



McCann Associates Software Service End-User Subscription Agreement (EUSA)

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III. MODIFICATIONS TO SERVICES AND TERMS AND CONDITIONS OF USE

McCann may at any time make modifications, changes, revisions, maintenance updates, enhancements and alterations to services or this User Services Agreement, without prior notice. Subscribers are responsible for regularly reviewing this Agreement. Your continued use of Services following any modifications, changes, revisions, maintenance updates, enhancements, and alterations shall constitute your acceptance of each modification, change, alteration and the like.

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Domestic and Foreign Intellectual Property statutes, treaties, conventions, protocols and agreements, including copyright laws (collectively “Intellectual Property law”) protect Software as a Service (“SaaS”). SaaS is accessed exclusively on a subscription basis, it is not sold; SaaS is not a ‘product’ it is a pure service. As a subscriber, you acknowledge, assent to and agree to abide by all Intellectual Property law pertaining to and protecting Measured Success. You must hold a valid subscription, which we assign to you, in order to use Measured Success.

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VI. SUBSCRIPTION GRANT AND OTHER TERMS OF USE

Upon your acceptance as an end-user/subscriber, McCann grants to you a non-exclusive, non-transferable, limited authority to access and use Services on a individual subscription basis which may sometimes be accessed on online by use of a special username and password ("**entry key**") to be issued by McCann and that shall be used only for purposes consistent with this Agreement and the pedagogic or other business nature and objectives for which Services were developed and procured. The entry key is McCann confidential information as defined within this Agreement and should not be used for any purpose inconsistent with the terms and conditions of this Agreement or the technology itself. A subscription does not grant you any rights to use McCann proprietary interfaces and other intellectual property in the design, development, manufacture, licensing or distribution of third party products, applications, devices, materials and accessories for use with SaaS or other McCann technologies. Some of those rights may be available under a separate agreement from McCann Associates. For more information, please contact McCann Associates.

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VII. TERMINATION

Without prejudice to any other rights, we may terminate this subscription if Subscriber breaches or fails to comply with any term or condition of this Agreement or associated collateral agreement. In such event, Subscriber shall immediately cease and desist from further use of any materials or documentation connected with Services and shall destroy and/or return, within the exclusive option of McCann, all related or connected documentation or materials. Upon request of McCann, terminated subscribers must provide a written statement acknowledging discontinued use of Services and documentation. Upon request of McCann, terminated subscribers shall provide McCann with a sworn verification as to subscriber's discontinued use of Services and return or destruction of such related documentation or materials.

VIII. CONFIDENTIAL INFORMATION

For purposes of this Agreement, confidential information shall include: the entry key used exclusively by a single assigned end-user and all materials or documentation relating to or used in conjunction with the Service. Subscribers shall not use, disclose or otherwise disseminate to any other person or entity any Confidential Information or any copy or summary of any Confidential Information. Subscribers shall not remove or duplicate any Confidential Information or participate in any way in the removal or duplication of any Confidential Information without McCann's prior written consent specifically to do the same. In the event that any party or its representatives is requested or required (by oral questions, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) to disclose any information supplied to such party in the course of its dealings with the other party or its

representative, it is agreed that such party will provide prompt notice of such request or requirement to McCann so that McCann may seek an appropriate protective order and/or by mutual agreement waive compliance with any contrary provisions of this Agreement. Upon the termination of this Agreement, at McCann's discretion, subscribers shall destroy or return promptly to McCann: (i) all copies thereof made; and (ii) all portions of all compilations, studies, notes, analyses and memoranda prepared in connection with the examination thereof or derived therefrom that contain or reflect any Confidential Information. Upon request of McCann, subscribers shall provide McCann with a sworn verification as to the return or destruction of such Confidential Information.

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X. LIMITS OF OUR LIABILITY

McCann Associates will select the test questions in a job advancement assessment based on the job analysis we conducted for you, or on the test plan you approved. Our responsibility for the content of the tests, which we prepare for you, is limited to demonstrating that the questions in the test are, in fact, directly related to the test plan.

