

## Ashby Customer Master Service Agreement

### TERMS OF SERVICE

**PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY CLICKING “LOGIN WITH GOOGLE,” OR BY ACCESSING A DEMO ACCOUNT CUSTOMER AGREES TO THESE TERMS AND CONDITIONS.**

These Terms of Service constitute an agreement (this “Agreement”) by and between Ashby, Inc., a Delaware Corporation (“Ashby”) and the corporation, LLC, partnership, sole proprietorship, or other business entity executing this Agreement (“Customer”). This Agreement is effective as of the date Customer accesses a demo account or first clicks “Login with Google” (the “Effective Date”). Customer’s use of and Ashby’s provision of Ashby’s Service (as defined below in Section 1.5) are governed by this Agreement.

EACH PARTY ACKNOWLEDGES THAT IT HAS READ THIS AGREEMENT, UNDERSTANDS IT, AND AGREES TO BE BOUND BY ITS TERMS, AND THAT THE PERSON EXECUTING THE AGREEMENT ON ITS BEHALF HAS BEEN AUTHORIZED TO DO SO. THE PERSON EXECUTING THIS AGREEMENT ON CUSTOMER’S BEHALF REPRESENTS THAT HE OR SHE HAS THE AUTHORITY TO BIND CUSTOMER TO THESE TERMS AND CONDITIONS.

**1. DEFINITIONS.** The following capitalized terms will have the following meanings whenever used in this Agreement.

- 1.1. “Customer Data” means data in electronic form input or collected through the Service by or from Customer, including without limitation by Customer’s Users that is unique to Customer or Customer’s specific job postings and/or candidate or application management and tracking. For clarity, information that is generally available without restriction or is not unique to Customer or Customer’s specific job postings and/or candidate or application management and tracking is not Customer Data.
- 1.2. “Documentation” means Ashby’s standard manual related to use of the Service.
- 1.3. “Order” means an order for access to the Service, where Customer selects a Service subscription term and provides payment information via a legally binding commitment, including via electronic acceptance or via a signed ink signature (including via scanned replicas of the same).
- 1.4. “Privacy Policy” means Ashby’s privacy policy, currently posted at <http://ashbyhq.com/privacy>.
- 1.5. “Service” means Ashby’s job candidate and job applicant relationship management and tracking Service (“Ashby for Recruiting”) or Ashby’s talent analytics solution (“Ashby Analytics”), dependent on the product(s) specified in your Order.
- 1.6. “SLA” means Ashby shall use commercially reasonable efforts to make the Services available twenty-four (24) hours a day, seven days a week, except for: (i) planned downtime; and (ii) unavailability caused by circumstances beyond Ashby’s control, including but not limited to acts of God, internet service provider failures or delays, and denial of service attacks
- 1.7. “Term” is defined in Section 11.1 below.

- 1.8. “User” means any individual who uses the Service on Customer’s behalf or through Customer’s account or passwords, whether authorized or not.

## **2. THE SERVICE.**

- 2.1. Use of the Service. During the Term, Customer may access and use the Service pursuant to the terms of any outstanding Order, including such features and functions as the Order requires.
- 2.2. Service Levels. Ashby shall provide the remedies listed in the SLA for any failure of the Service listed in the SLA. Such remedies are Customer’s sole remedy for any failure of the Service, and Customer recognizes and agrees that if the SLA does not list a remedy for a given failure, it has no remedy.
- 2.3. Documentation: Customer may reproduce and use the Documentation solely as necessary to support Users’ use of the Service.
- 2.4. Service Revisions. Ashby may revise Service features and functions or the SLA at any time, including without limitation by removing such features and functions or reducing service levels. If any such revision to the Service materially reduces features or functionality provided pursuant to an Order, Customer may within 30 days of notice of the revision terminate such Order, without cause, or terminate this Agreement without cause if such Order is the only one outstanding. If any such revision to the SLA materially reduces service levels provided pursuant to an outstanding Order, the revisions will not go into effect with respect to such Order until the start of the Term beginning 45 or more days after Ashby posts the revision and so informs Customer.

