

# Terms and Conditions

## TERMS OF USE

JobDiagnosis.com

Version Date: [Sep. 8, 2009]

## TERMS OF USE AGREEMENT

This Terms of Use Agreement ("Agreement") constitutes a legally binding agreement made between you ("you") and Array of Sites, Inc and its affiliated companies (collectively, "Company"), concerning your access to and use of the www.JobDiagnosis.com website ("Website"). The Website allows users to receive information on careers and career options and as well as promotional information on a variety of products and services ("Company Services").

All users who are minors in the jurisdiction in which they reside (generally under the age of 18) must have the permission of, and be directly supervised by, their parent or guardian to use the Website. If you are a minor, you must have your parent or guardian read and agree to this Agreement prior to you using the Website. Persons under the age of 13 are not permitted to register for the Website or use the Company Services.

By activating the confirmation process during the registration or visiting the Website, you acknowledge and agree that: (i) you will be enrolled in a free, ad-supported, Internet-based service; (ii) we may integrate advertising messages in with the presentation of the Website to you; (iii) you will receive delivery of email-based advertising content from JobDiagnosis.com and/or third parties as an integral part of your registration to the Website and will also receive telemarketing calls and direct mail from Company and/or third parties; and (iv) you have read, understood and agree to this Agreement in its entirety.

If you do not agree to abide by this Agreement, or to modifications that Company may make to this Agreement in the future, do not use or access or continue to use or access the Company Services or the Website.

## USER REPRESENTATIONS

By using the Company Services, you represent and warrant that:

- all information you submit is truthful and accurate;
- you will maintain the accuracy of such information;
- you will keep your password, if applicable, confidential and will be responsible for all use of your password and account;
- you are not a minor in the jurisdiction in which you reside, or if a minor, you have received parental permission to use this Website; and
- your use of the Company Services does not violate any applicable law or regulation.

## SUBMISSIONS

You acknowledge and agree that any questions, comments, suggestions, ideas, feedback or other information about the Website or the Company Services ("Submissions") provided by you to Company are non-confidential and Company (as well as any designee of Company) shall be entitled to the unrestricted use and dissemination of these Submissions for any purpose, commercial or otherwise, without acknowledgment or compensation to you.

## PROHIBITED ACTIVITIES

You may not access or use the Website for any other purpose other than that for which Company makes it available. The Website is for the personal use of users only and may not be used in connection with any commercial endeavors except those that are specifically endorsed or approved by Company. Certain activities, even if legal, may violate the common rules of etiquette, as determined by Company in Company's sole discretion. Prohibited activity includes, but is not limited to:

- engaging in unauthorized framing of or linking to the Website;
- deciphering, decompiling, disassembling or reverse engineering any of the software comprising or in any way making up a part of the Website;
- interfering with, disrupting, or creating an undue burden on the Website or the networks or services connected to the Website;
- engaging in any automated use of the system, such as using any data mining, robots or similar data gathering and extraction tools;
- systematic retrieval of data or other content from the Website to create or compile, directly or indirectly, a collection, compilation, database or directory without written permission from Company;
- attempting to bypass any measures of the Website designed to prevent or restrict access to the Website, or any portion of the Website;
- using the Company Service as part of any effort to compete with Company;
- harassing, annoying, intimidating or threatening any Company employees or agents engaged in providing any portion of the Company Services to you;
- deleting the copyright or other proprietary rights notice from any Company Content; and
- using the Website in a manner inconsistent with any and all applicable laws and regulations.

#### Non-commercial Use by Users

The Website is for the personal use of individual users only and may not be used in connection with any commercial endeavors. Organizations, companies, and/or businesses may not become users and should not use the Service or the Website for any purpose. Illegal and/or unauthorized uses of the Website, including collecting usernames and/or email addresses of users by electronic or other means for the purpose of sending unsolicited email and unauthorized framing of or linking to the Website may be investigated, and appropriate legal action will be taken, including without limitation, civil, criminal, and injunctive redress.

