

TERMS AND CONDITIONS

[HIRE-INTELLIGENCE.COM](http://hire-intelligence.com) TERMS OF USE: BY PURCHASING ACCESS TO AND USING THE HIRE-INTELLIGENCE PORTALSITE, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS (THE "AGREEMENT") GOVERNING YOUR USE OF [HIRE-INTELLIGENCE.COM](http://hire-intelligence.com)'S ONLINE SERVICE, INCLUDING OFFLINE COMPONENTS (COLLECTIVELY, THE "SERVICE"). IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE AUTHORITY TO BIND SUCH ENTITY TO THESE TERMS AND CONDITIONS, IN WHICH CASE THE TERMS "YOU" OR "YOUR" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THESE TERMS AND CONDITIONS, YOU MUST NOT PURCHASE AND MAY NOT USE THE SERVICE.

Introduction [Hire-intelligence.com](http://hire-intelligence.com) is a wholly owned internet-based service of Execuserve Corp and operates under the Hire-Intelligence brand. This service provides access to your Hire-Intelligence job candidate and employee assessments and other services. The service makes bundles of different quantities of assessments available for purchase. Upon purchasing a bundle of When you become a user of Hire-Intelligence assessments you will be provided access to the Hire-Intelligence management portal from which your assessments can be managed and reports can be accessed. As part of the Service, Execuserve Corp will provide you with use of the Service, including a browser interface and data encryption, transmission, access and storage. Your registration for, or use of, the Service shall be deemed to be your agreement to abide by this Agreement including any materials available on the hire-intelligence.com website incorporated by reference herein, including but not limited to hire-intelligence.com's privacy and security policies. For reference, a Definitions section is included at the end of this Agreement. NOTICE TO LICENSE BUYERS: IF YOU ARE PURCHASING ACCESS TO THE HIRE-INTELLIGENCE SERVICE VIA AN ANNUAL UNLIMITED LICENSE THESE TERMS AND CONDITIONS CONTINUE TO APPLY, EXCEPT AS MAY BE MODIFIED BY THE HIRE-INTELLIGENCE LICENSE AGREEMENT.

1. Privacy & Security; Disclosure [Hire-intelligence.com](http://hire-intelligence.com)'s privacy and security policies may be viewed at <http://www.hire-intelligence.com>. Execuserve Corp reserves the right to modify these privacy and security policies in its reasonable discretion from time to time. Note that because the Service is a hosted, online application, Execuserve Corp occasionally may need to notify all users of the Service (whether or not they have opted out of other communications from hire-intelligence.com) of important announcements regarding the operation of the Service. If you become a paying customer of the Service, you agree that Execuserve Corp can disclose the fact that you are a paying customer and the edition of the Service that you are using and may use your company's logo for marketing.

License Grant & Restrictions Execuserve Corp hereby grants you a non-exclusive, non-transferable, worldwide right right to use the Service, solely for your own internal business purposes, subject to the terms and conditions of this Agreement. All rights not expressly granted to you are reserved by Execuserve Corp and its licensors.

3. You may not access the Service if you are a direct competitor of Execuserve Corp, except with Execuserve Corp's prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

You shall not (i) license, sublicense, sell, resell, transfer, assign, distribute or otherwise commercially exploit or make

available to any third party the Service or the Content in any way; (ii) modify or make derivative works based upon the Service or the Content; (iii) create Internet "links" to the Service or "frame" or "mirror" any Content on any other server or wireless or Internet-based device; or (iv) reverse engineer or access the Service in order to (a) build a competitive product or service, (b) build a product using similar ideas, features, functions or graphics of the Service, or (c) copy any ideas, features, functions or graphics of the Service.

You may use the Service only for your internal business purposes and shall not: (i) use the Service in any way that may violate third party privacy rights; (ii) interfere with or disrupt the integrity or performance of the Service or the data contained therein; or (iii) attempt to gain unauthorized access to the Service or its related systems or networks.

