

**COUNTY OF MONTEREY STANDARD AGREEMENT
(NOT TO EXCEED \$100,000)**

This **Agreement** is made by and between the County of Monterey, a political subdivision of the State of California (hereinafter "County") and:

SkillSurvey Inc.

(hereinafter "CONTRACTOR").

In consideration of the mutual covenants and conditions set forth in this Agreement, the parties agree as follows:

1.0 GENERAL DESCRIPTION.

1.01 The County hereby engages CONTRACTOR to perform, and CONTRACTOR hereby agrees to perform, the services described in **Exhibit A** in conformity with the terms of this Agreement. The goods and/or services are generally described as follows:

Provide online reference assessment solutions to increase quality of hire and improve recruiting efficiency for the Monterey County Health Department.

2.0 PAYMENT PROVISIONS.

2.01 County shall pay the CONTRACTOR in accordance with the payment provisions set forth in **Exhibit A**, subject to the limitations set forth in this Agreement. The total amount payable by County to CONTRACTOR under this Agreement is not to exceed the sum of \$ 37,808.00.

3.0 TERM OF AGREEMENT.

3.01 The term of this Agreement is from September 18, 2013 to September 17, 2016, unless sooner terminated pursuant to the terms of this Agreement. This Agreement is of no force or effect until signed by both CONTRACTOR and County and with County signing last, and **CONTRACTOR may not commence work before County signs this Agreement.**

3.02 The County reserves the right to cancel this Agreement, or any extension of this Agreement, without cause, with a thirty day (30) written notice, or with cause immediately.

4.0 SCOPE OF SERVICES AND ADDITIONAL PROVISIONS.

4.01 The following attached exhibits are incorporated herein by reference and constitute a part of this Agreement:

Exhibit A Scope of Services/Payment Provisions

Exhibit B SkillSurvey Inc. Order Form Agreement

Exhibit C SkillSurvey Inc. "Consent to Obtain Information from References"

Exhibit D Modifications to County of Monterey Standard Agreement

Attachment #1 - Service Level Agmt. Attachment #2 - SkillSurvey Inc. Terms of Use

5.0 PERFORMANCE STANDARDS.



- 5.01 CONTRACTOR warrants that CONTRACTOR and CONTRACTOR's agents, employees, and subcontractors performing services under this Agreement are specially trained, experienced, competent, and appropriately licensed to perform the work and deliver the services required under this Agreement and are not employees of the County, or immediate family of an employee of the County.
- 5.02 CONTRACTOR, its agents, employees, and subcontractors shall perform all work in a safe and skillful manner and in compliance with all applicable laws and regulations. All work performed under this Agreement that is required by law to be performed or supervised by licensed personnel shall be performed in accordance with such licensing requirements.
- 5.03 CONTRACTOR shall furnish, at its own expense, all materials, equipment, and personnel necessary to carry out the terms of this Agreement, except as otherwise specified in this Agreement. CONTRACTOR shall not use County premises, property (including equipment, instruments, or supplies) or personnel for any purpose other than in the performance of its obligations under this Agreement.

6.0 PAYMENT CONDITIONS.

- 6.01 Prices shall remain firm for the initial term of the Agreement and, thereafter, may be adjusted annually as provided herein. The County does not guarantee any minimum or maximum amount of dollars to be spent under this Agreement.
- 6.02 Negotiations for rate changes shall be commenced, by CONTRACTOR, a minimum of ninety days (90) prior to the expiration of the Agreement. Rate changes are not binding unless mutually agreed upon in writing by the County and the CONTRACTOR.
- 6.03 Invoice amounts shall be billed directly to the ordering department.
- 6.04 ~~CONTRACTOR shall submit such invoice periodically or at the completion of services, but in any event, not later than 30 days after completion of services. The invoice shall set forth the amounts claimed by CONTRACTOR for the previous period, together with an itemized basis for the amounts claimed, and such other information pertinent to the invoice. The County shall certify the invoice, either in the requested amount or in such other amount as the County approves in conformity with this Agreement, and shall promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller shall pay the amount certified within 30 days of receiving the certified invoice.~~

see Exhibit D

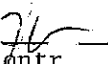

initials:

 
CONTR. CTY

7.0 TERMINATION.

- 7.01 During the term of this Agreement, the County may terminate the Agreement for any reason by giving written notice of termination to the CONTRACTOR at least thirty (30) days prior to the effective date of termination. Such notice shall set forth the effective date of termination. In the event of such termination, the amount payable under this Agreement shall be reduced in proportion to the services provided prior to the date of termination.
- 7.02 The County may cancel and terminate this Agreement for good cause effective immediately upon written notice to CONTRACTOR. "Good cause" includes the failure of

initials:

 
CONTR. CTY

CONTRACTOR to perform the required services at the time and in the manner provided under this Agreement. If County terminates this Agreement for good cause, the County may be relieved of the payment of any consideration to CONTRACTOR, and the County may proceed with the work in any manner, which County deems proper. The cost to the County shall be deducted from any sum due the CONTRACTOR under this Agreement.

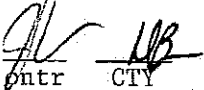
- 7.03 The County's payments to CONTRACTOR under this Agreement are funded by local, state and federal governments. If funds from local, state and federal sources are not obtained and continued at a level sufficient to allow for the County's purchase of the indicated quantity of services, then the County may give written notice of this fact to CONTRACTOR, and the obligations of the parties under this Agreement shall terminate immediately, or on such date thereafter, as the County may specify in its notice, unless in the meanwhile the parties enter into a written amendment modifying this Agreement.

8.0 INDEMNIFICATION.

- 8.01 Contractor shall indemnify, defend, and hold harmless the County of Monterey (hereinafter "County"), its officers, agents and employees from any claim, liability, loss, injury or damage arising out of, or in connection with, performance of this Agreement by Contractor and/or its agents, employees or sub-contractors, ~~excepting only loss, injury or damage caused by the negligence or willful misconduct of personnel employed by the County.~~ It is the intent of the parties to this Agreement to provide the broadest possible coverage for the County. The Contractor shall reimburse the County for all costs, attorneys' fees, expenses and liabilities incurred with respect to any litigation in which the Contractor is obligated to indemnify, defend and hold harmless the County under this Agreement.