**3. SERVICE FEES.** Customer shall pay Ashby the fee set forth in each Order (the “Subscription Fee”) for each Term. Ashby will not be required to refund the Subscription Fee under any circumstances.

## **4. CUSTOMER DATA & PRIVACY.**

- 4.1. Use of Customer Data. Unless it receives Customer’s prior written consent, Ashby: (a) shall not access, process, or otherwise use Customer Data other than as necessary to facilitate the Service; and (b) shall not intentionally grant any third party access to Customer Data, including without limitation Ashby’s other customers, except subcontractors that are subject to a reasonable nondisclosure agreement. Notwithstanding the foregoing, Ashby may disclose Customer Data as required by applicable law or by proper legal or governmental authority. Ashby shall give Customer prompt notice of any such legal or governmental demand and reasonably cooperate with Customer in any effort to seek a protective order or otherwise to contest such required disclosure, at Customer’s expense.
- 4.2. Privacy Policy. The Privacy Policy applies only to the Service and does not apply to any third party website or services linked to the Service or recommended or referred to through the Service or by Ashby’s staff.
- 4.3. Risk of Exposure. Customer recognizes and agrees that hosting data online involves risks of unauthorized disclosure or exposure and that, in accessing and using the Service, Customer assumes such risks. Ashby offers no representation, warranty, or guarantee that Customer Data will not be exposed or disclosed through errors or the actions of third parties.
- 4.4. Data Accuracy. Ashby will have no responsibility or liability for the accuracy of data uploaded to the

Service by Customer, including without limitation Customer Data and any other data uploaded by Users.

- 4.5. Data Deletion. Ashby may permanently erase Customer Data if Customer's account is delinquent, suspended, or terminated for 30 days or more.
- 4.6. Excluded Data. Customer represents and warrants that Customer Data does not and will not include, and Customer has not and shall not upload or transmit to Ashby's computers or other media, any sensitive data ("Excluded Data") regulated pursuant to specific legal frameworks such as health data (HIPAA), personal information of minors (COPPA), educational records (FERPA), data related to home ownership (FHA), data related to credit decisions (FCRA), or regulated financial data (the "Excluded Data Laws"). CUSTOMER RECOGNIZES AND AGREES THAT: (a) ASHBY HAS NO LIABILITY FOR ANY FAILURE TO PROVIDE PROTECTIONS SET FORTH IN THE EXCLUDED DATA LAWS OR OTHERWISE TO PROTECT EXCLUDED DATA; AND (b) ASHBY'S SERVICES ARE NOT INTENDED FOR MANAGEMENT OR PROTECTION OF EXCLUDED DATA AND MAY NOT PROVIDE ADEQUATE OR LEGALLY REQUIRED SECURITY FOR EXCLUDED DATA.
- 4.7. Aggregate & Anonymized Data. Notwithstanding the provisions above of this Article 4, Licensee agrees that Ashby may calculate aggregate, anonymized statistics about its Customers' use of the Service that are non-personally identifiable with respect to Customer and/or any individual and use those statistics (but not the underlying data) for purposes of Ashby's own sales, marketing, business development, product enhancement, or customer service initiatives. Notwithstanding the foregoing, Ashby shall ensure that the statistics will not constitute Personal Data and will not include any Personal Data.