#### INTELLECTUAL PROPERTY RIGHTS

The content on the Website ("Company Content") and the trademarks, service marks and logos contained therein ("Marks") are owned by or licensed to Company, subject to copyright and other intellectual property rights under United States and foreign laws and international conventions. Company Content, includes, without limitation, all source code, databases, functionality, software, website designs, text and graphics. All Company graphics, logos, designs, page headers, button icons, scripts and service names are registered trademarks, trademarks or trade dress of Company in the U.S. and/or other countries. Company's trademarks and trade dress may not be used, including as part of trademarks and/or as part of domain names, in connection with any product or service in any manner that is likely to cause confusion and may not be copied, imitated, or used, in whole or in part, without the prior written permission of the Company. Company Content on the Website is provided to you "AS IS" for your information and personal use only and may not be used, copied, reproduced, distributed, transmitted, broadcast, displayed, sold, licensed, or otherwise exploited for any other purposes whatsoever without the prior written consent of the respective owners. Systematic retrieval of data or other content from the Website to create or compile, directly or indirectly, a collection, compilation, database or directory without written permission from Company is prohibited. Provided that you are eligible to use the Website, you are granted a limited license to access and use the Website and the Company Content and to download or print a copy of any portion of the Company Content to which you have properly gained access solely for your personal, non-commercial use. Company reserves all rights not expressly granted to you in and to the Website and Company Content and Marks. If you download or print a copy of the Company Content for personal use, you must retain all copyright and other proprietary notices contained therein. You agree not to circumvent, disable or otherwise interfere with security related features of the Website or features that prevent or restrict use or copying of any Company Content or enforce limitations on use of the Website or the Company Content therein.

## THIRD PARTY WEBSITES AND CONTENT

The Website contains (or you may be sent through the Website or the Company Service) links to other websites ("Third Party Websites") as well as articles, photographs, text, graphics, pictures, designs, music, sound, video, information, applications, software and other content or items belonging to or originating from third parties (the "Third Party Content"). Such Third Party Websites and Third Party Content are not investigated, monitored or checked for accuracy, appropriateness, or completeness by us, and we are not responsible for any Third Party Websites accessed through the Website or any Third Party Content posted on, available through or installed from the Website, including the content, accuracy, offensiveness, opinions, reliability, privacy practices or other policies of or contained in the Third Party Websites or the Third Party Content. Inclusion of, linking to or permitting the use or installation of any Third Party Website or any Third Party Content does not imply approval or endorsement thereof by us. If you decide to leave the Website and access the Third Party Websites or to use or install any Third Party Content, you do so at your own risk and you should be aware that our terms and policies no longer govern. You should review the applicable terms and policies, including privacy and data gathering practices, of any website to which you navigate from the Website or relating to any applications you use or install from the website.

## SITE MANAGEMENT

Company reserves the right but does not have the obligation to:

- monitor the Website for violations of this Agreement;
- take appropriate legal action against anyone who, in Company's sole discretion, violates this Agreement, including without limitation, reporting you to law enforcement authorities; and
- otherwise manage the Website in a manner designed to protect the rights and property of Company and others and to facilitate the proper functioning of the Website.

## PRIVACY

We care about the privacy of our users. Please review the Company Privacy Policy. By using the Website or the Company Services, you are consenting to have your personal data transferred to and processed in the United States. By using the Website or the Company Services, you are consenting to the terms of Privacy Policy.

## PROVISIONS FOR ADVERTISERS

You can target specific audiences by buying ads on the Website. These additional terms apply to you if you place an order for ads on the Website ("Order"). When you place an Order, you will tell us the type of advertising you want to buy, the amount you want to spend, and your bid, if applicable. If we accept your Order, we will deliver your ads as inventory becomes available. You will pay for your Orders in accordance with our payment terms in effect at the time of your Order. The amount you owe will be calculated based on our tracking mechanisms. Your ads must comply with our advertisement guidelines in effect at the time of your Order. Unless otherwise agreed with us, we will determine the size, placement, and positioning of your ads. We do not guarantee the activity that your ads will receive, such as the number of clicks you will get. We cannot control how people interact with your ads, and are not responsible for click fraud or other improper actions that affect the cost of running ads. You will not offer any contest or sweepstakes without our prior written consent. If we consent, you take full responsibility for the contest or sweepstakes, and will follow our applicable guidelines in effect at the time of the Order and all applicable laws. You can cancel your Order at any time through our online portal, but it may take several days before the ad stops running, during which period the applicable charges will continue to accrue. Please contact us for information on the current expected lag time from early termination to cessation of an ad running. Our license to run your ad will end when we have completed your Order. You understand, however, that if users have interacted with your ads, your ads may remain until the users delete it. We can use your ads and related information for marketing or promotional purposes. You will not issue any press release or make public statements about your relationship with Company without written permission. We may reject or remove any ad for any reason. If you are placing ads on someone else's behalf, you warrant that you have permission to place the ads and you will be primarily responsible for the payment due for such ads. Additionally, if you fail to make any such payments, we may seek payment directly from the advertiser. You and the advertiser, jointly and severally, agree to defend, indemnify and hold harmless Company from and against any claims, actions, proceedings, liabilities, costs, expenses (including attorneys' fees) and damages arising from or relating to any ads you place on the Website. You