See Exhibit D

Initials:


cntr CTY

9.0 INSURANCE REQUIREMENTS.

- 9.01 Evidence of Coverage:

Prior to commencement of this Agreement, the Contractor shall provide a "Certificate of Insurance" certifying that coverage as required herein has been obtained. Individual endorsements executed by the insurance carrier shall accompany the certificate. In addition, the Contractor upon request shall provide a certified copy of the policy or policies.

This verification of coverage shall be sent to the County's Contracts/Purchasing Department, unless otherwise directed. The Contractor shall not receive a "Notice to Proceed" with the work under this Agreement until it has obtained all insurance required and the County has approved such insurance. This approval of insurance shall neither relieve nor decrease the liability of the Contractor.

- 9.02 Qualifying Insurers:

All coverage's, except surety, shall be issued by companies which hold a current policy holder's alphabetic and financial size category rating of not less than A- VII, according to the current Best's Key Rating Guide or a company of equal financial stability that is approved by the County's Purchasing Manager.

- 9.03 Insurance Coverage Requirements: Without limiting CONTRACTOR's duty to indemnify, CONTRACTOR shall maintain in effect throughout the term of this Agreement a policy or policies of insurance with the following minimum limits of liability:

Commercial General Liability Insurance, including but not limited to premises and operations, including coverage for Bodily Injury and Property Damage, Personal Injury, Contractual Liability, Broad form Property Damage, Independent Contractors, Products and Completed Operations, with a combined single limit for Bodily Injury and Property Damage of not less than \$1,000,000 per occurrence.

(Note: any proposed modifications to these general liability insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Business Automobile Liability Insurance, covering all motor vehicles, including owned, leased, non-owned, and hired vehicles, used in providing services under this Agreement, with a combined single limit for Bodily Injury and Property Damage of not less than \$500,000 per occurrence.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Workers' Compensation Insurance, if CONTRACTOR employs others in the performance of this Agreement, in accordance with California Labor Code section 3700 and with Employer's Liability limits not less than \$1,000,000 each person, \$1,000,000 each accident and \$1,000,000 each disease.

(Note: any proposed modifications to these workers' compensation insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

Professional Liability Insurance, if required for the professional services being provided, (e.g., those persons authorized by a license to engage in a business or profession regulated by the California Business and Professions Code), in the amount of not less than \$1,000,000 per claim and \$2,000,000 in the aggregate, to cover liability for malpractice or errors or omissions made in the course of rendering professional services. If professional liability insurance is written on a "claims-made" basis rather than an occurrence basis, the CONTRACTOR shall, upon the expiration or earlier termination of this Agreement, obtain extended reporting coverage ("tail coverage") with the same liability limits. Any such tail coverage shall continue for at least three years following the expiration or earlier termination of this Agreement.

(Note: any proposed modifications to these auto insurance requirements shall be attached as an Exhibit hereto, and the section(s) above that are proposed as not applicable shall be lined out in blue ink. All proposed modifications are subject to County approval.)

9.04 Other Requirements:

All insurance required by this Agreement shall be with a company acceptable to the County and issued and executed by an admitted insurer authorized to transact Insurance business in the State of California. Unless otherwise specified by this Agreement, all such insurance shall be written on an occurrence basis, or, if the policy is not written on an occurrence basis, such policy with the coverage required herein shall continue in effect for a period of

three years following the date CONTRACTOR completes its performance of services under this Agreement.

Each liability policy shall provide that the County shall be given notice in writing at least thirty days in advance of any endorsed reduction in coverage or limit, cancellation, or intended non-renewal thereof. Each policy shall provide coverage for Contractor and additional insureds with respect to claims arising from each subcontractor, if any, performing work under this Agreement, or be accompanied by a certificate of insurance from each subcontractor showing each subcontractor has identical insurance coverage to the above requirements.

Commercial general liability and automobile liability policies shall **provide an endorsement naming the County of Monterey, its officers, agents, and employees as Additional Insureds** with respect to liability arising out of the CONTRACTOR'S work, including ongoing and completed operations, and shall further provide that **such insurance is primary** insurance to any insurance or self-insurance maintained by the County and that the insurance of **the Additional Insureds shall not be called upon to contribute** to a loss covered by the CONTRACTOR'S insurance. The required endorsement form for Commercial General Liability Additional Insured is ISO Form CG 20 10 11-85 or CG 20 10 10 01 in tandem with CG 20 37 10 01 (2000). The required endorsement form for Automobile Additional Insured endorsement is ISO Form CA 20 48 02 99.

Prior to the execution of this Agreement by the County, CONTRACTOR shall file certificates of insurance with the County's contract administrator and County's Contracts/Purchasing Division, showing that the CONTRACTOR has in effect the insurance required by this Agreement. The CONTRACTOR shall file a new or amended certificate of insurance within five calendar days after any change is made in any insurance policy, which would alter the information on the certificate then on file. Acceptance or approval of insurance shall in no way modify or change the indemnification clause in this Agreement, which shall continue in full force and effect.

CONTRACTOR shall at all times during the term of this Agreement maintain in force the insurance coverage required under this Agreement and shall send, without demand by County, annual certificates to County's Contract Administrator and County's Contracts/Purchasing Division. If the certificate is not received by the expiration date, County shall notify CONTRACTOR and CONTRACTOR shall have five calendar days to send in the certificate, evidencing no lapse in coverage during the interim. Failure by CONTRACTOR to maintain such insurance is a default of this Agreement, which entitles County, at its sole discretion, to terminate this Agreement immediately.