Your Responsibilities You are responsible for all activity occurring under your User account and shall abide by all applicable local, state, national and foreign laws, treaties and regulations in connection with your use of the Service, including those related to data privacy, international communications and the transmission of technical or personal data.

4. You shall: (i) notify Execuserve Corp immediately of any unauthorized use of any password or account or any other known or suspected breach of security; (ii) report to Execuserve Corp immediately and use reasonable efforts to stop immediately any copying or distribution of Content that is known or suspected by you or your Users; and (iii) not impersonate another hire-intelligence.com user or provide false identity information to gain access to or use the Service.

Account Information and Data Execuserve Corp does not own any data, information or material that you, or those to whom you have granted access to a Hire-Intelligence assessment, submit to the Service in the course of using the Service ("Customer Data"). You, not Execuserve Corp, shall have sole responsibility for the accuracy, quality, integrity, legality, reliability, appropriateness, and intellectual property ownership or right to use of all Customer Data, and Execuserve Corp shall not be responsible or liable for the deletion, correction, destruction, damage, loss or failure to store any Customer Data. This Agreement provides Users access to their data for 180 days after they have used their last Hire-Intelligence assessment at which time the Agreement will terminate. In the event this Agreement is terminated (other than by reason of your breach), Execuserve Corp will make available to you a file of the Customer Data within 30 days of termination if you so request at the time of termination. Execuserve Corp reserves the right to withhold, remove and/or discard Customer Data without notice for any breach, including, without limitation, your non-payment. Upon termination for cause, your right to access or use Customer Data immediately ceases, and Execuserve Corp shall have no obligation to maintain or forward any Customer Data.

5. Intellectual Property Ownership Execuserve Corp alone (and its licensors, where applicable) shall own all right, title and interest, including all related Intellectual Property Rights, in and to the Hire-intelligence.com Technology, the Content and the Service and any suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by you or any other party relating to the Service. This Agreement is not a sale and does not convey to you any rights of ownership in or related to the Service, the Hire-intelligence.com Technology or the Intellectual Property Rights owned by Execuserve Corp. The hire-intelligence.com name, the hire-intelligence.com logo, and the product names associated with the Service are trademarks of Execuserve Corp or third parties, and no right or license is granted to use them.

6. Charges and Payment of Fees You shall pay all fees or charges to your account in accordance with the fees, charges, and billing terms in effect at the time a fee or charge is due and payable. The initial charges will be the fee for the bundle of assessments initially purchased. There may be a fee for set-up of your access portal. All payment obligations are noncancelable and all amounts paid are nonrefundable. You are responsible for paying for all assessments in a bundle used, whether or not such assessments are actively used. You must provide hire-intelligence.com with valid credit card or
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approved purchase order information as a condition to signing up for the Service. An authorized Administrator may purchase additional assessments by executing an additional written Order Form or using the Online Order Center directly setting them up via the Portal. Execuserve Corp reserves the right to modify fees for the service at any time. All pricing terms are confidential, and you agree not to disclose them to any third party.

Billing and Renewal Execuserve Corp charges and collects monthly in advance for use of the Service unless an approved Purchase Order has been received, in which case charges are due and payable within 30 days. Fees for other services will be charged on an as-quoted basis. Execuserve Corp's fees are exclusive of all taxes, levies, or duties imposed by taxing authorities, and you shall be responsible for payment of all such taxes, levies, or duties, excluding only United States (federal or state) taxes based solely on Execuserve Corp's income.

8. You agree to provide Execuserve Corp with complete and accurate billing and contact information. This information includes your legal company name, street address, e-mail address, and name and telephone number of an authorized billing contact and Administrator. You agree to update this information within 30 days of any change to it. If the contact information you have provided is false or fraudulent, Execuserve Corp reserves the right to terminate your access to the Service in addition to any other legal remedies.

