



Ashby Customer Terms of Service

Last updated May 6, 2025

PLEASE READ THESE TERMS OF SERVICE CAREFULLY. BY USING THE SERVICE, CUSTOMER AGREES TO THESE TERMS OF SERVICE.

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 entering into this Agreement ("Customer"). This Agreement is effective as of the date Customer first completes a purchase with Ashby (via an Order or otherwise) or logs into the Service (the "Effective Date"). Customer's use of and Ashby's provision of the Service (as defined below in Section 1.5) are governed by this Agreement.

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

1. Definitions.

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

1.1. "*Customer Data*" means information, data and other content in electronic form that is collected, downloaded or otherwise received, directly or indirectly, from Customer, a User or Customer's candidates by or through the Service. For avoidance of doubt, Customer Data does not include Service Usage Data.

1.2. "*Documentation*" means Ashby's standard documentation related to use of the Service.

1.3. "*Order*" means either a written order or an online transaction for access to the Service specifying the Service, the Service subscription term and payment information. An Order will become legally binding upon electronic acceptance or ink signature (including via scanned replicas of the same).

1.4. "*Privacy Policy*" means Ashby's privacy policy at <http://ashbyhq.com/privacy>.

1.5. "*Service*" means Ashby's job candidate and job applicant relationship management and tracking Service ("Ashby All-In-One") or Ashby's talent analytics solution ("Ashby Analytics"), as specified in an Order.

1.6. "*Service Usage Data*" means statistical data and information derived from Ashby's operation of the Service and use of the Service by Ashby's customers, including performance results.

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.

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 Level Commitments.* Ashby shall use commercially reasonable efforts to make the Service available twenty-four (24) hours a day, seven (7) days a week,

except for: (i) planned downtime; and (ii) unavailability caused by circumstances beyond Ashby's reasonable control, including but not limited to force majeure events, internet service provider failures or delays, and denial of service attacks.

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 or functions at any time, including without limitation by removing such features or functions. If any such revision to the Service materially reduces features or functionality provided pursuant to an Order, Customer may upon 30 days' written notice terminate such Order.

3. Billing and Payment.

3.1. *Subscription Fee.* Customer shall pay Ashby the fees for the Service as set forth in each Order (the "Subscription Fee"). Customer will not be entitled to any refund of the Subscription Fee under any circumstances.

3.2. *Taxes.* Customer agrees to be responsible for the payment of all sales, use and excise taxes, and any other similar taxes, duties and charges of any kind imposed by any federal, state or local governmental entity (collectively, "Taxes"), on any amounts payable by Customer under this Agreement. Unless expressly agreed otherwise, the Subscription Fee is exclusive of any Taxes. Ashby may collect and remit such Taxes as required by law. If Ashby determines that it has a legal obligation to collect Taxes, Ashby will invoice Customer for the applicable amount, and Customer agrees to pay such Taxes in addition to the Subscription Fee. In no event will Customer pay or be responsible for any Taxes imposed on, or with respect to, Ashby's income, revenues, gross receipts, personnel, or real or personal property or other assets.

4. Customer Data and Privacy.

4.1. *Customer Data.* Customer grants to Ashby a non-exclusive, non-transferable (except pursuant to Section 12.5 below), worldwide license to use Customer Data for the purpose of providing the Service, including the right to store, process, display and generally make Customer Data available through the Service. Except with Customer's prior written consent, Ashby shall not: (a) access, process, or otherwise use Customer Data other than as necessary to facilitate the Service; or (b) intentionally grant any third party access to Customer Data, including without limitation Ashby's other customers, except subcontractors that have agreed to maintain the confidentiality of Customer Data. Customer represents and warrants that: (a) it either owns Customer Data or is otherwise permitted to grant the license set forth in this Section 4.1; (b) Customer has obtained all rights, consents and authorizations necessary to ensure that the posting and use of Customer Data on or through the Service does not and will not violate the privacy rights, Intellectual Property Rights, or any other rights of any person; and (c) the use of Customer Data in connection with the Service does not and will not result in a breach of contract between Customer and any third party. Without limiting the foregoing, Customer shall be responsible for complying with all data protection laws and regulations, including but not limited to providing any required notices to individuals and obtaining all necessary consents, for the collection, processing and transfer of personal information to Ashby for use in connection with the Service.

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. *Security Measures.* Ashby has implemented and will maintain commercially reasonable security measures to protect Customer Data. However, 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. *Service Usage Data.* Customer agrees that Ashby may collect Service Usage Data. Ashby owns all Service Usage Data and may use Service Usage Data (i) to maintain, optimize and improve the Service; (ii) to develop, improve, or offer other Ashby products or services; (iii) to develop and commercialize benchmarks and measures; and (iv) otherwise to operate Ashby's business; provided, however, that if Ashby provides Service Usage Data to any third party, such Service Usage Data will be aggregated and de-identified such that neither Customer nor any Customer personal information can be reasonably identified.