10.0 RECORDS AND CONFIDENTIALITY.

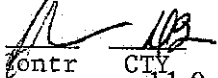
- 10.01 **Confidentiality.** CONTRACTOR and its officers, employees, agents, and subcontractors shall comply with any and all federal, state, and local laws, which provide for the confidentiality of records and other information. CONTRACTOR shall not disclose any confidential records or other confidential information received from the County or prepared in connection with the performance of this Agreement, unless County specifically permits CONTRACTOR to disclose such records or information. CONTRACTOR shall promptly transmit to County any and all requests for disclosure of any such confidential records or information. CONTRACTOR shall not use any confidential information gained by

CONTRACTOR in the performance of this Agreement except for the sole purpose of carrying out CONTRACTOR's obligations under this Agreement.

- 10.02 County Records. When this Agreement expires or terminates, CONTRACTOR shall return to County any County records which CONTRACTOR used or received from County to perform services under this Agreement.
- 10.03 Maintenance of Records. CONTRACTOR shall prepare, maintain, and preserve all reports and records that may be required by federal, state, and County rules and regulations related to services performed under this Agreement. CONTRACTOR shall maintain such records for a period of at least three years after receipt of final payment under this Agreement. If any litigation, claim, negotiation, audit exception, or other action relating to this Agreement is pending at the end of the three year period, then CONTRACTOR shall retain said records until such action is resolved.
- 10.04 Access to and Audit of Records. The County shall have the right to examine, monitor and audit all records, documents, conditions, and activities of the CONTRACTOR and its subcontractors related to services provided under this Agreement. Pursuant to Government Code section 8546.7, if this Agreement involves the expenditure of public funds in excess of \$10,000, the parties to this Agreement may be subject, at the request of the County or as part of any audit of the County, to the examination and audit of the State Auditor pertaining to matters connected with the performance of this Agreement for a period of three years after final payment under the Agreement.
- 10.05 Royalties and Inventions. County shall have a royalty-free, exclusive and irrevocable license to reproduce, publish, and use, and authorize others to do so, all original computer programs, writings, sound recordings, pictorial reproductions, drawings, and other works of similar nature produced in the course of or under this Agreement. CONTRACTOR shall not publish any such material without the prior written approval of County.

See Exhibit D

Initials:


Contr CTY

11.0 NON-DISCRIMINATION.

- 11.01 During the performance of this Agreement, CONTRACTOR, and its subcontractors, shall not unlawfully discriminate against any person because of race, religious creed, color, sex, national origin, ancestry, physical disability, mental disability, medical condition, marital status, age (over 40), or sexual orientation, either in CONTRACTOR's employment practices or in the furnishing of services to recipients. CONTRACTOR shall ensure that the evaluation and treatment of its employees and applicants for employment and all persons receiving and requesting services are free of such discrimination. CONTRACTOR and any subcontractor shall, in the performance of this Agreement, fully comply with all federal, state, and local laws and regulations which prohibit discrimination. The provision of services primarily or exclusively to such target population as may be designated in this Agreement shall not be deemed to be prohibited discrimination.

12.0 COMPLIANCE WITH TERMS OF STATE OR FEDERAL GRANTS.

- 12.01 If this Agreement has been or will be funded with monies received by the County pursuant to a contract with the state or federal government in which the County is the grantee, CONTRACTOR will comply with all the provisions of said contract, to the extent applicable to CONTRACTOR as a subgrantee under said contract, and said provisions shall

be deemed a part of this Agreement, as though fully set forth herein. Upon request, County will deliver a copy of said contract to CONTRACTOR, at no cost to CONTRACTOR.

13.0 INDEPENDENT CONTRACTOR.

13.01 In the performance of work, duties, and obligations under this Agreement, CONTRACTOR is at all times acting and performing as an independent contractor and not as an employee of the County. No offer or obligation of permanent employment with the County or particular County department or agency is intended in any manner, and CONTRACTOR shall not become entitled by virtue of this Agreement to receive from County any form of employee benefits including but not limited to sick leave, vacation, retirement benefits, workers' compensation coverage, insurance or disability benefits. CONTRACTOR shall be solely liable for and obligated to pay directly all applicable taxes, including federal and state income taxes and social security, arising out of CONTRACTOR's performance of this Agreement. In connection therewith, CONTRACTOR shall defend, indemnify, and hold County harmless from any and all liability which County may incur because of CONTRACTOR's failure to pay such taxes.

14.0 NOTICES.

14.01 Notices required under this Agreement shall be delivered personally or by first-class, postage pre-paid mail to the County and CONTRACTOR'S contract administrators at the addresses listed below:

| FOR COUNTY: | FOR CONTRACTOR: |
|---|--|
| Ray Bullick, Director of Health or designee | Fred Barnhart, Director of Sales, West Region |
| Name and Title | Name and Title |
| 1270 Natividad Road Salinas, CA 93906 | 565 East Swedesford Road, Suite 315 Wayne, PA 19087 |
| Address | Address |
| (831) 755-4526 | (650) 592-2056 |
| Phone | Phone |

15.0 MISCELLANEOUS PROVISIONS.

15.01 Conflict of Interest. CONTRACTOR represents that it presently has no interest and agrees not to acquire any interest during the term of this Agreement, which would directly, or indirectly conflict in any manner or to any degree with the full and complete performance of the services required to be rendered under this Agreement.

15.02 Amendment. This Agreement may be amended or modified only by an instrument in writing signed by the County and the CONTRACTOR.