If you believe your bill is incorrect, you must contact us in writing within 60 days of the invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

9. Non-Payment and Suspension In addition to any other rights granted to hire-intelligence.com herein, Execuserve Corp reserves the right to suspend or terminate this Agreement and your access to the Service if your account becomes delinquent (falls into arrears). Delinquent invoices (accounts in arrears) are subject to interest of 1.0% per month on any outstanding balance, or the maximum permitted by law, whichever is less, plus all expenses of collection. If you or Execuserve Corp initiates termination of this Agreement, you will be obligated to pay the balance due on your account computed in accordance with the Charges and Payment of Fees section above. You agree that Execuserve Corp may charge such unpaid fees to your credit card or otherwise bill you for such unpaid fees.

Execuserve Corp reserves the right to impose a reconnection fee in the event you are suspended and thereafter request access to the Service. You agree and acknowledge that Execuserve Corp has no obligation to retain Customer Data and that such Customer Data may be irretrievably deleted if your account is 30 days or more delinquent.

10. Force Majeure Execuserve Corp shall not be liable for delays or defaults in providing use of the Service, if such delays or defaults are due to: (a) acts of God, terrorism or a public enemy; (b) acts of the United States or any state or political subdivision thereof; (c) fires, severe weather, floods, earthquakes, natural disasters, explosions or other catastrophes; (d) embargoes, epidemics or quarantine restrictions; (e) shortage of goods, labor strikes, slowdowns, differences with workmen or labor stoppages of any kind; (f) data destruction or acquisition due to unauthorized access or malicious software; (g) delays of a supplier or delay of transportation for any reason; or (h) other causes beyond the control of Execuserve Corp, including, but not limited to, breakdown or failure of utilities, telecommunications networks, machinery or equipment, or delay in Customer reporting problems or furnishing information or materials.

11. Termination for Cause Any breach of your payment obligations or unauthorized use of the Hire-intelligence.com Technology or Service will be deemed a material breach of this Agreement. Execuserve Corp, in its sole discretion, may terminate your password, account or use of the Service if you breach or otherwise fail to comply with this Agreement. In

addition, Execuserve Corp may terminate a free account at any time in its sole discretion. You agree and acknowledge that Execuserve Corp has no obligation to retain the Customer Data, and may delete such Customer Data, if you have materially breached this Agreement, including but not limited to failure to pay outstanding fees, and such breach has not been cured within 30 days of notice of such breach.

12. Representations & Warranties Each party represents and warrants that it has the legal power and authority to enter into this Agreement. Execuserve Corp represents and warrants that it will provide the Service in a manner consistent with general industry standards reasonably applicable to the provision thereof and that the Service will perform substantially in accordance with the online [hire-intelligence.com](https://www.hire-intelligence.com) help documentation under normal use and circumstances. You represent and warrant that you have not falsely identified yourself nor provided any false information to gain access to the Service and that your billing information is correct.

Mutual Indemnification You shall indemnify and hold Execuserve Corp, its licensors and each such party's parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that use of the Customer Data infringes the rights of, or has caused harm to, a third party; (ii) a claim, which if true, would constitute a violation by you of your representations and warranties; or (iii) a claim arising from the breach by you or your Users of this Agreement, provided in any such case that Execuserve Corp (a) gives written notice of the claim promptly to you; (b) gives you sole control of the defense and settlement of the claim (provided that you may not settle or defend any claim unless you unconditionally release Execuserve Corp of all liability and such settlement does not affect Execuserve Corp.s business or Service); (c) provides to you all available information and assistance; and (d) has not compromised or settled such claim.

13. Execuserve Corp shall indemnify and hold you and your parent organizations, subsidiaries, affiliates, officers, directors, employees, attorneys and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including attorneys' fees and costs) arising out of or in connection with: (i) a claim alleging that the Service directly infringes a copyright, a U.S. patent issued as of the Effective Date, or a trademark of a third party; (ii) a claim, which if true, would constitute a violation by Execuserve Corp of its representations or warranties; or (iii) a claim arising from breach of this Agreement by Execuserve Corp; provided that you (a) promptly give written notice of the claim to Execuserve Corp; (b) give Execuserve Corp sole control of the defense and settlement of the claim (provided that Execuserve Corp may not settle or defend any claim unless it unconditionally releases you of all liability); (c) provide to Execuserve Corp all available information and assistance; and (d) have not compromised or settled such claim. Execuserve Corp shall have no indemnification obligation, and you shall indemnify Execuserve Corp pursuant to this Agreement, for claims arising from any infringement arising from the combination of the Service with any of your products, service, hardware or business process(s).