warrant that you have the legal authority to bind the advertiser to this provision. You agree that if the advertiser you represent violates this provision, we may hold you responsible for that violation.

#### TERM AND TERMINATION

This Agreement shall remain in full force and effect while you use the Website or are otherwise a user of the Website.

WITHOUT LIMITING ANY OTHER PROVISION OF THIS AGREEMENT, COMPANY RESERVES THE RIGHT TO, IN COMPANY'S SOLE DISCRETION AND WITHOUT NOTICE OR LIABILITY DENY, ACCESS TO AND USE OF THE WEBSITE TO, ANY PERSON FOR ANY REASON OR FOR NO REASON AT ALL, INCLUDING WITHOUT LIMITATION FOR BREACH OF ANY REPRESENTATION, WARRANTY OR COVENANT CONTAINED IN THIS AGREEMENT, OR OF ANY APPLICABLE LAW OR REGULATION, AND COMPANY MAY TERMINATE YOUR USE OR PARTICIPATION IN THE WEBSITE, DELETE YOUR PROFILE IF APPLICABLE) AND ANY CONTENT OR INFORMATION THAT YOU HAVE POSTED AT ANY TIME, WITHOUT WARNING, IN COMPANY'S SOLE DISCRETION.

In order to protect the integrity of the Company Services, Company reserves the right at any time in its sole discretion to block certain IP addresses from accessing the Company Services.

Any provisions of this Agreement that, in order to fulfill the purposes of such provisions, need to survive the termination or expiration of this Agreement, shall be deemed to survive for as long as necessary to fulfill such purposes.

#### MODIFICATIONS

##### To Agreement

Company may modify this Agreement from time to time. Any and all changes to this Agreement will be reflected on the Website and revisions will be indicated by date. You agree to be bound to any changes to this Agreement when you use the Company Services after any such modification is posted on the Website. Company may also, in its discretion, choose to alert all users with whom it maintains email information of such modifications by means of an email to their most recently provided email address. It is therefore important that you regularly review this Agreement and keep your contact information current to ensure you are informed of changes. Modifications to this Agreement shall be effective when posted but shall not apply retroactively. Additionally, modifications made to this Agreement applicable to dispute resolution shall not apply to disputes arising prior to the effective date of the modification.

##### To Services

Company reserves the right at any time to modify or discontinue, temporarily or permanently, the Company Services (or any part thereof) with or without notice. You agree that Company shall not be liable to you or to any third party for any modification, suspension or discontinuance of the Company Services.

#### DISPUTES

All questions of law, rights, and remedies regarding any act, event or occurrence undertaken pursuant or relating to this Website or the Company Services shall be governed and construed by the law of the State of New York, excluding such state's conflicts of law rules. Any legal action of whatever nature by or against the Company arising out of or related in any respect to this Website and the Company Services shall be brought solely in either the applicable federal or state courts located in or with jurisdiction over New York County, New York; subject, however, to the right of the Company, at the Company's sole discretion, to bring an action to seek injunctive relief to enforce this Agreement or to stop or prevent an infringement of proprietary or other third party rights (or any similar cause of action) in any applicable court in any jurisdiction where jurisdiction exists with regard to a user. You hereby consent to (and waive any challenge or objection to) personal jurisdiction and venue in the above-referenced courts. Application of the United Nations Convention on Contracts for the International Sale of Goods is excluded from this Agreement. Additionally, application of the Uniform Computer Information Transaction Act (UCITA) is excluded from this Agreement. In no event shall any claim, action or proceeding by you related in any way to the Website and/or the Company Service (including your visit to or use of the

Website and/or the Company Service) be instituted more than three (3) years after the cause of action arose.