- 15.03 Waiver. Any waiver of any terms and conditions of this Agreement must be in writing and signed by the County and the CONTRACTOR. A waiver of any of the terms and conditions of this Agreement shall not be construed as a waiver of any other terms or conditions in this Agreement.
- 15.04 Contractor. The term "CONTRACTOR" as used in this Agreement includes CONTRACTOR's officers, agents, and employees acting on CONTRACTOR's behalf in the performance of this Agreement.
- 15.05 Disputes. CONTRACTOR shall continue to perform under this Agreement during any dispute.
- 15.06 Assignment and Subcontracting. The CONTRACTOR shall not assign, sell, or otherwise transfer its interest or obligations in this Agreement without the prior written consent of the County. None of the services covered by this Agreement shall be subcontracted without the prior written approval of the County. Notwithstanding any such subcontract, CONTRACTOR shall continue to be liable for the performance of all requirements of this Agreement.
- 15.07 Successors and Assigns. This Agreement and the rights, privileges, duties, and obligations of the County and CONTRACTOR under this Agreement, to the extent assignable or delegable, shall be binding upon and inure to the benefit of the parties and their respective successors, permitted assigns, and heirs.
- 15.08 Compliance with Applicable Law. The parties shall comply with all applicable federal, state, and local laws and regulations in performing this Agreement.
- 15.09 Headings. The headings are for convenience only and shall not be used to interpret the terms of this Agreement.
- 15.10 Time is of the Essence. Time is of the essence in each and all of the provisions of this Agreement.
- 15.11 Governing Law. This Agreement shall be governed by and interpreted under the laws of the State of California.
- 15.12 Non-exclusive Agreement. This Agreement is non-exclusive and both County and CONTRACTOR expressly reserve the right to contract with other entities for the same or similar services.
- 15.13 Construction of Agreement. The County and CONTRACTOR agree that each party has fully participated in the review and revision of this Agreement and that any rule of construction to the effect that ambiguities are to be resolved against the drafting party shall not apply in the interpretation of this Agreement or any amendment to this Agreement.
- 15.14 Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same Agreement.

- 15.15 Authority. Any individual executing this Agreement on behalf of the County or the CONTRACTOR represents and warrants hereby that he or she has the requisite authority to enter into this Agreement on behalf of such party and bind the party to the terms and conditions of this Agreement.
- 15.16 Integration. This Agreement, including the exhibits, represent the entire Agreement between the County and the CONTRACTOR with respect to the subject matter of this Agreement and shall supersede all prior negotiations, representations, or agreements, either written or oral, between the County and the CONTRACTOR as of the effective date of this Agreement, which is the date that the County signs the Agreement.
- 15.17 Interpretation of Conflicting Provisions. In the event of any conflict or inconsistency between the provisions of this Agreement and the Provisions of any exhibit or other attachment to this Agreement, the provisions of this Agreement shall prevail and control.

-----*This section left blank intentionally*-----

16.0 SIGNATURE PAGE.

IN WITNESS WHEREOF, County and CONTRACTOR have executed this Agreement as of the day and year written below.

COUNTY OF MONTEREY

CONTRACTOR

By: *Rebecca Pope*
Contracts/Purchasing Officer

SkillSurvey Inc.
Contractor's Business Name*

Date: 9/18/13

By: _____
Department Head (if applicable)

By: *[Signature]*
(Signature of Chair, President, or Vice-President)*

Date: _____

Approved as to Form¹

Paul Kramer - Full Operations
Name and Title

By: *[Signature]*
Deputy County Counsel

Date: 9/13/13

Date: 9/15/13

By: *[Signature]*
(Signature of Secretary, Asst. Secretary, CFO, Treasurer or Asst. Treasurer)*

Approved as to Fiscal Provisions²

Roy Bixler CEO
Name and Title

By: *[Signature]*
Auditor/Controller

Date: 9/13/13

Date: 6-13

RISK MANAGEMENT
COUNTY OF MONTEREY
APPROVED AS TO INDEMNITY/
INSURANCE LANGUAGE

By: *[Signature]*
Risk Management

Date: 7/11/13

*INSTRUCTIONS: If CONTRACTOR is a corporation, including limited liability and non-profit corporations, the full legal name of the corporation shall be set forth above together with the signatures of two specified officers. If CONTRACTOR is a partnership, the name of the partnership shall be set forth above together with the signature of a partner who has authority to execute this Agreement on behalf of the partnership. If CONTRACTOR is contracting in an individual capacity, the individual shall set forth the name of the business, if any, and shall personally sign the Agreement.

¹Approval by County Counsel is required

²Approval by Auditor/Controller is required

³Approval by Risk Management is required only if changes are made in sections 7 or 8

EXHIBIT A

**To
Standard Agreement
Between
County of Monterey on behalf of its
Health Department
And
SkillSurvey Inc.**

Scope of Services / Payment Provisions

A. SCOPE OF SERVICES

SkillSurvey Inc. "CONTRACTOR" shall provide services and staff, and otherwise do all things necessary for or incidental to the performance of work as set forth in the SkillSurvey Enterprise Order Form Agreement, fully incorporated into this Exhibit A (attached).

B. PAYMENT PROVISIONS

COMPENSATION/ PAYMENT

COUNTY shall pay an amount **not to exceed \$37,808.00** during the term of this Agreement, for the performance of all things necessary as set forth in the attached SkillSurvey Enterprise Order Form Agreement.

C. INVOICING AND PAYMENTS

1. Upon signature of the Agreement, receipt and approval of the invoices, County agrees to compensate CONTRACTOR in accordance with the above listed terms.
2. County agrees to pay \$4,660.00 (training/set-up and partial payment for Year 1), thirty (30) days from the effective date of the Standard Agreement. County will pay the balance of Year 1, \$9,320.00 thirty (30) days from September 30, 2013 provided the following has been met:
 - i. The solution is available online to authorized users who log on with their assigned username and password.
 - ii. Users are able to input candidate names after which system emails are sent to candidates.
 - iii. In the event three (3) or more references respond to a SkillSurvey, a report can be generated and displayed as a pdf file.

- iv. County will confirm by email that the above criteria have been met no later than September 30, 2013.
3. Invoices shall be submitted in duplicate to:

**Monterey County Health Department
Human Resources/Administration
Attn: Dianne Dinsmore, Human Resources
1270 Natividad Road
Salinas, CA 93906**

4. Invoices shall:
 - i. Be prepared on Contractor letterhead. An authorized official, employee, or agent certifying that the expenditures claimed represent services performed under this contract must sign invoices.
 - ii. Bear the Contractor's name as shown on the agreement.
 - iii. Identify the billing and/or performance period covered by the invoice.
 - iv. Itemize costs for the billing period in the same detail as indicated in the scope of services in the agreement. Reimbursement may only be sought for those costs and/or cost categories expressly identified as allowable in this agreement and approved by the County of Monterey.