14. Disclaimer of Warranties EXECUSERVE CORP AND ITS LICENSORS MAKE NO REPRESENTATION, WARRANTY, OR GUARANTY AS TO THE RELIABILITY, TIMELINESS, QUALITY, SUITABILITY, TRUTH, AVAILABILITY, ACCURACY OR COMPLETENESS OF THE SERVICE OR ANY CONTENT. EXECUSERVE CORP AND ITS LICENSORS DO NOT REPRESENT OR WARRANT THAT (A) THE USE OF THE SERVICE WILL BE SECURE, TIMELY, UNINTERRUPTED OR ERROR-FREE OR OPERATE IN COMBINATION WITH ANY OTHER HARDWARE, SOFTWARE, SYSTEM OR DATA, (B) THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (C) ANY STORED DATA WILL BE ACCURATE OR RELIABLE, (D) THE QUALITY OF ANY PRODUCTS, SERVICES, INFORMATION, OR OTHER MATERIAL PURCHASED OR

OBTAINED BY YOU THROUGH THE SERVICE WILL MEET YOUR REQUIREMENTS OR EXPECTATIONS, (E) ERRORS OR DEFECTS WILL BE CORRECTED, OR (F) THE SERVICE OR THE SERVER(S) THAT MAKE THE SERVICE AVAILABLE ARE FREE OF VIRUSES OR OTHER HARMFUL COMPONENTS. THE SERVICE AND ALL CONTENT IS PROVIDED TO YOU STRICTLY ON AN "AS IS" BASIS. ALL CONDITIONS, REPRESENTATIONS AND WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, OR NON-INFRINGEMENT OF THIRD PARTY RIGHTS, ARE HEREBY DISCLAIMED TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW BY EXECUSERVE CORP AND ITS LICENSORS.

15. Internet Delays HIRE-INTELLIGENCE.COM'S SERVICES MAY BE SUBJECT TO LIMITATIONS, DELAYS, AND OTHER PROBLEMS INHERENT IN THE USE OF THE INTERNET AND ELECTRONIC COMMUNICATIONS. EXECUSERVE CORP IS NOT RESPONSIBLE FOR ANY DELAYS, DELIVERY FAILURES, OR OTHER DAMAGE RESULTING FROM SUCH PROBLEMS.

16. Limitation of Liability IN NO EVENT SHALL EITHER PARTY'S AGGREGATE LIABILITY EXCEED THE AMOUNTS ACTUALLY PAID BY AND/OR DUE FROM YOU IN THE TWELVE (12) MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO SUCH CLAIM. IN NO EVENT SHALL EITHER PARTY AND/OR ITS LICENSORS BE LIABLE TO ANYONE FOR ANY INDIRECT, PUNITIVE, SPECIAL, EXEMPLARY, INCIDENTAL, CONSEQUENTIAL OR OTHER DAMAGES OF ANY TYPE OR KIND (INCLUDING LOSS OF DATA, REVENUE, PROFITS, USE OR OTHER ECONOMIC ADVANTAGE) ARISING OUT OF, OR IN ANY WAY CONNECTED WITH THIS SERVICE, INCLUDING BUT NOT LIMITED TO THE USE OR INABILITY TO USE THE SERVICE, OR FOR ANY CONTENT OBTAINED FROM OR THROUGH THE SERVICE, ANY INTERRUPTION, INACCURACY, ERROR OR OMISSION, REGARDLESS OF CAUSE IN THE CONTENT, EVEN IF THE PARTY FROM WHICH DAMAGES ARE BEING SOUGHT OR SUCH PARTY'S LICENSORS HAVE BEEN PREVIOUSLY ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

17. Additional Rights Certain states and/or jurisdictions do not allow the exclusion of implied warranties or limitation of liability for incidental, consequential or certain other types of damages, so the exclusions set forth above may not apply to you.