## CORRECTIONS

Occasionally there may be information on the Website that contains typographical errors, inaccuracies or omissions that may relate to service descriptions, pricing, availability, and various other information. Company reserves the right to correct any errors, inaccuracies or omissions and to change or update the information at any time, without prior notice.

## DISCLAIMERS

YOU AGREE THAT YOUR USE OF THE WEBSITE AND COMPANY SERVICES WILL BE AT YOUR SOLE RISK. TO THE FULLEST EXTENT PERMITTED BY LAW, COMPANY, ITS OFFICERS, DIRECTORS, EMPLOYEES, AND AGENTS DISCLAIM ALL WARRANTIES, EXPRESS OR IMPLIED, IN CONNECTION WITH THE WEBSITE AND THE COMPANY SERVICES AND YOUR USE THEREOF, INCLUDING, WITHOUT LIMITATION, THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT. COMPANY MAKES NO WARRANTIES OR REPRESENTATIONS ABOUT THE ACCURACY OR COMPLETENESS OF THE WEBSITE'S CONTENT OR THE CONTENT OF ANY WEBSITES LINKED TO THIS WEBSITE AND ASSUMES NO LIABILITY OR RESPONSIBILITY FOR ANY (A) ERRORS, MISTAKES, OR INACCURACIES OF CONTENT AND MATERIALS, (B) PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM YOUR ACCESS TO AND USE OF OUR WEBSITE, (C) ANY UNAUTHORIZED ACCESS TO OR USE OF OUR SECURE SERVERS AND/OR ANY AND ALL PERSONAL INFORMATION AND/OR FINANCIAL INFORMATION STORED THEREIN, (D) ANY INTERRUPTION OR CESSATION OF TRANSMISSION TO OR FROM THE WEBSITE, (E) ANY BUGS, VIRUSES, TROJAN HORSES, OR THE LIKE WHICH MAY BE TRANSMITTED TO OR THROUGH THE WEBSITE BY ANY THIRD PARTY, AND/OR (F) ANY ERRORS OR OMISSIONS IN ANY CONTENT AND MATERIALS OR FOR ANY LOSS OR DAMAGE OF ANY KIND INCURRED AS A RESULT OF THE USE OF ANY CONTENT POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE VIA THE WEBSITE. COMPANY DOES NOT WARRANT, ENDORSE, GUARANTEE, OR ASSUME RESPONSIBILITY FOR ANY PRODUCT OR SERVICE ADVERTISED OR OFFERED BY A THIRD PARTY THROUGH THE WEBSITE OR ANY HYPERLINKED WEBSITE OR FEATURED IN ANY BANNER OR OTHER ADVERTISING, AND COMPANY WILL NOT BE A PARTY TO OR IN ANY WAY BE RESPONSIBLE FOR MONITORING ANY TRANSACTION BETWEEN YOU AND THIRD-PARTY PROVIDERS OF PRODUCTS OR SERVICES. AS WITH THE PURCHASE OF A PRODUCT OR SERVICE THROUGH ANY MEDIUM OR IN ANY ENVIRONMENT, YOU SHOULD USE YOUR BEST JUDGMENT AND EXERCISE CAUTION WHERE APPROPRIATE.

The Company reserves the right to change any and all content, software and other items used or contained in the Website and any Company Services offered through the Website at any time without notice.

## LIMITATIONS OF LIABILITY

IN NO EVENT SHALL COMPANY OR ITS DIRECTORS, EMPLOYEES, OR AGENTS BE LIABLE TO YOU OR ANY THIRD PARTY FOR ANY INDIRECT, CONSEQUENTIAL, EXEMPLARY, INCIDENTAL, SPECIAL OR PUNITIVE DAMAGES, INCLUDING LOST PROFIT DAMAGES ARISING FROM YOUR USE OF THE WEBSITE OR COMPANY SERVICES, EVEN IF COMPANY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, COMPANY'S LIABILITY TO YOU FOR ANY CAUSE WHATSOEVER AND REGARDLESS OF THE FORM OF THE ACTION, WILL AT ALL TIMES BE LIMITED TO THE AMOUNT PAID, IF ANY, BY YOU TO COMPANY FOR THE COMPANY SERVICES DURING THE PERIOD OF 12 MONTHS PRIOR TO ANY CAUSE OF ACTION ARISING, BUT IN NO EVENT SHALL SUCH AMOUNT BE LESS THAN \$100.