D. EXPENSES/FISCAL DOCUMENTATION

1. Invoices, received from Contractor and accepted and/or submitted for payment by the County, shall not be deemed evidence of allowable agreement costs.
2. Contractor shall maintain for review and audit and provide to County upon request, adequate documentation of all expenses claimed pursuant to this agreement to permit a determination of expense allowability.

Exhibit B



Enterprise Order Form Agreement

| | | | |
|------------------------------|---|----------------------|-------------------------------------|
| Customer Name | County of Monterey on behalf of its Health Department | Type of Order | |
| | | New | <input checked="" type="checkbox"/> |
| SkillsSurvey Contact: | | Expansion | <input type="checkbox"/> |
| Barnhart | | Renewal | <input type="checkbox"/> |
| | Proposal Expires | | |
| | 9/15/2013 | | |

| | Start Date | End Date |
|--------------------|------------|-----------|
| Contract Effective | 9/18/2013 | 9/17/2016 |

| Service Item | Employees | Price * | Fees |
|-----------------------------|-----------|----------|------------------|
| SkillsSurvey Pre-Hire 360® | 800 | \$ 16.10 | \$ 12,880 |
| Passive Candidate Compiler | Included | | |
| Candidate Comparison Report | Included | | |
| Maintenance and Support | Included | | |
| Subtotal | | | \$ 12,880 |

| Service Item | List Price | Hours | Fees |
|--------------------------------|------------|-------|------------------|
| Training and Set-up (per hour) | \$ 110 | 10 | \$ 1,100 |
| Other | | | \$ - |
| Subtotal | | | \$ 1,100 |
| Total | | | \$ 13,980 |

* Price per employee

Additional Enterprise Order Form Comments:

| | |
|---------------------------|----------|
| Multi year contract (Y/N) | Y |
| Year 1 | \$13,980 |
| Year 2 (5% discount) | \$12,236 |
| Year 3 (10% discount) | \$11,592 |
| Total Commitment | \$37,808 |

Special terms
 Payment of \$4,660 will be due 30 days from receipt of the certified invoice by the County Auditor-Controller. The balance of \$9,320 will be invoiced on 9/30/13 and will be due 30 days from receipt of certified invoice in accordance with the acceptance criteria specified in Exhibit D – Modifications to County of Monterey Standard Agreement. Years 2 and 3 will be invoiced on the anniversary of this agreement. Please sign, date, and email to contracts@skillsurvey.com or FAX all pages of the agreement to: 347-438-3000. Thank you for your business!

SkillSurvey will not increase fees during the initial term of this agreement unless Customer's employee population increases by more than 10% via a change to its organizational structure which may include an acquisition, merger, or affiliation. If employee population during this term does increase by more than 10%, the pricing will be computed by taking the per employee price times the increased number of employees beyond that which is stated on order form. Pricing will be prorated for remainder of the Term.

SERVICE AND SUPPORT INFORMATION

Information on Support Services for SkillSurvey Customers may be found at <http://www.skillsurvey.com/serviceagreement>, a copy of which is attached hereto as Attachment 1.

TERM and USE

Initial term of this agreement is defined above by Contract Effective Date and End date. Use of SkillSurvey Services by Subscriber is governed by the SkillSurvey Terms and Conditions found at <http://www.skillsurvey.com/termsfuse>, a copy of which is attached hereto as Attachment 2.

PAYMENT TERMS

SkillSurvey is hereby authorized to invoice for services on the date of execution of this Enterprise Order Form and thereafter. Payment for Service is due net thirty (30) days from the receipt of the certified invoice by the County Auditor-Controller. (The Monterey County Health Department will approve the invoices and forward immediately to the Auditor-Controller for payment).

CONFIDENTIALITY OF TERMS

Customer shall not disclose to the public or to any third party the terms and conditions or special pricing provisions contained in this Agreement, other than as pursuant to the California Public Records Act

ORDER COMMITMENT

This order for products and services from SkillSurvey is made pursuant to the terms of this Agreement, which become effective as of the date of execution by the County Purchasing Agent. The person executing this commitment is fully authorized to execute this commitment on behalf of Customer. All products and services ordered herein are governed in all cases by the terms of the entire Agreement.

SERVICE ITEM DESCRIPTIONS:

PLAN

A Statement of Work (SOW) is required for Survey Customization, Email Customization, and Private Label Branding.

MAINTENANCE AND SUPPORT

System updates, enhancements, and support for administrators, recruiters, candidates, and references are included.

SURVEY CUSTOMIZATION

Encompasses changes to existing surveys in our library as well as creation of new surveys.

EMAIL CUSTOMIZATION

This option enables Customer to edit the text copy of the Candidate email, the Reference email, or both emails. Requested edits to these emails are subject to SkillSurvey approval.

PRIVATE LABEL BRANDING

The Customer brand, logo, graphics, and email formats can be included within the SkillSurvey Product Suite if desired.

TRAINING AND SET-UP

There is a initial fee of \$1100 that includes WebEx training and coaching for administrators and recruiters as well as provisioning and set-up on SkillSurvey servers.

| | Customer Information | Billing Information |
|-----------------------|---|---|
| Customer | County of Monterey on behalf of its Health Department | County of Monterey on behalf of its Health Department |
| Contact | | |
| Title | | |
| Signature | | |
| Date | | |
| Address | 1270 Natividad Road | 1270 Natividad Road |
| Address | | |
| City | Salinas | Salinas |
| State/Province | CA | CA |
| Postal Code | 93908 | 93908 |
| Phone Number | 360.744.6951 | 360.744.6951 |
| Email ID | DinsmoreDR@co.monterey.ca.us | DinsmoreDR@co.monterey.ca.us |

Consent to Obtain Information from References

I hereby authorize SkillSurvey, Inc. to obtain and verify from my designated business and professional references ("My References") such information about my background, prior employment and other qualifications, data and information (collectively "Information") as Company deems relevant to its decision whether to hire me for the position for which I am applying.

I endorse, acknowledge and authorize Company's use of the SkillSurvey, Inc. ("SkillSurvey") services and related technologies to gather information from My References. I further authorize Company to contact My References on my behalf, which includes directly sending email on my behalf to My References to the emails provided by me and any other new or corrected email that becomes know to Company or SkillSurvey in the process of attempting to gather than information.

