

# CareerScope® Online Services Agreement

## ACCEPTANCE OF AGREEMENT

Please read this Agreement carefully. This is a legal agreement between you and Vocational Research Institute, LLC (“VRI”). By accessing and/or using CareerScope Online (the “Service”), you agree to be bound by the terms of this Agreement, and you and your users consent to the collection and use of information as described in the CareerScope® Online Privacy Policy. If you do not agree to the terms of this Agreement, you must exit the Service immediately, discontinue any use of the Service, and contact VRI for a refund of any pre-paid service fees.

### 1. Subscription; Use Restrictions.

1.1. Subscription. Subject to the terms and conditions of this Agreement and your payment of all applicable Fees in accordance with Section 2, VRI hereby grants to you a limited, non-exclusive, non-assignable, non-sublicensable, non-transferable right (the “Subscription”), to access and use the Service for the quantity of users for which you have submitted an order to VRI. All rights not expressly granted hereunder are reserved by VRI.

1.2. Authorized Use. You may permit any individual to whom you are providing career counseling services to access or use the Service, subject to the maximum number of users permitted under your order (each a “User” and collectively, “Users”), and you shall be responsible for managing the access and use of the Service by your Users through the Management Portal.

1.3. Restrictions. You shall not: (a) permit access to the Service by anyone other than Users (b) copy the Service or any portion thereof; (c) translate, decompile or create or attempt to create, by reverse engineering or otherwise, the source code for the Service; (d) modify, adapt, translate or create a derivative work from the Service; (e) remove any proprietary notices, labels, or marks on the Service; or (f) assign, sublicense, rent, transfer, publish, make available to third parties on a time-sharing or service bureau basis or otherwise make available for the benefit of third parties all or any part of the Service,

including, without limitation, by transmitting or providing the Service, or any portion thereof, over the Internet, or otherwise, to any third party.

## **2. Fees.**

2.1. You shall pay VRI the applicable fees as specified on your order for the Services (the “Fees”). The Fees must be paid before VRI will grant you or your Users with access to the Service.

2.2. You shall, in addition to the Fees required for the Service, pay all applicable sales, use, transfer or other taxes and all duties, whether international, national, state or local, however designated, which are levied or imposed by reason of the transaction(s) contemplated hereby, and you authorize VRI to, at its option, invoice you for any such taxes that are due or may become due, excluding, however, income taxes on net profits which may be levied against VRI.

## **3. Initial Term; Renewal; Termination; Consequences of Termination.**

3.1. Term. Promptly following VRI’s receipt of the Fees, VRI shall activate your account and allow you to access the Services. Your access to the Services shall continue for one year from the date of activation (“Initial Term”).

3.2. Renewal. Upon expiration of the Initial Term or any renewal thereof, this Agreement will automatically terminate unless you renew your Subscription.

3.3. Termination by VRI. VRI may immediately suspend or terminate, in VRI’s sole discretion, this Agreement and the Service in the event that you (i) fail to pay the applicable Fees, or you or any User breaches any obligation, warranty, representation or covenant under this Agreement, which failure or breach is not cured within ten (10) days of receipt of written notice thereof.

3.4. Termination by You. You may terminate this Agreement for any reason or no reason upon written notice to VRI, in which event you shall not be entitled to any refund of Fees.

3.5. Consequences of Termination. Upon termination or expiration of this Agreement for any reason, the Subscription shall terminate, and you will be obligated to pay any and all Fees owed to VRI. Additionally, (i) all rights granted to you hereunder will immediately cease, and you and VRI will otherwise cooperate with each other to terminate relations in an orderly manner; (ii) each User shall have sole responsibility to print his/her report(s)

resulting from use of the Service and must do so prior to termination (reports will not be accessible following termination); and (iii) VRI or its third party hosting provider has the right to delete all of your Users and their data, and shall have no further responsibility or liability with respect to any User data. Other than as set forth in this Section 3.5, VRI shall have no further obligations to you upon termination.

#### **4. Operating Environment; Security.**

4.1. Hardware and Software. You are solely responsible for acquiring, installing, operating and maintaining the hardware and software environment necessary for you to access and use the Service.

4.2. Service Availability and Uptime; Data Security. VRI uses a third-party service provider to host the Service. Such third party is solely responsible for availability, uptime and security. The Service may be unavailable at times due to regular and unscheduled maintenance and due to events outside the reasonable control of VRI's service provider. As with any online service, despite the commercially reasonable efforts of VRI and its service provider to keep the Service and User data secure, the Service and User data may be vulnerable to unauthorized access.

4.3. Changes to Service. Upon reasonable notice to you, VRI may fix, upgrade, modify, change or enhance the Service and convert you to a new version thereof at any time in its sole discretion.