CERTAIN STATE LAWS DO NOT ALLOW LIMITATIONS ON IMPLIED WARRANTIES OR THE EXCLUSION OR LIMITATION OF CERTAIN DAMAGES. IF THESE LAWS APPLY TO YOU, SOME OR ALL OF THE ABOVE DISCLAIMERS OR LIMITATIONS MAY NOT APPLY TO YOU, AND YOU MAY HAVE ADDITIONAL RIGHTS.

IF YOU ARE A CALIFORNIA RESIDENT, YOU WAIVE CALIFORNIA CIVIL CODE SECTION 1542, WHICH SAYS: "A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS WHICH THE CREDITOR DOES NOT KNOW OR SUSPECT TO EXIST IN HIS FAVOR AT THE TIME OF EXECUTING THE RELEASE, WHICH, IF KNOWN BY HIM MUST HAVE MATERIALLY AFFECTED HIS SETTLEMENT WITH THE DEBTOR."

## INDEMNITY

You agree to defend, indemnify and hold Company, its subsidiaries, and affiliates, and their respective officers, agents, partners and employees, harmless from and against, any loss, damage, liability, claim, or demand, including reasonable attorneys' fees and expenses, made by any third party due to or arising out of your use of the Company Services in violation of this Agreement and/or arising from a breach of this Agreement and/or any breach of your representations and warranties set forth above. Notwithstanding the foregoing, Company reserves the right, at your expense, to assume the exclusive defense and control of any matter for which you are required to indemnify Company, and you agree to cooperate, at your expense, with Company's defense of such claims. Company will use reasonable efforts to notify you of any such claim, action, or proceeding which is subject to this indemnification upon becoming aware of it.

## SWEEPSTAKES

From time to time, Company may conduct sweepstakes that entitle the winners to prizes. Each sweepstakes has its own terms and conditions, set forth in the "official rules" for that sweepstakes.

## NOTICES

Except as explicitly stated otherwise, any notices given to Company shall be given by email to support@JobDiagnosis.com. Any notices given to you shall be given to the email address you provided during the registration process, or such other address as each party may specify. Notice shall be deemed to be given 24 hours after the email is sent, unless the sending party is notified that the email address is invalid. We may also choose to send notices by email, regular mail or discussion forum postings.

## U.S. EXPORT CONTROLS

Software from this Website (the "Software") is further subject to United States export controls. No Software may be downloaded from the Website or otherwise exported or re-exported (i) into (or to a national or resident of) Cuba, Iraq, Libya, North Korea, Iran, Syria, or any other Country to which the U.S. has embargoed goods; or (ii) to anyone on the U.S. Treasury Department's list of Specially Designated Nationals or the U.S. Commerce Department's Table of Deny Orders. By downloading or using the Software, you represent and warrant that you are not located in, under the control of, or a national or resident of any such country or on any such list.

## MISCELLANEOUS

This Agreement constitutes the entire agreement between you and Company regarding the use of the Company Services. The failure of Company to exercise or enforce any right or provision of this Agreement shall not operate as a waiver of such right or provision. The section titles in this Agreement are for convenience only and have no legal or contractual effect. This Agreement operates to the fullest extent permissible by law. This Agreement and your account may not be assigned by you without our express written consent. Company may assign any or all of its rights and obligations to others at any time. If any provision or part of a provision of this Agreement is unlawful, void or unenforceable, that provision or part of the provision is deemed severable from this Agreement and does not affect the validity and enforceability of any remaining provisions.

## CONTACT US

In order to resolve a complaint regarding the Company Services or to receive further information regarding use of the Company Services, please contact Company as set forth below or, if any complaint with us is not satisfactorily resolved, and you are a California resident, you can contact the Complaint Assistance Unit of the Division of Consumer Services of the Department of Consumer Affairs in writing at 400 "R" Street, Sacramento, California 95814 or by telephone at 1-916-445-1254.

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