5. Customer's Responsibilities and 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; (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; (e) use the Service in connection with any fraudulent, illegal, deceptive, or harmful activity, including but not limited to impersonation, unauthorized access, or dissemination of false or misleading information; (f) attempt to circumvent or disable any security or other technological features of the Service; or (g) use the Service in any manner that could interfere with, disrupt, negatively affect, or inhibit other users from fully enjoying the Service, or that could damage, disable, overburden, or impair the functioning of the Service. In the event that it suspects any breach of the requirements of this Section 5.1, including without limitation by Users, or any fraudulent, illegal, or unauthorized use of the Service, Ashby may suspend Customer's access to the Service without advance notice or immediately terminate this Agreement, in addition to such other remedies as Ashby may have. This Agreement does not require that Ashby take any action against Customer or any User or other third party for violating this Section 5.1 or this Agreement, but Ashby is free to take any such action it sees fit, including reporting suspected illegal activities to appropriate law enforcement authorities.

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 and 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 requirements of this Agreement applicable to Customer; and (b) any use of the Service through Customer's account, whether authorized or unauthorized.

6. Intellectual Property Rights and Feedback.

6.1. *Intellectual Property 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. "Feedback" refers to any suggestion or idea for improving or otherwise modifying any of Ashby's products or services.

7. Confidential Information.

"Confidential Information" means the following information that one party (the "Disclosing Party") discloses to the other party (the "Receiving Party"): (a) any document that the Disclosing Party marks "Confidential"; (b) any information that the Disclosing Party orally designates as "Confidential" at the time of disclosure, provided the Disclosing Party confirms such designation in writing within 10 business days; (c) in the case of Ashby, the Documentation; (d) in the case of Customer, Customer Data; and (e) any other information that the Receiving Party should reasonably understand to be confidential or proprietary, whether or not marked, designated or otherwise identified as "confidential." Notwithstanding the foregoing, Confidential Information does not include information that: (i) is in the Receiving Party's possession at the time of disclosure; (ii) is independently developed by the Receiving Party without use of or reference to Confidential Information; (iii) becomes known publicly, before or after disclosure, other than as a result of the Receiving Party's improper action or inaction; or (iv) is approved for release in writing by the Disclosing Party. Each party is on notice that the other party's Confidential Information may include the other party's valuable trade secrets.

7.1. *Nondisclosure.* The Receiving Party shall not use the Disclosing Party's Confidential Information for any purpose other than to exercise its rights and fulfill its obligations under this Agreement (the "Purpose"). The Receiving Party: (a) shall not disclose Confidential Information to any employee or contractor of the Receiving Party unless such person needs access in order to facilitate the Purpose and is bound by confidentiality obligations no less restrictive than those of this Section 7; and (b) shall not disclose Confidential Information to any other third party without the Disclosing Party's prior written consent. Without limiting the generality of the foregoing, the Receiving Party 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. The Receiving Party shall promptly notify the Disclosing Party of any misuse or misappropriation of Confidential Information that comes to the Receiving Party's attention. Notwithstanding the foregoing, the Receiving Party may disclose Confidential Information as required by applicable law or by proper legal or governmental authority. The Receiving Party shall give the Disclosing Party prompt notice of any such legal or governmental demand and reasonably cooperate with the Disclosing Party in any effort to seek a protective order or otherwise to contest such required disclosure, at the Disclosing Party's expense.

7.2. *Injunction.* Each party agrees that breach of this Section 7 may cause the other party irreparable injury, for which monetary damages may not provide adequate compensation, and that in addition to any other remedy, the non-breaching party 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 and Return.* With respect to each item of Confidential Information, the obligations of Section 7.1 above will terminate two years after the date of disclosure; provided that such obligations related to Confidential Information constituting trade secrets of the Disclosing Party will continue so long as such information remains subject to trade secret protection pursuant to applicable law. Upon termination of this Agreement, the Receiving Party shall

return all copies of Confidential Information to the Disclosing Party 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. Each party will retain all right, title, and interest in and to its Confidential Information.

8. Representations and 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.

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 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 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 DOES NOT REPRESENT OR WARRANT THAT THE SERVICE WILL PERFORM WITHOUT INTERRUPTION OR ERROR; AND (b) 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: (a) claims by Users or by Customer's employees, as well as by Customer's own customers; (b) claims related to Customer's 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. Customer's obligations set forth in this Section 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 and 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 Section 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 Section 10 apply likewise to Ashby's affiliates, licensors, suppliers, advertisers, agents, sponsors, directors, officers, employees, consultants, and other representatives.

11. Term and 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 opts out of such renewal by written notice to the other party 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 to the other party 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) Sections 6 (Intellectual Property and 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 Customer's name and company logo in Ashby's 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 94108, 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 and 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 each party's successors and permitted 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 and 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 located in 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 Privacy Policy, the terms of this Agreement will govern.

12.10. *Compliance with Export Controls.* 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 or region subject to a United States embargo (currently including the Crimea, Luhansk and Donetsk regions, Cuba, Iran, North Korea, 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 on its website. Such amended Agreement will be deemed accepted and become effective 30 days after such posting (the "Proposed Amendment Date") unless Customer first gives Ashby written notice of rejection of the amended Agreement. In the event of such rejection, this Agreement will continue under its original provisions, and the amended Agreement will become effective at the start of Customer's next Term following the Proposed Amendment Date (unless Customer first terminates this Agreement pursuant to Section 11, Term and Termination). Customer's continued use of the Service following the effective date of an amended Agreement 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 12.12, Ashby may revise the Privacy Policy at any time by posting a new version on its website, and such new version will become effective on the date it is posted.