## **5. CUSTOMER'S RESPONSIBILITIES & RESTRICTIONS.**

- 5.1. Acceptable Use. Customer shall not: (a) use the Service for service bureau or time-sharing purposes or in any other way allow third parties to exploit the Service; (b) provide Service passwords or other log-in information to any third party; (c) share non-public Service features or content with any third party; or (d) access the Service in order to build a competitive product or service, to build a product using similar ideas, features, functions or graphics of the Service, or to copy any ideas, features, functions or graphics of the Service. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Users, Ashby may suspend Customer's access to the Service without advanced notice, in addition to such other remedies as Ashby may have. Neither this Agreement nor the AUP requires that Ashby take any action against Customer or any User or other third party for violating the AUP, this Section 5.1, or this Agreement, but Ashby is free to take any such action it sees fit.
- 5.2. Unauthorized Access. Customer shall take reasonable steps to prevent unauthorized access to the Service, including without limitation by protecting its passwords and other log-in information. Customer shall notify Ashby immediately of any known or suspected unauthorized use of the Service or breach of its security and shall use best efforts to stop said breach.
- 5.3. Compliance with Laws. In its use of the Service, Customer shall comply with all applicable laws, including without limitation laws governing the protection of personally identifiable information and other laws applicable to the protection of Customer Data.
- 5.4. Users & Service Access. Customer is responsible and liable for: (a) Users' use of the Service, including

without limitation unauthorized User conduct and any User conduct that would violate the AUP or the requirements of this Agreement applicable to Customer; and (b) any use of the Service through Customer's account, whether authorized or unauthorized.

## **6. IP & FEEDBACK.**

- 6.1. IP Rights to the Service. Ashby retains all right, title, and interest in and to the Service, including without limitation all software used to provide the Service and all graphics, user interfaces, logos, and trademarks reproduced through the Service. This Agreement does not grant Customer any intellectual property license or rights in or to the Service or any of its components. Customer recognizes that the Service and its components are protected by copyright and other laws.
- 6.2. Feedback. Ashby has not agreed to and does not agree to treat as confidential any Feedback (as defined below) Customer or Users provide to Ashby, and nothing in this Agreement or in the parties' dealings arising out of or related to this Agreement will restrict Ashby's right to use, profit from, disclose, publish, keep secret, or otherwise exploit Feedback, without compensating or crediting Customer or the User in question. Notwithstanding the provisions of Article 7 below, Feedback will not be considered Confidential Information, provided information Customer transmits with Feedback or related to Feedback may be considered Confidential Information. ("Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Ashby's products or services.)

**7. CONFIDENTIAL INFORMATION.** "Confidential Information" refers to the following items Ashby discloses to Customer: (a) any document Ashby marks "Confidential"; (b) any information Ashby orally designates as "Confidential" at the time of disclosure, provided Ashby confirms such designation in writing within 10 business days; (c) the Documentation; and (d) any other nonpublic, sensitive information Customer should reasonably consider a trade secret or otherwise confidential. Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in Customer's possession at the time of disclosure; (ii) is independently developed by Customer without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of Customer's improper action or inaction; or (iv) is approved for release in writing by Customer. Customer is on notice that the Confidential Information may include Ashby's valuable trade secrets.

- 7.1. Nondisclosure. Customer shall not use Confidential Information for any purpose other than internal personal use of the Service to manage and track job candidates and applicants (the "Purpose"). Customer: (a) shall not disclose Confidential Information to any employee or contractor of Customer unless such person needs access in order to facilitate the Purpose and executes a nondisclosure agreement with Customer with terms no less restrictive than those of this Article 7; and (b) shall not disclose Confidential Information to any other third party without Ashby's prior written consent. Without limiting the generality of the foregoing, Customer shall protect Confidential Information with the same degree of care it uses to protect its own confidential information of similar nature and importance, but with no less than reasonable care. Customer shall promptly notify Ashby of any misuse or misappropriation of Confidential Information that comes to Customer's attention. Notwithstanding the foregoing, Customer may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. Customer shall give Ashby prompt notice of any such legal or governmental demand and reasonably cooperate with Ashby in any effort to seek a protective order or otherwise to contest such required disclosure, at Ashby's expense.
- 7.2. Injunction. Customer agrees that breach of this Article 7 would cause Ashby irreparable injury, for

which monetary damages would not provide adequate compensation, and that in addition to any other remedy, Ashby will be entitled to injunctive relief against such breach or threatened breach, without proving actual damage or posting a bond or other security.