18. Local Laws and Export Control This site provides services and uses software and technology that may be subject to United States export controls administered by the U.S. Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, and other U.S. agencies and the export control regulations of Switzerland and the European Union. The user of this site ("User") acknowledges and agrees that the site shall not be used, and none of the underlying information, software, or technology may be transferred or otherwise exported or re-exported to countries as to which the United States, Switzerland and/or the European Union maintains an embargo (collectively, "Embargoed Countries"), or to or by a national or resident thereof, or any person or entity on the U.S. Department of Treasury's List of Specially Designated Nationals or the U.S. Department of Commerce's Table of Denial Orders (collectively, "Designated Nationals"). The lists of Embargoed Countries and Designated Nationals are subject to change without notice. By using the Service, you represent and warrant that you are not located in, under the control of, or a national or resident of an Embargoed Country or Designated National. You agree to comply strictly with all U.S., Swiss and European Union export laws and assume sole responsibility for obtaining licenses to export or re-export as may be required.

This site may use encryption technology that is subject to licensing requirements under the U.S. Export Administration Regulations, 15 C.F.R. Parts 730-774 and Council Regulation (EC) No. 1334/2000

Execuserve Corp and its licensors make no representation that the Service is appropriate or available for use in other locations. If you use the Service from outside the United States of America you are solely responsible for compliance with all applicable laws, including without limitation export and import regulations of other countries. Any diversion of the Content contrary to United States, Swiss or European Union (including European Union Member States) law is prohibited. None of the Content, nor any information acquired through the use of the Service, is or will be used for nuclear activities, chemical or biological weapons, or missile projects, unless specifically authorized by the United States government or appropriate European body for such purposes.

- Notice Execuserve Corp may give notice by means of a general notice on the Service, electronic mail to your e-mail address on record in Execuserve Corp's account information, or by written communication sent by first class mail or pre-paid post to your address on record in Execuserve Corp.s account information. Such notice shall be deemed to have been given upon the expiration of 48 hours after mailing or posting (if sent by first class mail or pre-paid post) or 12 hours after sending (if sent by email). You may give notice to Execuserve Corp (such notice shall be deemed given when received by Execuserve Corp) at any time by any of the following: letter sent by confirmed facsimile to hire-intelligence.com at the following fax numbers (whichever is appropriate): (804) 725-5238; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to hire-intelligence.com at the following address: Execuserve Corp, Williams Wharf Road, P.O. Box 1006, Mathews, VA 23109.
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- Modification to Terms Execuserve Corp reserves the right to modify the terms and conditions of this Agreement or its policies relating to the Service at any time, effective upon posting of an updated version of this Agreement on the Service. You are responsible for regularly reviewing this Agreement. Continued use of the Service after any such changes shall constitute your consent to such changes.
- 20.

- Assignment; Change in Control This Agreement may not be assigned by you without the prior written approval of Execuserve Corp but may be assigned without your consent by Execuserve Corp to (i) a parent or subsidiary, (ii) an acquirer of assets, or (iii) a successor by merger. Any purported assignment in violation of this section shall be void. Any actual or proposed change in control of you that results or would result in a direct competitor of Execuserve Corp directly or indirectly owning or controlling 50% or more of you shall entitle Execuserve Corp to terminate this Agreement for cause immediately upon written notice.
- 21.

