

## SkillSurvey Inc. Credential OnDemand Terms of Use

THESE TERMS OF USE ("AGREEMENT") ARE A BINDING AGREEMENT BETWEEN SKILLSURVEY, INC. ("COMPANY") AND THE PERSON OR ENTITY ORDERING COMPANY'S CREDENTIAL ONDEMAND® TOOLS ("SUBSCRIBER" OR "YOU"), AND GOVERNS THE PROVISION AND USE OF SUCH PRODUCTS.

BY AGREEING TO AN ORDER FORM (AS DEFINED IN SECTION 1 BELOW) THAT REFERENCES THIS AGREEMENT, SUBSCRIBER AGREES TO THE TERMS OF THIS AGREEMENT. IF THE PERSON ACCEPTING THIS AGREEMENT IS ENTERING INTO IT ON BEHALF OF A COMPANY OR OTHER LEGAL ENTITY, SUCH PERSON REPRESENTS AND WARRANTS THAT HE OR SHE HAS THE AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERM "SUBSCRIBER" SHALL REFER TO SUCH ENTITY. IF YOU DO NOT HAVE SUCH AUTHORITY OR DO NOT AGREE WITH THIS AGREEMENT, YOU MAY NOT USE THE PRODUCTS.

This Agreement was last updated on March 24, 2016. It is effective between Subscriber and the Company as of the date of Subscriber's accepting this Agreement (the "Effective Date").

**1. Definitions.** As used in this Agreement, the following terms shall have the following meanings:

**1.1 "Company Materials"** shall mean the Company's Credential OnDemand® tools, software, technologies, processes, systems, platforms, techniques, algorithms, source code, object code, materials, equipment, templates, programs, report formats, report structures, inputs and outputs, methodologies and technical information, know-how or other materials and the intellectual property rights therein including, but not limited to, any modifications, customizations, improvements, enhancements or derivative works of or to the foregoing.

**1.2 "Order Form"** shall mean any written or electronic document mutually agreed to by the Company and Subscriber (including by exchange of emails) for the provision of Products by the Company to Subscriber. Order Forms shall be deemed incorporated herein by reference.

**1.3 "Products"** shall mean those Company proprietary web-based (including through any mobile app offered by Company or through an application programming interface) Credential OnDemand® tools licensed by Subscriber as set forth in one or more Order Forms, as well as any updates, modifications, customizations or improvements thereto as the Company may provide to Subscriber from time to time.

**1.4 "User"** shall mean Subscriber's employees, independent contractors and/or agents who use any of the Products.

### **2. License; Products; Subscriber Materials.**

**2.1 License; Products.** The Company hereby grants Subscriber a limited, non-exclusive, non-transferable and non-sublicensable (except in connection with a permitted assignment of this Agreement) license to use the Products during the license term set forth in the relevant Order Form(s) and solely in accordance with the terms of the Agreement, including the relevant Order Form(s). The Products are distributed and hosted electronically over the internet through a password-protected website.

**2.2 License to Subscriber Materials.** By executing this Agreement, Subscriber gives the Company a royalty-free, worldwide, non-exclusive, non-transferable (except in connection with a permitted assignment of this Agreement), non-sublicensable (except to authorized contractors and resellers as the Company deems necessary to provide the Products), limited license to use, reproduce, modify, transmit, distribute and display Subscriber's content and materials, as provided to the Company, in connection with the provision of the Products. Except for the limited rights expressly granted in this Agreement, Subscriber reserves all right, title and interest (including all intellectual property rights) in and to its content and materials.

**2.3 Changes to Products.** The Company may, at its sole discretion, modify, enhance and/or expand the features of a Product from time to time at no additional cost to Subscriber. The Company may also, from time to time, make available additional features and/or functionalities to a Product which may, but are not required to, be added to a Product by Subscriber at an additional cost ("Cost Feature"). If Subscriber elects to add a Cost Feature, it may do so by contacting its local Company sales representative or the Company directly at [sales@skillsurvey.com](mailto:sales@skillsurvey.com) in order to receive a quote for the Cost Feature.