- 7.3. Termination & Return. With respect to each item of Confidential Information, the obligations of Section 7.1 above (*Nondisclosure*) will terminate one year after the date of disclosure; provided that such obligations related to Confidential Information constituting Ashby's trade secrets will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, Customer shall return all copies of Confidential Information to Ashby or certify, in writing, the destruction thereof.
- 7.4. Retention of Rights. This Agreement does not transfer ownership of Confidential Information or grant a license thereto. Ashby will retain all right, title, and interest in and to all Confidential Information.
- 7.5. Exception & Immunity. Pursuant to the Defend Trade Secrets Act of 2016, 18 USC Section 1833(b), Recipient is on notice and acknowledges that, notwithstanding the foregoing or any other provision of this Agreement:
- (a) *Immunity*. An individual shall not be held criminally or civilly liable under any Federal or State trade secret law for the disclosure of a trade secret that- (A) is made- (i) in confidence to a Federal, State, or local government official, either directly or indirectly, or to an attorney; and (ii) solely for the purpose of reporting or investigating a suspected violation of law; or (B) is made in a complaint or other document filed in a lawsuit or other proceeding, if such filing is made under seal.
  - (b) *Use of Trade Secret Information in Anti-Retaliation Lawsuit*. An individual who files a lawsuit for retaliation by an employer for reporting a suspected violation of law may disclose the trade secret to the attorney of the individual and use the trade secret information in the court proceeding, if the individual- (A) files any document containing the trade secret under seal; and (B) does not disclose the trade secret, except pursuant to court order.

## **8. REPRESENTATIONS & WARRANTIES.**

- 8.1. From Ashby. Ashby represents and warrants that it is the owner of the Service and of each and every component thereof, or the recipient of a valid license thereto, and that it has and will maintain the full power and authority to grant the rights granted in this Agreement without the further consent of any third party. Ashby's representations and warranties in the preceding sentence do not apply to use of the Service in combination with hardware or software not provided by Ashby. In the event of a breach of the warranty in this Section 8.1, Ashby, at its own expense, shall promptly take the following actions: (a) secure for Customer the right to continue using the Service; (b) replace or modify the Service to make it noninfringing; or (c) terminate the infringing features of the Service and refund to Customer any prepaid fees for such features, in proportion to the portion of the Term left after such termination. In conjunction with Customer's right to terminate for breach where applicable, the preceding sentence states Ashby's sole obligation and liability, and Customer's sole remedy, for breach of the warranty in this Section 8.1 and for potential or actual intellectual property infringement by the Service.
- 8.2. From Customer. Customer represents and warrants that: (a) it has the full right and authority to

enter into, execute, and perform its obligations under this Agreement and that no pending or threatened claim or litigation known to it would have a material adverse impact on its ability to perform as required by this Agreement; (b) it has accurately identified itself and it has not provided any inaccurate information about itself to or through the Service; and (c) it is a corporation, the sole proprietorship of an individual 18 years or older, or another entity authorized to do business pursuant to applicable law.

- 8.3. Warranty Disclaimers. Except to the extent set forth in the SLA and in Section 8.1 above, CUSTOMER ACCEPTS THE SERVICE “AS IS” AND AS AVAILABLE, WITH NO REPRESENTATION OR WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NONINFRINGEMENT OF INTELLECTUAL PROPERTY RIGHTS, OR ANY IMPLIED WARRANTY ARISING FROM STATUTE, COURSE OF DEALING, COURSE OF PERFORMANCE, OR USAGE OF TRADE. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING: (a) ASHBY HAS NO OBLIGATION TO INDEMNIFY OR DEFEND CUSTOMER OR USERS AGAINST CLAIMS RELATED TO INFRINGEMENT OF INTELLECTUAL PROPERTY; (b) ASHBY DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (c) ASHBY DOES NOT REPRESENT OR WARRANT THAT THE SERVICE IS SECURE FROM HACKING OR OTHER UNAUTHORIZED INTRUSION OR THAT CUSTOMER DATA WILL REMAIN PRIVATE OR SECURE.