4.4. User IDs and Passwords. You and your Users are responsible for maintaining the confidentiality of your User IDs and passwords for access to the Service, and shall be fully responsible for all activities that occur under such User IDs and passwords. You agree to immediately notify VRI of any unauthorized use of User IDs or passwords or any other breach of security pertaining to the Service.

#### **5. Proprietary Rights.**

5.1. Ownership. The Service is and shall remain the sole and exclusive property of VRI, including, without limitation, all copyright, trademark, patent, trade secret, database and other intellectual property and proprietary rights inherent therein or appurtenant thereto. No title or proprietary rights to the Service are transferred to you hereby. VRI is the exclusive owner of all rights in any copy, translation, modification, adaptation or

derivation of the Service, including any improvement or developments thereof suggested by you or any Users.

5.2. User Data. Users own the personally identifiable data that Users enter or upload using the Service (collectively, "User Data"). VRI shall not use or disclose User Data except to the extent necessary to provide the Service and as set forth in the Privacy Policy accessible through the Service. All other data pertaining to the access and use of the Service is owned by VRI.

## **6. Warranties and Disclaimers.**

6.1. Lawful Use. You shall use the Service only for lawful purposes and in conformance with this Agreement. You and Users shall be solely responsible for compliance with all applicable laws, including without limitation export and import regulations. VRI at its sole discretion may, but has no obligation to, monitor any and all areas of the Service to oversee compliance with this Agreement, and you will inform Users that their use of the Service will constitute consent to such monitoring.

6.2. Limited Warranty. VRI represents and warrants to you that it will deliver the Service in a good and workmanlike manner. VRI does not warrant that the Service will meet all of your or the Users' requirements or that its operation will be uninterrupted or error free, or that any or all defects in the Service will be corrected. Except for VRI's obligation regarding Indemnification in Section 8, your sole and exclusive remedy for any breach of the foregoing warranty by VRI shall be a refund of any pre-paid Fees for which use of the Service has not yet occurred. This Limited Warranty does not extend to any claim resulting from your unauthorized modification of the Service or from use, combination, or incorporation of the Service in any manner for which it is not designed or permitted.

## **7. Disclaimer of Warranties.**

Except for the express limited warranties set forth above, licensee acknowledges that the service is provided hereunder with no warranty whatsoever. Licensee acknowledges that its and its users' use of the service is at licensee's own risk and that, as with all online services, the service and user data are vulnerable to unauthorized access by third parties. The service is provided solely on an "as-is" basis. VRI makes, and you receive, no warranties, express, implied, or otherwise. VRI expressly disclaims all implied and

statutory warranties and conditions of merchantability, satisfactory quality, fitness for a particular purpose, and noninfringement.

## **8. Indemnification.**

VRI Indemnification. VRI warrants that VRI has the right to grant you the Subscription to use the Service and, provided you are in compliance with the terms of this Agreement, VRI shall defend, indemnify and hold you harmless from and against any and all loss, cost, expense and liability (including reasonable attorneys' fees, costs and expenses) incurred in connection with any third party demands, assertions, claims, suits, action or other proceedings alleging that the Service infringes any third party's U.S. intellectual property rights. If any infringement or misappropriation claim with respect to your access to, or use of, the Service may be or has been asserted, VRI may, at its option and expense, (a) procure the right to continue accessing and using the Service, (b) replace or modify the Service to eliminate the infringement or misappropriation while providing functionally equivalent performance, or (c) terminate this Agreement and provide a refund of any pre-paid Fees for which use of the Services has not occurred. VRI will have no indemnity obligation to you if the infringement or misappropriation claim results from (a) a correction or modification to the Service not provided by VRI directly or through its authorized agents or subcontractors, (b) specifications or instructions provided by you, (c) User content, or (d) or from use, combination, or incorporation of the Service in any manner for which it is not designed or permitted. You acknowledge that this Section 8 states your exclusive remedy and VRI's sole liability in connection with any claim of infringement or misappropriation.

## **9. Limitation of Liability.**

In no event shall VRI be liable to anyone for any consequential, exemplary, special, indirect, incidental or punitive damages or lost revenue, lost profits or anticipated business (even if VRI has been advised of the possibility of such damages) arising from or relating to this agreement, the subject matter hereof or the service, including without limitation, damages arising from loss of user data, or any other damages, however caused, and under any theory of liability, including but not limited to tort (including negligence), contract (including fundamental breach) or otherwise. The aggregate liability of VRI for any other damages arising from or relating to this agreement, the subject matter hereof, or the service, however caused, under any theory of liability, shall not exceed the greater of one thousand dollars or a refund of any pre-paid fees for which use of the service has not occurred.

