

SkillSurvey Inc. Career Readiness Terms of Use

1. Scope. These SkillSurvey Inc. (“SkillSurvey”) Terms and Conditions (the “Agreement”) govern the services (the “Services”) ordered by Subscriber from SkillSurvey, unless Subscriber has signed a separate Services Agreement with SkillSurvey, and they also govern the use of the SkillSurvey software system (“Software”). Subscriber will use the Survey Software to obtain behavioral insight from supervisors, coworkers and mentors to assess, measure & verify mastery of competencies based on a student’s most recent work-related experience.

2. Subscriber Site Set Up. The Software is distributed and hosted electronically over the internet through a password-protected web page.

3. Term and Termination.

a. Term. This Agreement commences on the Effective Date and shall continue until the End Date, in both cases as stipulated in the Order Form, unless a renewal period is indicated on the Order Form in which case this Agreement shall renew in accordance therewith.

b. Termination. Each party may terminate this Agreement by written notice to the other party if the other party is in material breach of its obligations under this Agreement and such breach is not cured within fifteen (15) days after written notice thereof from the terminating party.

c. Surviving Provisions. The following provisions will survive the expiration or termination of this Agreement: (i) any payment provisions set forth in the Order Form (as to amounts due and owing as of the Agreement’s expiration or termination date), and (ii) Sections 3, 4, 6, 7, and 8 of this Agreement.

4. Customer Responsibilities.

a. Subscriber will use the Software in strict compliance with all applicable law including without limitation, federal and state equal opportunity laws and regulations.

b. Subscriber will use the Software for Subscriber’s exclusive use only and for student feedback purposes only, and only in accordance with applicable law.

c. Subscriber will not resell the information provided by the Software to any other entity without the express written permission of an authorized officer of SkillSurvey.

d. Subscriber assumes responsibilities for all communications carried out and facilitated by Subscriber, Subscriber’s employees, students, vendors and evaluators over the Software, and understands that SkillSurvey will in no way edit, view or facilitate such communication.

e. Subscriber understands that any report generated through the Software is not an assessment of any job candidate, and further understands that SkillSurvey is not assembling or evaluating information about any job candidate or student and is not providing any opinions regarding information contained in any report generated through the Software.

f. Subscriber represents and warrants that, prior to using the Services or Software in connection with a student or a student’s evaluations, Subscriber will obtain, in writing: the student’s consent to disclose their data and data relating to the student’s evaluators to SkillSurvey, and for SkillSurvey to use such data to provide the Services and the Software, including where applicable, student’s express consent to receive automated text messages through SkillSurvey and student’s confirmation of consent by the student’s evaluators to receive automated text messages through SkillSurvey; and a general release from the student for the benefit of the SkillSurvey Indemnitees (as defined below) and the student’s evaluators, relating to the student’s use of the Services and Software and related communications. Subscriber shall defend SkillSurvey and its affiliates, and its and their officers, directors, employees, and agents (collectively, the “SkillSurvey Indemnitees”), against any and all allegations, suits, claims, actions or proceedings (each a “Claim”) resulting from or related to Subscriber’s use of the Services or Software (including, but not limited to, Subscriber’s failure to obtain a student’s consent for SkillSurvey to use the student’s and the student’s evaluators’ data, including for text message communications). Subscriber shall indemnify the SkillSurvey Indemnitees from any out-of-pocket and reasonably-incurred costs, expenses, and fees (including reasonable attorneys’ fees) incurred by the SkillSurvey Indemnitees, and damages, awards, penalties, and other amounts awarded against or owed to a third party by the SkillSurvey Indemnitees, resulting from any such Claim.

5. Privacy. SkillSurvey’s privacy statement may be found on SkillSurvey’s website: <https://www.skillsurvey.com/privacy-policy>. Please consult it to learn SkillSurvey’s current practices with respect to Subscriber’s information.