**9. INDEMNIFICATION.** Customer shall defend, indemnify, and hold harmless Ashby and the Ashby Associates (as defined below) against any “Indemnified Claim,” meaning any third party claim, suit, or proceeding arising out of or related to Customer's alleged or actual use of, misuse of, or failure to use the Service, including without limitation: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to unauthorized disclosure or exposure of personally identifiable information or other private information, including Customer Data; (c) claims related to infringement or violation of a copyright, trademark, trade secret, or privacy or confidentiality right by written material, images, logos or other content uploaded to the Service through Customer's account, including without limitation by Customer Data; and (d) claims that use of the Service through Customer's account harasses, defames, or defrauds a third party or violates the CAN-Spam Act of 2003 or any other law or restriction on electronic advertising. Indemnified Claims include, without limitation, claims arising out of or related to Ashby's negligence. Customer's obligations set forth in this Article 9 include retention and payment of attorneys and payment of court costs, as well as settlement at Customer's expense and payment of judgments. Ashby will have the right, not to be exercised unreasonably, to reject any settlement or compromise that requires that it admit wrongdoing or liability or subjects it to any ongoing affirmative obligations. (The “Ashby Associates” are Ashby's officers, directors, shareholders, parents, subsidiaries, agents, successors, and assigns.)

## **10. LIMITATION OF LIABILITY.**

- 10.1. Dollar Cap. ASHBY'S LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT WILL NOT EXCEED THE GREATER OF \$500 USD OR THE TOTAL AMOUNTS PAID AND PAYABLE UNDER THIS AGREEMENT IN THE TWELVE MONTHS PRIOR TO ANY CLAIM.
- 10.2. Exclusion of Consequential Damages. IN NO EVENT WILL ASHBY BE LIABLE TO CUSTOMER FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT.

10.3. Clarifications & Disclaimers. THE LIABILITIES LIMITED BY THIS ARTICLE 10 APPLY: (a) TO LIABILITY FOR NEGLIGENCE; (b) REGARDLESS OF THE FORM OF ACTION, WHETHER IN CONTRACT, TORT, STRICT PRODUCT LIABILITY, OR OTHERWISE; (c) EVEN IF ASHBY IS ADVISED IN ADVANCE OF THE POSSIBILITY OF THE DAMAGES IN QUESTION AND EVEN IF SUCH DAMAGES WERE FORESEEABLE; AND (d) EVEN IF CUSTOMER'S REMEDIES FAIL OF THEIR ESSENTIAL PURPOSE. If applicable law limits the application of the provisions of this Article 10, Ashby's liability will be limited to the maximum extent permissible. For the avoidance of doubt, Ashby's liability limits and other rights set forth in this Article 10 apply likewise to Ashby's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

## **11. Term & Termination.**

11.1. Term. The term of this Agreement (the "Term") will commence on the Effective Date and continue for the period set forth in the Order or, if none, for one year. Thereafter, the Term will renew for successive one year periods, unless either party refuses such renewal by written notice 30 or more days before the renewal date.

11.2. Termination for Cause. Either party may terminate this Agreement for the other's material breach by written notice specifying in detail the nature of the breach, effective in 30 days unless the other party first cures such breach, or effective immediately if the breach is not subject to cure.

11.3. Effects of Termination. Upon termination of this Agreement, Customer shall cease all use of the Service and delete, destroy, or return all copies of the Documentation in its possession or control. The following provisions will survive termination or expiration of this Agreement: (a) any obligation of Customer to pay fees incurred before termination; (b) Articles and Sections 6 (*IP & Feedback*), 7 (*Confidential Information*), 8.3 (*Warranty Disclaimers*), 9 (*Indemnification*), and 10 (*Limitation of Liability*); and (c) any other provision of this Agreement that must survive to fulfill its essential purpose.

## **12. MISCELLANEOUS.**

12.1. Independent Contractors. The parties are independent contractors and shall so represent themselves in all regards. Neither party is the agent of the other, and neither may make commitments on the other's behalf.