- General With respect to U.S. Customers, this Agreement shall be governed by Virginia law and controlling United States federal law, without regard to the choice or conflicts of law provisions of any jurisdiction, and any disputes, actions, claims or causes of action arising out of or in connection with this Agreement or the Service shall be subject to the exclusive jurisdiction of the state and federal courts located in Virginia. No text or information set forth on any other purchase order, preprinted form or document (other than an Order Form, if applicable) shall add to or vary the terms and conditions of this Agreement. If any provision of this Agreement is held by a court of competent jurisdiction to be invalid or unenforceable, then such provision(s) shall be construed, as nearly as possible, to reflect the intentions of the invalid or unenforceable provision(s), with all other provisions remaining in full force and effect. No joint venture, partnership, employment, or agency relationship exists between you and Execuserve Corp as a result of this agreement or use of the Service. The failure of Execuserve Corp to enforce any right or provision in this Agreement shall not constitute a waiver of such right or provision unless acknowledged and agreed to by Execuserve Corp in writing. This Agreement, together with any
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applicable Order Form, comprises the entire agreement between you and Execuserve Corp and supersedes all prior or contemporaneous negotiations, discussions or agreements, whether written or oral, between the parties regarding the subject matter contained herein.

23 Definitions As used in this Agreement and in any Order Forms now or hereafter associated herewith: "Agreement" means these online terms of use, any Order Forms, whether written or submitted online via the Management Portal, and any materials available on the hire-intelligence.com website specifically incorporated by reference herein, as such materials, including the terms of this Agreement, may be updated by Execuserve Corp from time to time in its sole discretion; "Content" means the audio and visual information, documents, software, products and services contained or made available to you in the course of using the Service; "Customer Data" means any data, information or material provided or submitted by you or by your job candidates or employees, to the Service in the course of using the Service; "Effective Date" means the earlier of either the date this Agreement is accepted by selecting the "I Accept" option presented on the screen after this Agreement is displayed or the date you begin using the Service; "Initial Term" means the initial period during which you are obligated to pay for the Service; "Intellectual Property Rights" means unpatented inventions, patent applications, patents, design rights, copyrights, trademarks, service marks, trade names, domain name rights, mask work rights, know-how and other trade secret rights, and all other intellectual property rights, derivatives thereof, and forms of protection of a similar nature anywhere in the world; "Administrator(s)" means those Users designated by you who are authorized to purchase assessments online using the Management Portal or by executing written Order Forms and to create User accounts and otherwise administer your use of the Service; "Order Form(s)" means the form evidencing the initial subscription for the Service and any subsequent order forms submitted online or in written form, specifying, among other things, the number of assessments and other services contracted for, the applicable fees, the billing period, and other charges as agreed to between the parties, each such Order Form to be incorporated into and to become a part of this Agreement (in the event of any conflict between the terms of this Agreement and the terms of any such Order Form, the terms of this Agreement shall prevail); "Management Portal" means hire-intelligence.com's online application that allows the Administrator designated by you to, among other things, add assessment test takers to the Service; "Execuserve Corp" means collectively Execuserve Corp, Inc., a Virginia corporation, having its principal place of business at Williams Wharf Road, Mathews, Virginia 23109; "[Hire-intelligence.com](http://hire-intelligence.com) Technology" means all of Execuserve Corp.s proprietary technology (including software, hardware, products, processes, algorithms, user interfaces, know-how, techniques, designs and other tangible or intangible technical material or information) made available to you by Execuserve Corp in providing the Service; "Service(s)" means the specific edition of Execuserve Corp.s online job candidate and employee assessment system, data analysis, or other corporate services identified during the ordering process, developed, operated, and maintained by Execuserve Corp, accessible via <http://www.hire-intelligence.com> or another designated web site or IP address, or ancillary online or offline products and services provided to you by Execuserve Corp, to which you are being granted access under this Agreement, including the Hire-Intelligence.com Technology and the Content; "User(s)" means your employees, representatives, consultants, contractors or agents who are authorized to use the Service and have been supplied user identifications and passwords by you (or by hire-intelligence.com at your request).

Questions or Additional Information: If you have questions regarding this Agreement or wish to obtain additional information, please send an e-mail to info@hire-intelligence.com.