The "validity" of any test depends, among other things, on its application. No test is "valid" by itself or in the abstract. For any particular application, a test's validity can be affected by a number of factors, such as alternative tests, the prevailing concept of test "fairness," the manner in which the test is used in the selection procedure, and court and enforcement agency interpretations of applicable laws and other governing standards.

Accordingly, McCann Associates does not and cannot represent or warrant that a test is or will always be found valid or in compliance with applicable laws, regulations, guidelines, or other governing standards, and McCann Associates will not be liable or responsible for any damages or consequences that result from the use of one of our pre-employment (entry-level) or job advancement (promotional) assessments.

If an enforcement agency challenges a test, McCann Associates, without assuming any liability, will make our staff available to you to provide information about the test development and the validation process, to prepare exhibits and/or testimony, and will provide any other defense assistance, of which we are capable, to the extent that you may wish us to provide these services.

If you authorize us to provide these additional services, or if we are subpoenaed to testify, we will charge for the time our staff expended on these services, at our established billing rates current at the time of the service, together with toll calls, shipping, reproduction, living and transportation expenses as may be necessary.

UNDER NO CIRCUMSTANCES SHALL MCCANN'S LIABILITY TO THE SUBSCRIBER HEREUNDER INCLUDE, NOR SHALL MCCANN BE LIABLE FOR, ANY CLAIM OR DEMAND AGAINST MCCANN BY A THIRD PARTY, EXCEPT AS SPECIFIED IN ABOVE, OR FOR COSTS OF PROCUREMENT OF SUBSTITUTE GOODS OR PRODUCTS OR ANY SPECIAL, INDIRECT, INCIDENTAL, CONSEQUENTIAL, TORT OR COVER DAMAGES HOWEVER CAUSED, INCLUDING, WITHOUT LIMITATION, DAMAGES RESULTING FROM NEGLIGENCE OR FROM DELAY OF DELIVERY OR FROM LOSS OF DATA, BUSINESS OR GOODWILL, WHETHER OR NOT SUBSCRIBER HAS BEEN ADVISED OR IS AWARE OF THE POSSIBILITY OF SUCH DAMAGES.

XI. ASSIGNMENT

This Agreement and the subscription granted hereunder may not be assigned, licensed, transferred or otherwise alienated by subscriber to any other party.

XII. FEES

Use of Subscription Services is subject to current and seasonable payment of applicable participation and/or special fees, if any, by Subscriber. Failure to comply with payment terms in consideration of continued and valid subscription use shall be grounds for suspension, revocation or termination of subscriber's access to Subscription Services.

XIII. GOVERNING LAW

The validity, interpretation and performance of this Agreement shall be governed by the laws of the Commonwealth of Pennsylvania. Should any provision of this Agreement be determined by the courts to be illegal or in conflict with any law of the Commonwealth of Pennsylvania, the validity of the remaining provisions shall not be impaired. All disputes which arise in connection with this Agreement or any claimed breach thereof, shall be resolved, if not sooner settled, by litigation only in the Courts of Bucks County, Pennsylvania (or the Federal Court otherwise having territorial jurisdiction over such County and subject matter jurisdiction over the dispute), and not elsewhere, subject only to the authority of the Court in question to order changes of venue. Each party waives the personal service of any and all process upon it, and agrees that all such service or process may be made by certified or registered mail, return receipt requested, addressed to the other.

XIV. OTHER

This Agreement constitutes the entire understanding between McCann and the Subscriber with respect to the subject matter hereof and supersedes any prior agreements, understandings, negotiations or offers between them. Any modification or amendment of the terms of this Agreement shall not be binding upon either party unless such amendment or modification is in a written form signed by an authorized representative of each party. McCann reserves the right to use the name and other identification of any client school in its advertising, marketing and other public statements.

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