6. Limited Warranty. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED “AS IS” AND “AS AVAILABLE.” SKILLSURVEY EXPRESSLY DISCLAIMS ALL WARRANTIES OF ANY KIND, EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE OR

NONINFRINGEMENT. SKILLSURVEY MAKES NO WARRANTY OR REPRESENTATION REGARDING THE SERVICES, ANY INFORMATION, MATERIALS, GOODS OR SERVICES OBTAINED THROUGH THE SERVICES, THE GENERAL SITE OR SUBSCRIBER SITE, OR THAT THE SERVICES WILL MEET ANY SUBSCRIBER REQUIREMENTS, OR BE

UNINTERRUPTED, TIMELY, SECURE OR ERROR FREE. USE OF THE SERVICES AND WEBSITE ARE AT SUBSCRIBER'S SOLE RISK. SUBSCRIBER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO SUBSCRIBER RESULTING FROM THE USE OF SUCH SERVICES OR WEBSITE. Because some states and jurisdictions do not allow limitations on implied warranties, the above limitation may not apply to Subscriber. In that event, such warranties are limited to the minimum warranty scope and period allowed by applicable law.

7. Limitations of Liability.

a. Limitation of Liability. IN NO EVENT SHALL SKILLSURVEY'S AGGREGATE, CUMULATIVE MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND/OR THE ORDER FORM, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT ACTUALLY PAID TO SKILLSURVEY BY SUBSCRIBER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT.

b. Exclusion of Consequential and Related Damages. IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, DATA OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES, HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS SECTION SHALL BE ENFORCEABLE EVEN IF A REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

8. General.

a. Interpretation and Conflicting Terms. This Agreement will be interpreted fairly in accordance with its terms and without any strict construction in favor of or against either party. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and supersedes and replaces all prior or contemporaneous understandings or agreements, written or oral, regarding such subject matter. SkillSurvey shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by written amendment to this Agreement, and are executed by SkillSurvey.

b. Confidential Information. The parties recognize and acknowledge that, by virtue of entering into this Agreement and providing the Services, they may have access to certain information of the other that is confidential and constitutes valuable, special and unique property of the other party. The parties agree that neither they nor any agents, representatives, employees or affiliates will at any time, either during or subsequent to the term of this Agreement, disclose to others or use, copy or permit to be copied, without the other party's express prior written consent, except pursuant to their respective duties hereunder, any confidential or proprietary information of the other party, including, but not limited to, information identified in writing by either party as confidential, and which is not otherwise available to the public. The term confidential information shall not include (i) information which, at the time of disclosure, is already known or available to the public, can be obtained from public sources or is otherwise in the public domain, (ii) information which, after disclosure, becomes known or available to the public through no breach by the receiving party of this Agreement, (iii) information already in the receiving party's possession at the time of disclosure, as evidenced by written documentary records of the receiving party, (iv) information which was independently developed by or for the receiving party without the use of or reliance on the disclosing party's confidential information, (v) information received by the receiving party from another person or entity who is not known by the receiving party to be under an obligation to the disclosing party to keep the same confidential, or (vi) information the receiving party is required by court order, injunction, writ, law, rule or regulation to disclose.

c. Promotional Use. Subscriber hereby grants SkillSurvey a non-exclusive license to display Subscriber's name and logo: (i) in connection with the Work Product and in the performance of Services and (ii) on SkillSurvey's website, press releases and in SkillSurvey's marketing efforts on its own behalf, including case studies, client references, and offline publications. SkillSurvey will use any such marks in conformity with Subscriber's general trademark policies where such policies are provided by Subscriber to SkillSurvey.

d. Waivers. The waiver of any one breach, default or right granted under this Agreement will not constitute the waiver of any subsequent breach, default or right granted. Any provision of this Agreement held to be illegal or unenforceable will be deemed amended to conform to applicable laws or regulations, or if it cannot be so amended without materially altering the intention of the parties, it will be stricken and the remainder of this Agreement will continue in full force and effect.

e. Use of the Services. Subject to the provisions contained herein, SkillSurvey hereby grants to Subscriber the right, to be exercised only by Subscriber's authorized end users to access those portions of a SkillSurvey website as may be designated from time to time by SkillSurvey and to use those portions of the website for the purpose of ordering and receiving the Services and/or Software and the reports and other data generated in connection with the Services. Such rights of access and use will terminate upon expiration or termination of the Agreement or as may be otherwise provided in this Agreement.

f. SkillSurvey Materials. Notwithstanding anything in this Agreement to the contrary, SkillSurvey shall own and retain all right, title and interest in and to its Services, Software, tools, technologies, processes, systems, platforms, techniques, algorithms, source code, object code, materials, equipment, templates, programs, report formats, report structures, inputs and outputs, methodologies and technical information, know-how or other materials and the intellectual property rights therein including, but not limited to, any modifications, customizations, improvements, enhancements or derivative works of or to the foregoing.