In consideration of Company considering my application for employment, I hereby release each of Company and SkillSurvey, and their respective officers, directors, managers, agents, and employees from any and all claims, actions, suits, causes of action or damages (collectively "Claims/Damages") that I may have arising out of the obtaining and verification information. I also herby release My References and any of their respective employers or related company/organization and their respective any affiliated officers, directors, agents and employees from any and all Claims/Damages that I may have arising out of the disclosure of information. I acknowledge that My References will be provided the option and opportunity to learn more about opportunities that may be available from Company or other third parties through the use of SkillSurvey's service offerings.

Exhibit D
MODIFICATIONS TO THE COUNTY STANDARD AGREEMENT

6.0 PAYMENT CONDITIONS

6.04 CONTRACTOR will submit the invoice within 7 days of the County's Contract/Purchasing Agent's signature. County will certify the invoice and will promptly submit such invoice to the County Auditor-Controller for payment. The County Auditor-Controller will pay the amount certified within 30 days of receiving the certified invoice.

7.0 TERMINATION

7.01 The following sentence is incorporated at the end of this section: In any event, payments received will not be returned to County.

8.0 INDEMNIFICATION

8.01 Deleted (see Attachment #2, SkillSurvey Inc. Terms of Use)

10.0 RECORDS AND CONFIDENTIALITY

10.05 Royalties and Inventions. Deleted

SkillSurvey Inc.
\$37,808.00
9/18/13 – 9/17/16

Attachment 1

SkillSurvey Inc. - Service Level Agreement

Commitment

SkillSurvey is a 24 x 7 mission critical service. We know that your success depends on immediate access to the reference information you need, and we're dedicated to ensuring that it's always available. SkillSurvey strives to have the most reliable and up-to-date systems available. We rely on our own internal expertise as well as that of our partners to deliver unparalleled customer service.

SkillSurvey's uptime numbers rival those of the best web service companies - for both business and consumer sites. SkillSurvey realizes there may occasionally be system outages due to issues beyond our control. SkillSurvey has established policies which quickly escalate to the proper personnel in the event of any system outage.

The remainder of this document covers our detailed service level commitments to all our customers.

System Uptime

Our objective is to meet or exceed 99% system uptime, outside of normal scheduled maintenance. Any scheduled system maintenance is completed on an after-hours basis, with advance notice given to all clients.

All components of the SkillSurvey system are proactively monitored and managed so that faults are detected before system outages occur. Our service is hosted by Rackspace.com, one of the fastest growing managed hosting companies in the world. Rackspace.com is committed to Fanatical Support™, their award-winning methodology and business commitment that governs their hosting operations. Rackspace.com also provides a guarantee of 100% uptime, outside of scheduled maintenance. You can read more about Rackspace.com's customer commitment at www.rackspace.com

Problem Reporting

System problems can be reported in the following ways:

- CustomerService@SkillSurvey.com
- Phone our dedicated customer support hotline at 610-422-3532
- Enter a trouble ticket into the support section of the service

Customer Support Hours:

8:00 a.m. to 5:00 p.m. EST Monday through Friday, Company Holidays excluded

Severity 1 Support will be provided on a 24 hour by 7 day basis

| Severity Level | Description | Example |
|----------------|--|---|
| Severity 1 | A major fault causing serious disruption to business activity and preventing the use of the service for the purpose for which it was designed. | <ul style="list-style-type: none"> • System down • Unable to add candidates • Unable to generate reports |
| Severity 2 | Significant fault causing the service not to operate in accordance with the specification but still usable with difficulty (e.g. by means of a work-around solution), with some disruption to business activity | <ul style="list-style-type: none"> • Candidate Report scored incorrectly • Email alerts not being sent • Lost data |
| Severity 3 | Minor fault causing the service not to operate completely in accordance with the specification but with no disruption to business activity | <ul style="list-style-type: none"> • New user request • Email formatting problem |
| Severity 4 | All other requests for service – from general usage questions, to recommendations for product enhancements or modifications and calls passed on to us for information purposes. The impact on you is non-critical. | <ul style="list-style-type: none"> • Training request • Sample document not available |

Target Response Times

The target response time is the time taken by SkillsSurvey to respond to a reported problem, and to confirm with the customer that the problem is being managed. Target response time does not specify when an issue will be resolved. The starting point for the target response time is the time recorded when the customer reports the problem to SkillsSurvey, either by phone, email, or trouble ticket system. The finishing point is when SkillsSurvey calls or emails the customer contact to progress the call. SkillsSurvey will use its reasonable efforts to meet the target response times detailed below:

| DESCRIPTION | SERVICE LEVEL |
|-------------|---------------|
|-------------|---------------|

| | | |
|--|-----------------|-------------------|
| Target Response time during Business Hours | Severity 1 | 60 minutes |
| | Severity 2 | 2 hours |
| | Severity 3 | 4 hours |
| | Severity 4 | 24 hours |
| Target Response time during non-business Hours | Severity 1 | 60 minutes |
| | Severity 2 to 4 | Next business day |

Escalation

Escalation is the formal notification of a problem to progressively more senior levels of management within SkillSurvey and the Customer, to enable appropriate actions to be taken by both parties to address the problem.

Escalation levels and target wait times are defined as follows:

| Problem Escalation / Severity Wait Times (During Service Hours) | | | | | | |
|---|------------------------|----------|-------------|-------------|-------------|-------------|
| Escalation Level | SkillSurvey | Customer | Severity 1 | Severity 2 | Severity 3 | Severity 4 |
| D | CEO | TBD | 2 Work Days | 3 Work Days | | |
| C | VP of Customer Service | TBD | 1 Work Day | 2 Work Days | 3 Work Days | 4 Work Days |
| B | Account Manager | TBD | 4 Hours | 1 Work Day | 1 Work Day | 2 Work Days |
| A | Service Representative | TBD | 60 minutes | 2 Hours | 4 Hours | 24 Hours |

The service desk will be the focal point for the co-ordination of the escalation within SkillSurvey, and will manage the effective resolution of the problem in conjunction with the Vice President of Customer Service. Escalation to the next level will occur whenever the appropriate escalation wait time has expired. The escalation wait time is measured from the time SkillSurvey is notified of the problem. Each time a problem is escalated, it will be to the next level upwards. At the time of escalation, SkillSurvey will contact the appropriate Customer representative with an update on the estimated time to resolve the problem.