12.2. Publicity. Customer grants Ashby the right to add Customer's name and company logo to Ashby's customer list and use in own sales, marketing, and business development initiatives.

12.3. Notices. Ashby may send notices pursuant to this Agreement to Customer's email contact points provided by Customer, and such notices will be deemed received 24 hours after they are sent. Customer may send notices pursuant to this Agreement to 49 Geary Street Suite 411, San Francisco, CA 94108f, and such notices will be deemed received 72 hours after they are sent.

12.4. Force Majeure. No delay, failure, or default, other than a failure to pay fees when due, will constitute a breach of this Agreement to the extent caused by acts of war, terrorism, hurricanes, earthquakes, other acts of God or of nature, strikes or other labor disputes, riots or other acts of civil disorder, embargoes, or other causes beyond the performing party's reasonable control.

12.5. Assignment & Successors. Customer may not assign this Agreement or any of its rights or obligations

hereunder without Ashby's express written consent. Except to the extent forbidden in this Section 12.5, this Agreement will be binding upon and inure to the benefit of the parties' respective successors and assigns.

- 12.6. Severability. To the extent permitted by applicable law, the parties hereby waive any provision of law that would render any clause of this Agreement invalid or otherwise unenforceable in any respect. In the event that a provision of this Agreement is held to be invalid or otherwise unenforceable, such provision will be interpreted to fulfill its intended purpose to the maximum extent permitted by applicable law, and the remaining provisions of this Agreement will continue in full force and effect.
- 12.7. No Waiver. Neither party will be deemed to have waived any of its rights under this Agreement by lapse of time or by any statement or representation other than by an authorized representative in an explicit written waiver. No waiver of a breach of this Agreement will constitute a waiver of any other breach of this Agreement.
- 12.8. Choice of Law & Jurisdiction: This Agreement and all claims arising out of or related to this Agreement will be governed solely by the internal laws of the State of California, including without limitation applicable federal law, without reference to: (a) any conflicts of law principle that would apply the substantive laws of another jurisdiction to the parties' rights or duties; (b) the 1980 United Nations Convention on Contracts for the International Sale of Goods; or (c) other international laws. The parties consent to the personal and exclusive jurisdiction of the federal and state courts of San Francisco, California. This Section 12.8 governs all claims arising out of or related to this Agreement, including without limitation tort claims.
- 12.9. Conflicts. In the event of any conflict between this Agreement and any Ashby policy posted online, including without limitation the AUP or Privacy Policy, the terms of this Agreement will govern.
- 12.10. Technology Export. Customer shall not: (a) permit any third party to access or use the Service in violation of any U.S. law or regulation; or (b) export any software provided by Ashby or otherwise remove it from the United States except in compliance with all applicable U.S. laws and regulations. Without limiting the generality of the foregoing, Customer shall not permit any third party to access or use the Service in, or export such software to, a country subject to a United States embargo (as of the Effective Date, Cuba, Iran, North Korea, Sudan, and Syria).
- 12.11. Entire Agreement. This Agreement sets forth the entire agreement of the parties and supersedes all prior or contemporaneous writings, negotiations, and discussions with respect to its subject matter. Neither party has relied upon any such prior or contemporaneous communications.
- 12.12. Amendment. Ashby may amend this Agreement from time to time by posting an amended version at its Website. Such amendment will be deemed accepted and become effective 30 days after such notice (the "Proposed Amendment Date") unless Customer first gives Ashby written notice of rejection of the amendment. In the event of such rejection, this Agreement will continue under its original provisions, and the amendment will become effective at the start of Customer's next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Article 11, *Term & Termination*). Customer's continued use of the Service following the effective date of an amendment will confirm Customer's consent thereto. This Agreement may not be amended in any other way except through a written agreement by authorized representatives of each party. Notwithstanding the foregoing provisions of this Section 12.11, Ashby may revise the

Privacy Policy and Acceptable Use Policy at any time by posting a new version of either at the Website, and such new version will become effective on the date it is posted.