulting from content You supply. We have the right but not the obligation to monitor and edit or remove any activity or content. We take no responsibility and assume no liability for any content posted by You or any third party.

5.4. Unless expressly permitted by Us in writing, You may not sell, rent, lease, share, or provide access to your account to anyone else, including without limitation, charging anyone for access to administrative rights on Your account. We reserve all available legal rights and remedies to prevent unauthorized use of the services, including, but not limited to, technological barriers, IP mapping, and, in serious cases, directly contacting your Internet Service Provider (ISP) regarding such unauthorized use.

6. Payment.

6.1. Some Smarter services are free to use. For any Smarter services that require payment, You will be explicitly informed before You're able to purchase Smarter Services.

6.2. By (1) clicking "Accept" to this Agreement, (2) providing Your credit card information, and (3) checking a consent box and clicking "Buy Now", You agree that We may charge Your credit card the price specified in the purchase any applicable taxes and transaction fees. If you do not follow the steps in the immediately preceding sentence, SmartRecruiters may not charge you a fee. Fees are fully earned upon payment. You authorize Us to charge any payment method associated to your account in case your



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primary payment method is declined or no longer available to Us for payment. We may charge your payment method in the currency specified when You made Your purchase. Depending on your purchase, We may charge you once or monthly. PAYMENTS ARE NONREFUNDABLE AND THERE ARE NO REFUNDS OR CREDITS FOR PARTIALLY USED PERIODS. However, following any cancellation or termination, You will continue to have access to the service(s) you purchased if such purchase was based on a period of time, and then, for the remainder of the purchased period of time. At any time, and for any reason, We may provide a refund, discount, or other consideration to You. The amount and form of such credits, and the decision to provide them, are at Our sole and absolute discretion. The provision of credits in one instance does not entitle You to credits in the future for similar instances, nor does it obligate Us to provide credits in the future, under any circumstance. We reserve the right to adjust pricing for Our services or any components thereof in any manner and at any time as We may determine in Our sole and absolute discretion. If there is a problem charging Your selected payment method, we may charge any other valid payment method associated with Your account. For any services subject to renewal, once purchased, such services shall continue to be charged until terminated. You must cancel the Service by going to settings -> Subscription Status -> and then clicking “Cancel Subscription” before it renews to avoid SmartRecruiters charging your payment method for the next billing cycle. You remain responsible for any uncollected amounts. If a payment is not successfully settled, due to expiration, insufficient funds, or otherwise, and You do not cancel your account, we may suspend your access to the service(s) until We have successfully charged a valid payment method.

7. Term; Termination. The Agreement shall remain in effect for as long as You have an account. This Agreement shall terminate when You delete Your account or as otherwise specified herein. To the fullest extent permitted by applicable law, SmartRecruiters reserves the right, without notice and in our sole discretion, to terminate your access to use the services, and to block or prevent your future access to and use of the services, including where we reasonably consider that: (a) your use of the services violates this Agreement or applicable law; (b) you fraudulently use or misuse the services; or (c) we are unable to continue providing the services to you due to technical or legitimate business reasons. Our right to terminate Your access includes the ability to terminate or to suspend your access to any purchased products or services, including any subscriptions. To the fullest extent permitted by applicable law, your only remedy with respect to any dissatisfaction with: (i) the services, (ii) any term of this Agreement, (iii) any policy or practice of SmartRecruiters in operating the services, or (iv) any content or information transmitted through the services, is to terminate your account and to discontinue use of any and all parts of the services.

8. LIMITATION OF LIABILITY; INDEMNITY; DISCLAIMERS. CLAUSES IN THIS SECTION 8 MAY NOT BE ENFORCEABLE IN ALL JURISDICTIONS. IF YOU ARE IN ONE OF THESE



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JURISDICTIONS, SOME, ALL, OR ONLY PORTIONS OF THE CLAUSES IN THIS SECTION 8 MAY NOT APPLY TO YOU.

8.1. LIMITATION OF LIABILITY. TO THE EXTENT LEGALLY PERMITTED UNDER APPLICABLE LAW, IN NO EVENT SHALL SMARTRECRUITERS, ITS EMPLOYEES, DIRECTORS, OFFICERS, AND AFFILIATES BE LIABLE FOR ANY DAMAGES, INCLUDING DAMAGES OR COSTS DUE TO LOSS OF PROFITS OR SALARY, 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. NOTHING IN THIS AGREEMENT WILL LIMIT OR EXCLUDE ANY LIABILITY IN ANY WAY THAT IS NOT PERMITTED UNDER APPLICABLE LAW. TO THE FULLEST EXTENT POSSIBLE BY LAW, OUR MAXIMUM LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, REGARDLESS OF THE CAUSE OF ACTION (WHETHER IN CONTRACT, TORT, BREACH OF WARRANTY OR OTHERWISE), WILL NOT EXCEED THE HIGHER OF THE AMOUNT OF MONEY YOU SPENT WITH US OR \$100 USD.