## **10. Miscellaneous.**

10.1. Relationship of the Parties. The relationship between VRI and you hereunder shall at all times be non-exclusive and that of independent contractors, and nothing contained herein shall render or constitute the parties joint venturers, partners or agents of each other. Neither VRI nor you shall hold itself out to third parties other than as set forth herein. Neither party shall have the right to execute any contract, or incur any obligation for which the other may be liable, or otherwise bind the other; nor, except as set forth herein, shall either party be liable for any representation, act or omission of the other. This Agreement is made for the sole benefit and protection of the parties hereto, and not for the benefit of any third party. No person or entity not a party to this Agreement shall have any right of action hereunder.

10.2. Assignment. You shall not assign, sublicense or transfer this Agreement or any of your rights hereunder to any third party without VRI's prior written consent, and any such attempted assignment, sublicense or transfer is hereby null and void. For purposes of the foregoing sentence, any change in control or merger shall constitute a prohibited assignment. VRI reserves the right to assign this Agreement, in whole or in part, at any time and in its sole discretion.

10.3. Modifications; Waiver. No modification or waiver by VRI of this Agreement or any part hereof shall be effective unless in signed writing. No waiver of any breach or condition of this Agreement by VRI shall be deemed to be a waiver of any other or subsequent breach or condition, whether of like or different nature.

10.4. Partial Invalidity. If any provision of this Agreement shall be held invalid or unenforceable by competent authority, such provision shall be construed so as to be limited or reduced to be enforceable to the maximum extent compatible with the law as it shall then appear. The total invalidity or unenforceability of any particular provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid or unenforceable provision were omitted.

10.5. Force Majeure. VRI shall not be liable for failure to perform hereunder due to the inability of you, any User, VRI or any other person to connect to the Internet, or any other failure or unavailability of the Service or Internet connectivity due to fiber optic cable cuts, interruption or failure of digital transmission links, hacker attacks, acts of God or nature, or any other cause beyond the control of VRI or its service providers.

10.6. Governing Law. This Agreement and all rights of the parties shall be governed by, and construed in accordance with, the laws of the Commonwealth of Pennsylvania pertaining to contracts made and to be wholly performed within such state, without taking into account conflicts of laws principles.

10.7. Jurisdiction and Venue. Any dispute arising out of or in connection with this Agreement, including any question regarding its existence, validity or termination, shall be referred to and finally resolved by arbitration under the American Arbitration Association in accordance with its Commercial Arbitration Rules (“Rules”), which Rules are deemed to be incorporated by reference into this Agreement. The number of arbitrators shall be one (1). The seat, or legal place, of arbitration shall be Philadelphia, PA, United States. The governing law of this Agreement for purposes of the arbitration shall be the substantive law of the Commonwealth of Pennsylvania, United States. Notwithstanding the foregoing, VRI shall be permitted, at its option, to bring any action in any court of equity or law, in any jurisdiction, to seek an injunction, seek damages or otherwise to protect VRI against irreparable injury with respect to its Confidential Information or intellectual property rights.

10.8. Injunctive Relief. You acknowledge that the Service comprises unique, confidential and valuable assets and trade secrets of VRI, and VRI shall have the right to obtain all equitable and legal redress which may be available to it for the breach or threatened breach of this Agreement or VRI’s rights in the Service, including, without limitation, injunctive relief.

10.9. Attorneys’ Fees and Costs. In any action brought by VRI under this Agreement, if VRI is the prevailing party, it shall be entitled to recover its actual costs and attorneys’ fees and all other litigation costs, including expert witness fees, as part of damages.

10.10. Entire Agreement; Amendments. This Agreement along with the payment terms on the order page contains the entire understanding between the parties hereto and supersedes any prior understanding, memoranda or other written or oral agreements between them respecting the within subject matter. This Agreement shall not be varied or amended unless such variation or amendment has been agreed in writing by the duly authorized representatives of each party.

10.11. Survival. Sections 1.3, 3.5, 4.4, 5.1, 5.2, 5.5, 6.1, 6.2, 7, 9 and 10 hereof shall survive the expiration or termination of this Agreement for any reason.

10.12. Notices. Any notice, request, demand, or other communication required or permitted to be given under this Agreement shall be in writing and will be delivered personally, or by mutually recognized overnight courier service, addressed as follows:

If to VRI:

Attention: Cal Schaerer, President  
Vocational Research Institute, LLC  
18221 Flower Hill Way, Suite D  
Gaithersburg, MD 20879

If to you:

your address as specified in your order.

Any notice so addressed and delivered personally or delivered by overnight courier service will be deemed given upon receipt. Either party may change its address by giving the other notice thereof in the manner provided in this Section.