Service Reviews and Reports

Customer Service will be examined with the overall Account Review. For customers with sufficient volume (i.e. > 100 units per month), Account Review calls will be scheduled quarterly, unless a specific event needs to be addressed in the interim. During these calls, the Customer will normally be represented by the Project Sponsor, and SkillSurvey will normally be represented by the Vice President of Customer Service. Other

representatives from both parties will attend the meetings as necessary to resolve open issues on the agenda. The purpose of the Account Review is to:

- Review monthly service statistics:

System uptime percentage

Number of calls for support by severity

Number of calls closed

Number of calls outstanding, and their status

Enhancement requests

- Review service usage effectiveness:

Candidate and reference response rates

Scoring distributions

Turnaround times

Organizational compliance

Organizational benefits assessment

- Review planned usage:

Hiring initiatives

Job type changes

Hiring process changes

etc.

- Examine escalated problems, especially any problems still outstanding

- Consider and act upon suggestions for improvement to the service

- Discuss any other matters arising from the delivery of the service

Attachment 2

SkillSurvey Inc. Terms of Use

SkillSurvey Inc. Services. These SkillSurvey Inc. Terms and Conditions govern the use by the Subscriber of any services ("the Services") ordered by the County of Monterey on behalf of its Health Department (Subscriber) from SkillSurvey Inc. and set-forth in one or more "Order Forms", unless Subscriber has signed a separate Services Agreement with SkillSurvey.

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 by the County Purchasing Agent for Subscriber and either signed or provisioned by SkillSurvey Inc.

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.

Changes to Services. SkillSurvey Inc. 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 Inc. 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 Inc. sales representative or SkillSurvey Inc. directly at customerservice@skillsurvey.com in order to receive a quote for the Cost Feature.

Fee Adjustments for 3 Year Term. SkillSurvey Inc. may, upon at least thirty (30) days prior written notice and effective at the end of the then-current (Initial or Renewal) Term (defined below), adjust the fees paid by Subscriber for the Services, provided that Subscriber shall have the option, within fifteen (15) days of receiving such notice from SkillSurvey Inc., to either (i) modify the quantity or type of Services utilized by Subscriber by a mutual written amendment between the parties, or (ii) terminate the affected Orders upon written notice, either of which will become effective at the beginning of the next Renewal Term.

SkillSurvey Inc. Training and Support. Training and Support provided by SkillSurvey Inc. is specified in the Service Descriptions.

Payment. Invoices for the Services are due in accordance with the Payment Terms set forth on the Order Form. SkillSurvey Inc. 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 Inc.), 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 Inc. to Subscriber.

Term and Termination.

a. **Term of Orders.** This Agreement will commence on the date signed by the County Purchasing Agent and. Each "Renewal Order" will begin at the end of the preceding (Initial or Renewal) Order and continue as set forth on the Order Form.

b. **Termination of Orders.** Either party may terminate any Order at the end of any (Initial or Renewal) Order by providing the other party written notice of termination at least 30 days prior to the end of such term.

c. **Term of Agreement.** This Agreement will commence on the date signed by the County's Purchasing Agent and may be terminated by written notice effective upon the termination of all of Subscriber's Orders.

d. **Termination for Breach.** 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.

e. **Surviving Provisions.** The following provisions will survive the expiration or termination of this Agreement: Any payment provisions set forth in the Order Form (as to amounts due and owing as of the Agreement's expiration or termination date), Customer Responsibilities, Privacy, Limited Warranty, and Limitation of Liability.

Customer Responsibilities.

a. Subscriber will use the Software Products 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, except to disclose said information to the subject of the report (the "Individual"), and for employment, development, or selection 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, End User's employees, job candidates, vendors and references over the Software, and understands that SkillSurvey will in no way edit, view or facilitate such communication.

e. Subscriber will base employment decisions and employee developmental decisions or actions on Subscriber's lawful policies and procedures and recognize that SkillSurvey is not allowed to render any legal opinions regarding information contained in a report.

Privacy. SkillSurvey Inc.'s privacy statement may be found on SkillSurvey Inc.'s website: <http://www.SkillSurvey.com/privacypolicy>. Please consult it to learn SkillSurvey Inc.'s current practices with respect to Subscriber's information.

Limited Warranty. SUBSCRIBER UNDERSTANDS AND AGREES THAT THE SERVICES, AND ANY ASSOCIATED SOFTWARE, ARE PROVIDED "AS IS" AND "AS AVAILABLE." SKILLSURVEY INC. 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 INC. 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. This Section, Limited Warranty, does not apply to claims brought pursuant to Section 10.01 of the County of Monterey Standard Agreement, and the following sections of this Terms of Use: Section "General" (d) Confidentiality, and Section General (i) Indemnity and Intellectual Property.

SkillSurvey Inc. expressly warrants that all materials and services covered by this Agreement shall be fit for the purpose intended, shall be free from material known defects, in a timely manner, and shall conform to the specifications, requirements, and instructions upon which this Agreement is based. SkillSurvey Inc. agrees to promptly replace or correct any incomplete, inaccurate, or defective Services at no further cost to Subscriber when material defects are due to the negligence, errors or omissions of SkillSurvey Inc.