8.2. INDEMNITY. YOU AGREE TO DEFEND (AT OUR REQUEST), INDEMNIFY, AND HOLD US HARMLESS FROM AND AGAINST ANY CLAIMS, LIABILITIES, DAMAGES, LOSSES, AND EXPENSES, INCLUDING WITHOUT LIMITATION, REASONABLE ATTORNEY'S FEES AND COSTS, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR YOUR USE OF THE SERVICE. YOU WILL COOPERATE AS REQUIRED BY US IN THE DEFENSE OF ANY CLAIM. WE RESERVE THE RIGHT TO ASSUME THE EXCLUSIVE DEFENSE AND CONTROL OF ANY MATTER SUBJECT TO INDEMNIFICATION BY YOU, AND YOU WILL NOT IN ANY EVENT SETTLE ANY CLAIM WITHOUT OUR PRIOR WRITTEN CONSENT.

8.3. SERVICES DISCLAIMER. WE MAKES NO PROMISES OR WARRANTIES REGARDING THE SERVICES PROVIDED UNDER THIS AGREEMENT. WE DO NOT GUARANTEE OR PROMISE THAT YOU WILL FIND A JOB AS A RESULT OF USING THE SERVICES. YOU ARE SOLELY RESPONSIBLE FOR FINDING EMPLOYMENT.

8.4. WARRANTY DISCLAIMER. EXCEPT AS EXPRESSLY PROVIDED IN THIS AGREEMENT AND TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, OUR SERVICES ARE PROVIDED "AS IS" AND "AS AVAILABLE," AND WE MAKE NO (AND HEREBY DISCLAIMS ALL) OTHER WARRANTIES, REPRESENTATIONS, OR CONDITIONS, WHETHER WRITTEN, ORAL, EXPRESS, IMPLIED, OR STATUTORY, INCLUDING ANY IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT, OR FITNESS FOR A PARTICULAR PURPOSE. WE DO NOT WARRANT THAT ALL ERRORS CAN BE CORRECTED, OR THAT OPERATION OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE.

8.5. DESCRIPTION DISCLAIMER. WE ATTEMPT TO BE AS ACCURATE AS PRACTICALLY POSSIBLE. HOWEVER, WE DO NOT WARRANT THAT PRODUCT DESCRIPTIONS OR OTHER CONTENT OF ANY SERVICE IS ACCURATE, COMPLETE, RELIABLE, CURRENT, OR ERROR-FREE.

8.6. BASIS OF THE BARGAIN. YOU ACKNOWLEDGE AND AGREE THAT WE HAVE OFFERED THE SERVICES, USER CONTENT, MATERIALS, AND OTHER CONTENT AND INFORMATION, SET ITS PRICES, AND ENTERED INTO THESE TERMS OF SERVICE IN RELIANCE UPON THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN, THAT THE WARRANTY



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DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN REFLECT A REASONABLE AND FAIR ALLOCATION OF RISK BETWEEN YOU AND US, AND THAT THE WARRANTY DISCLAIMERS AND LIMITATIONS OF LIABILITY SET FORTH HEREIN FORM AN ESSENTIAL BASIS OF THE BARGAIN BETWEEN YOU AND US. WE WOULD NOT BE ABLE TO PROVIDE THE SERVICES TO YOU ON AN ECONOMICALLY REASONABLE BASIS WITHOUT THESE LIMITATIONS.

9. Use of Your data for Artificial Intelligence.

9.1. By clicking “Accept,” You give US permission to use Your data for our artificial intelligence services. For this sole purpose, You grant US and Our affiliates a royalty-free, worldwide, perpetual, sublicensable, and irrevocable license to use Your data on an aggregated, deidentified, and non-descriptive basis provided We remove any and all information that would allow You to be identified.

10. Deleting; Managing Your Data.

10.1. You can delete, export, and manage Your data in the privacy settings in Your account with Us. To ensure any of Your payment related data is deleted, You must contact Stripe (<https://stripe.com/>). We shall use the efforts imposed on it by applicable law to have Your data deleted.

11. ARBITRATION. PLEASE READ THIS SECTION 11 CAREFULLY BECAUSE IT REQUIRES YOU TO ARBITRATE DISPUTES WITH US AND LIMITS THE MANNER IN WHICH YOU CAN SEEK RELIEF FROM SMARTRECRUITERS.

11.1. YOU AND US AGREE THE SOLE AND EXCLUSIVE FORUM AND REMEDY FOR ANY AND ALL DISPUTES AND CLAIMS RELATING IN ANY WAY TO OR ARISING OUT OF THIS AGREEMENT, (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) SHALL BE FINAL AND BINDING ARBITRATION, except that to the extent that either of us has in any manner infringed upon or violated or threatened to infringe upon or violate the other party's patent, copyright, trademark or trade secret rights, then the parties acknowledge that arbitration is not an adequate remedy at law and that injunctive or other appropriate relief may be sought.

