

SkillSurvey Inc. Terms of Use

1. Scope. These SkillSurvey Inc. (“SkillSurvey”) Terms and Conditions (the “Agreement”) govern the services (the “Services”) ordered by Subscriber from SkillSurvey and set forth in one or more “Order Forms”, unless Subscriber has signed a separate Services Agreement with SkillSurvey, and they also govern the use of the SkillSurvey software system (“Software”).

2. Order Forms. An “Order Form” is a form signed or authorized online by Subscriber that identifies the type and quantity of Services being ordered and the associated fees. The Order Form includes the Service description(s). An Order Form is effective only when signed or authorized online by Subscriber and either signed or provisioned by SkillSurvey.

3. Subscriber Site Set Up. The Software is distributed and hosted electronically over the internet through a password-protected web page. Upon execution of an Order Form, SkillSurvey will deliver software activation password key(s) to the Subscriber via an e-mail message.

4. Changes to Services. SkillSurvey may, at its sole discretion, modify, enhance and/or expand the features of a Service from time to time at no additional cost to Subscriber. SkillSurvey may also, from time to time, make available additional features and/or functionalities to a Service which may, but are not required to, be added to a Service by Subscriber at an additional cost (“Cost Feature”). If Subscriber elects to add a Cost Feature, it may do so by contacting its local SkillSurvey sales representative or SkillSurvey directly at sales@skillsurvey.com in order to receive a quote for the Cost Feature.

5. SkillSurvey Training and Support. Training and Support provided by SkillSurvey is specified in the Service descriptions in the Order Form.

6. Payment. Invoices for the Services are due in accordance with the Payment Terms set forth on the Order Form. SkillSurvey reserves the right to charge interest at the lower of 1.5% per month or the highest rate permitted by law on any monthly payment not received when due, and SkillSurvey may suspend the Services if Subscriber’s payment of fees is ten (10) or more business days delinquent. Additionally, SkillSurvey is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due, including reasonable attorneys’ fees. Subscriber shall pay all taxes (exclusive of taxes based on the net income of SkillSurvey), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Services or related components provided by SkillSurvey to Subscriber.

7. Term and Termination.

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

7.b. Termination. Each party may terminate any Order(s) and/or 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.

7.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 6, 7, 8, 9, 11, 12, and 13 of this Agreement

8. Use of Subscriber Name.

8.a. Subscriber’s Name and Logo. Subscriber agrees that SkillSurvey may use Subscriber’s name and logo on the Subscriber Site, if required by Subscriber for branding.

8.b. Promotional Use. Subscriber agrees that SkillSurvey may use Subscriber’s name and logo to identify Subscriber as a customer of SkillSurvey on SkillSurvey’s website, and as a part of a general list of SkillSurvey customers for use and reference in SkillSurvey corporate, promotional and marketing materials. Subscriber agrees that SkillSurvey may issue a press release identifying Subscriber as a SkillSurvey customer and describing Subscriber’s intended utilization, and the benefits that Subscriber expects to receive, from use of the Services. The content of any press release identifying Subscriber as a customer of SkillSurvey will be subject to Subscriber’s prior approval, which will not be unreasonably withheld.

9. Customer Responsibilities.

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

9.b. In the event the Services covered under this Agreement include SkillSurvey Reference[®] and/or SkillSurvey Source[®], Subscriber will use the Software for Subscriber’s exclusive use only and for employment development purposes only, and only in accordance with applicable law. The report should not be disclosed to the subject of the report, except as may be required by law.

9.c. In the event the Services covered under this Agreement include SkillSurvey Post-Hire, Subscriber will use the Software for Subscriber’s exclusive use only and for organizational development and process improvement, including recruiting and retention purposes only and only, and only in accordance with applicable law.

9.d. 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.

9.e. Subscriber assumes responsibilities for all communications carried out and facilitated by Subscriber, Individuals, references, and resources over the Software, and understands that SkillSurvey will in no way edit, view or facilitate such communication. For the purposes of SkillSurvey Reference[®] and SkillSurvey Source[®], "Individuals" may include Subscriber's employees and job candidates. For the purposes of SkillSurvey Post-Hire, "Individuals" may include Subscriber's employees, Subscriber's former employees, and vendors.

9.f. As applicable to Services covered under this Agreement, Subscriber will base employment decisions and employee and organizational development and process improvement decisions or actions on Subscriber's lawful policies and procedures.

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

9.h. Subscriber represents and warrants that, prior to using the texting feature of the Services or Software in connection with an Individual or an Individual's references, Subscriber will obtain, in writing: the Individual's express consent to receive automated text messages through SkillSurvey and the Individual's confirmation of consent by the Individual's reference to receive automated text messages through SkillSurvey. 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 an Individual's consent for SkillSurvey to use the Individual's and the Individual's references' data, including for text message communications). Supplier 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.

10. 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.

11. 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.

12. Limitations of Liability.

12.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.

12.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.

13. General.

13.a. Assignment. Neither party may assign or delegate their respective obligations under this Agreement either in whole or in part, without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign their rights and obligations under this Agreement as the result of a merger, consolidation, acquisition or the sale of all or substantially all of the assets of the assigning party and SkillSurvey may assign its rights and delegate its obligations in whole or in part to an affiliate, provided that either party may terminate this Agreement upon 10 days' notice, if the assignee can be reasonably considered a competitor of the non-assigning party.

13.b. Governing Law. This Agreement and the Order Form will be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania as applied to agreements entered into and to be performed entirely within Pennsylvania between Pennsylvania residents. The parties hereby submit to the jurisdiction of, and waive any venue objections against state and federal courts in Chester County, Pennsylvania in any litigation arising out of the Agreement.

13.c. 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, including the Order Forms and all Attachments, 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.

To the extent that any provision of this Agreement and any Order Form conflict, the terms of the Order Form shall control. 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.

13.d. 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 parties agree that neither party may use the name or other identity of the other party in oral or written statements, without the prior written permission of the other party. 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.

13.e. Force Majeure. Except for Subscriber's obligation to pay for the Services rendered, neither party will be responsible for failure of performance due to causes beyond its control. Such causes include (without limitation) accidents, acts of God, labor disputes, actions of any government agency, shortage of materials, acts of terrorism, or the stability or availability of the Internet or a portion thereof.

13.f. 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.

13.g. 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.

13.h. U.S. Export Law. Subscriber acknowledges that the Services are subject to U.S. export control laws and regulations. Subscriber represents that it is not a citizen of an embargoed country or prohibited end user under applicable U.S. export and anti-terrorism laws, regulations and lists. Subscriber will not use, export or allow a third party to use or export the Services in any manner that would violate applicable law, including but not limited to applicable export control laws and regulations.

13.i. SkillSurvey Materials. Notwithstanding anything in this Agreement or any Order Form 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.