SkillSurvey Inc. further warrants that its Servers have a guarantee uptime of 99% and for so long as Subscriber shall pay the fees described in this Agreement (a) the System will be materially free of errors, and (b) SkillSurvey Inc. will provide the Services in a professional and workmanlike manner consistent with the highest industry standards. SkillSurvey Inc. further warrants, during the term of this Agreement, that (i) the Servers will be free of any Harmful Code (as defined below), and (ii) SkillSurvey Inc. will not interfere with or disrupt Subscriber's or the User's use of the System. For purposes of this Agreement, the term "Harmful Code" means any software code with the ability to damage, interfere with, or adversely affect computer

programs, data files, or hardware without the consent or intent of the computer user. This definition includes, but is not limited to, self-replacing and self-propagating programming instructions commonly called "viruses," "Trojan horses" and "worms." SkillSurvey Inc. agrees to implement reasonable procedures adequate to prevent any software, link or code provided to County hereunder from being contaminated with Harmful Code. If SkillSurvey Inc. learns of or suspects the existence of any Harmful Code, SkillSurvey Inc. will immediately notify Subscriber and make every effort to remove the Harmful Code.

Limitation of Liability.

IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR ANY LOSS OF PROFITS; ANY INCIDENTAL, SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL EVEN IF ADVISED OF THE POSSIBILITY OF SUCH CLAIMS OR DEMANDS. EXCEPT AS IT RELATES TO BREACHES OF CONFIDENTIALITY OR VIOLATIONS OF ANY APPLICABLE LAWS. THE AMOUNT OF ACTUAL, TOTAL MAXIMUM DAMAGES THAT SUBSCRIBER MAY RECOVER FROM SKILLSURVEY IS AGREED TO BE LIMITED TO THE AMOUNT OF FEES ACTUALLY PAID TO SKILLSURVEY HEREUNDER. THESE LIMITATIONS UPON DAMAGES AND CLAIMS ARE INTENDED TO APPLY WITHOUT REGARD TO WHETHER OTHER PROVISIONS OF THIS AGREEMENT HAVE BEEN BREACHED OR HAVE PROVEN INEFFECTIVE. SOME STATES DO NOT ALLOW THE EXCLUSION OR LIMITATION OF INCIDENTAL OR CONSEQUENTIAL DAMAGES, SO THIS LIMITATION AND EXCLUSION MAY NOT APPLY. Because some states and jurisdictions do not allow limitation of liability in certain instances, portions of the above limitation may not apply to Subscriber

General

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 Inc. 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.

b. **Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the United States and the State of California as applied to agreements entered into and to be performed entirely within California between California residents. The parties hereby submit to the jurisdiction of, and waive any venue objections against state and federal courts in Monterey County, California in any litigation arising out of the Agreement.

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 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. However, SkillSurvey Inc. and Subscriber shall not be bound by terms additional to or different from those in this Agreement that appear in Subscriber's or SkillSurvey Inc.'s acknowledgements, purchase orders, quotations, prior understandings, or in any other communications between the parties, unless such terms are expressly agreed to by amendment to this Agreement, and are executed by both Subscriber and SkillSurvey Inc.

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 parties agree that the terms of this SkillSurvey Inc. Terms of Use, the County of Monterey Standard Agreement, and any and all other exhibits and attachments hereto are subject to disclosure pursuant to the California Public Records Act.

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.

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.

g. Use of the Services. Subject to the provisions contained herein, SkillSurvey hereby grants to End User the right, to be exercised only by End User'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 Software and the

reports and other data generated in connection with the Software. Such rights of access and use will terminate upon termination of the Agreement or as may be otherwise provided in this Agreement.

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.

i. **Indemnity and Intellectual Property:**

- (a) **Indemnified Parties and Claims.** The "Indemnified Parties" are Subscriber and its officers, directors, shareholders, parents, subsidiaries, agents, insurers, successors, and assigns. An "Indemnified Claim" is any third party claim, suit, or proceeding against the Indemnified Parties arising out of, related to, or alleging: (i) infringement of any valid, U.S. patent, copyright, or other intellectual property right by the Software; or (ii) injury to or death of any individual, or any loss of or damage to real or tangible personal property, caused by the negligence of SkillSurvey Inc. or of any of its agents, subcontractors, or employees.
- (b) **Indemnity.** SkillSurvey Inc. will indemnify, defend, and hold Indemnified Parties harmless against any Indemnified Claim, provided Indemnified Parties gives SkillSurvey Inc. prompt notice of such Indemnified Claim. SkillSurvey Inc.'s obligations set forth in the preceding sentence include, without limitation, retention and payment of reasonable attorneys fees and payment of court costs, as well as settlement at SkillSurvey Inc.'s expense, payment of judgments, or both.
- (c) **Litigation.** SkillSurvey Inc. will control the defense of any Indemnified Claim, including appeals, negotiations, and any settlement or compromise thereof; provided Indemnified Parties will have the right to approve the terms of any settlement or compromise that restricts its rights granted under this Agreement or subjects it to any ongoing obligations.
- (d) In the event that the intellectual property indemnity pursuant to subsection (i)(a) above is triggered, and in SkillSurvey's sole opinion, any Software may be held to constitute an infringement and its use is enjoined, SkillSurvey may, at its own expense and at its sole option, (i) procure for Subscriber, the right to continue to receive the Software, (ii) if applicable, replace the same with non-infringing Software of equivalent function and performance, or (iii) modify the Software so it becomes non-infringing without detracting from function or performance. If SkillSurvey determines that it is not commercially reasonable to perform any of the foregoing alternatives, then (x) Subscriber must cease use of the allegedly infringing Software, and (y) either party hereto may immediately

terminate the Standard Agreement and these Terms of Use without further liability to the other. SkillSurvey shall, however, in no event be liable for any use of the Software after Subscriber has received written instructions from SkillSurvey to cease using the Software. Notwithstanding the provisions of these Terms of Use to the contrary, SkillSurvey will have no liability to the extent that the infringement or alleged infringement arises from: (A) the use of the Software in any manner other than as specified by the Standard Agreement, the Terms of Use or applicable statement of work, exhibit or appendix or otherwise approved by SkillSurvey in writing, (B) modification or alteration of the Software by the Subscriber, (C) use of the Software by Subscriber in combination with products or services not purchased hereunder where the Software would not otherwise be infringing, (D) use of the Software by Subscriber in an application or environment for which the Software was not designed or contemplated, or (E) any specific instructions or requested changes to the Software provided by Subscriber to SkillSurvey.