11.2. In Our sole discretion, arbitration under this Agreement shall be conducted by either (1) the American Arbitration Association (the "**AAA**") under its Commercial Arbitration Rules and, in the case of consumer disputes, the AAA's Supplementary Procedures for Consumer Related Disputes (the "**AAA Consumer Rules**") (collectively, the "**AAA Rules**"), or (2) JAMS, subject to JAMS Comprehensive Arbitration Rules. The location of the arbitration and the allocation of costs and fees for such arbitration shall be determined in accordance with such applicable rules and shall be subject to the limitations provided for in the applicable rules (for consumer disputes). The arbitrator's award shall be binding and may be entered as a judgment in any court of competent jurisdiction.

11.3. To the fullest extent permitted by applicable law, NO ARBITRATION OR CLAIM UNDER THESE TERMS OF USE SHALL BE JOINED TO ANY OTHER ARBITRATION OR CLAIM, INCLUDING ANY ARBITRATION OR CLAIM INVOLVING ANY OTHER CURRENT OR FORMER USER OF THE



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SERVICE, AND NO CLASS ARBITRATION PROCEEDINGS SHALL BE PERMITTED. NEITHER YOU NOR US MAY JOIN OR CONSOLIDATE CLAIMS OF OTHERS OR PARTICIPATE IN ANY CLAIM AS A CLASS REPRESENTATIVE OR A CLASS MEMBER. IN NO EVENT SHALL ANY CLAIM, ACTION OR PROCEEDING BY YOU RELATED IN ANY WAY TO THE SITE OR THE SERVICES (INCLUDING YOUR VISIT TO OR USE OF THE SITE AND/OR THE SERVICE) BE INSTITUTED MORE THAN ONE (1) YEAR AFTER THE CAUSE OF ACTION AROSE. OTHERWISE, SUCH CAUSE OF ACTION IS PERMANENTLY BARRED.

12. Updating this Agreement. We may change our services and policies, and therefore We may amend this Agreement so that it accurately reflects Our services and policies. Unless otherwise required by law, We will notify You (for example, through our service) when we make changes to this Agreement and give You an opportunity to review them before they go into effect. Then, if You continue to use the Service, You will be bound by the updated Agreement. If You do not want to agree to the updated Agreement, You can delete Your account and or stop using the services.

13. Miscellaneous.

13.1. Jurisdiction; Governing Law. This Agreement shall be governed by laws of the State of Delaware without regard to conflicts of law.

13.2. Survival. Any sections related to proprietary rights, payment of fees accrued, confidentiality and non-disclosure, indemnification, and limitation of liability shall survive any termination, cancellation, or expiration of this Agreement.

13.3. Entire Agreement. This Agreement and the documents referred to in it, constitutes the entire agreement between You and Us and governs Your use of the services, and as of the effective date supersedes all prior and written agreements, arrangements, communications and representations. Any hand-written or other changes to this Agreement made without Our prior written approval will not be binding against Us.

13.4. Severability. If any provision of this Agreement is, for any reason, held to be invalid or unenforceable for any reason, the remaining provisions will continue in full force without being impaired or invalidated in any way. The Parties agree to replace any invalid provision with a valid provision that most closely approximates the intent and economic effect of the invalid provision.

13.5. Waiver. 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.

13.6. Force Majeure. Except for payment obligations, neither party will be liable to the other for any failure to meet its obligations under the Agreement where such failure is caused by events beyond its reasonable control such as failure of communications networks, inability to timely obtain instructions or information from the other party, governmental action, fire, storms, floods or other acts of God.



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13.7. Notices. Notices will be only validly served pursuant to this Agreement where the notice has been sent by tracked delivery where receipt of the notice is acknowledged in writing by the other Party. Any notice provided to Us pursuant to this Agreement shall be sent to SmartRecruiters, Inc., 225 Bush Street, Suite #300, San Francisco, CA 94104, Attn: Chief Executive Officer, copy: Head of Legal at legal@smartrecruiters.com. You are responsible for updating Your contact information to provide Us with Your most current contact information.

13.8. Assignment. You may not assign your rights or delegate Your obligations under this Agreement without Our prior written consent. We may assign this Agreement with You to any affiliated company or to any entity that succeeds to all or substantially all of Our business or assets related to the applicable Service.

13.9. No Third-Party Beneficiaries. This Agreement does not create any rights in any third party.

13.10. Authorized Subprocessors. You authorize Us to utilize the following subprocessors: Stripe, viewable at <https://stripe.com/>, and Iterable, Inc. viewable at <https://iterable.com/>.

13.11. Location Specific Clauses.

13.11.1. France. If You are located in France, You waive Your right to retract the contract within seven days of Your purchase.