### **3. Fees and Payment.**

**3.1 Fees.** Subscriber shall pay all fees specified in the Order Form(s) hereunder. Except as otherwise specified in an Order Form, (a) fees are quoted and payable in United States dollars, and (b) payment obligations are non-cancelable and fees paid are non-refundable. All Products are accepted upon delivery by the Company.

**3.2 Fee Adjustments.** The Company may, upon at least thirty (30) days prior written notice and effective after the Initial Term, adjust the fees paid by Subscriber for the Products during any Renewal Term, provided that Subscriber shall have the option, within fifteen (15) days of receiving such notice from the Company, to either (a) modify the quantity or type of Products utilized by Subscriber by a mutual written amendment between the parties, or (b) terminate the affected Order Forms upon written notice, either of which will become effective at the beginning of the next term.

**3.3 Payment.** Invoices for the Products are due in accordance with the payment terms set forth on the Order Form. The Company reserves the right to charge interest at the lower of one and one-half percent (1.5%) per month or the highest rate permitted by law on any monthly payment not received when due. The Company may, without limiting its other rights and remedies, suspend the Products if Subscriber's payment of fees is ten (10) or more business days delinquent or delinquent more than twice during a six (6) month period. Suspension of Products shall continue until outstanding fees are paid in full. The Company is entitled to recover any reasonable sums expended in connection with the collection of sums not paid when due, including reasonable attorneys' fees and collection agency fees.

**3.4 Taxes.** Subscriber shall pay all taxes (exclusive of taxes based on the net income of the Company), levies, or charges imposed by any governmental authority of any kind whatsoever applicable to any of the materials, goods, Products or related components provided by the Company to Subscriber.

#### **4. Term and Termination.**

**4.1 Term of the Agreement.** This Agreement commences on the Effective Date and shall continue until the End Date as stipulated on the Order Form (the "Initial Term"). Thereafter, this Agreement shall automatically renew for consecutive one (1) year terms (each a "Renewal Term") unless either party provides the other party with written notice of termination no less than ninety (90) days prior to the expiration of the then current term. An Order Form may specify a different license term for Products, and any such term shall apply to the use of those Products.

**4.2 Termination for Cause.** The Company may terminate this Agreement and all Order Forms (a) upon thirty (30) days written notice to the Subscriber of a material breach if such breach remains uncured at the expiration of such period, or (b) if the Subscriber becomes the subject of a petition in bankruptcy or any other proceeding relating to insolvency, receivership, liquidation or assignment for the benefit of creditors. The Subscriber may terminate a respective Order Form upon thirty (30) days written notice to the Company of a material breach of such Order Form if such breach remains uncured at the expiration of such period.

**4.3 Effect of Termination.** Upon the termination of this Agreement, all licenses and Products hereunder shall automatically terminate. In no event shall any termination relieve Subscriber of the obligation to pay any fees payable to the Company for the period prior to the effective date of termination. Upon termination of this Agreement, each party shall remove all displays and references to the other party's trademarks, service marks and other proprietary indicia licensed pursuant to Section 11.6 hereof.

**4.4 Surviving Provisions.** Sections 1, 3, 4, 5, 6, 7, 8, 9, 10 and 11 shall survive any termination or expiration of this Agreement, along with any provisions of this Agreement concerning ownership rights.

#### **5. Subscriber Obligations and Agreements.**

**5.1 General.** Subscriber (a) shall comply with all applicable local, state, federal and foreign laws, statutes, rules and regulations in how Subscriber uses the Products and otherwise including, but not limited to, all federal and state equal opportunity laws and regulations, (b) will use the Products for Subscriber's exclusive use only and for employment, development, or selection purposes only (and, except as provided in Section 5.2, not as a screener for a third party), and the information should not be disclosed except as may be required by law, (c) shall not resell the information provided by the Products to any other entity without the express written permission of an authorized officer of the Company or except as otherwise expressly provided for herein, (d) shall assume responsibility for all communications carried out and facilitated by Subscriber, its Users, its customers, physician candidates, vendors and references over the Products, and understands that the Company will in no way edit, view or facilitate such communication, (e) shall base employment decisions and employee developmental decisions or actions on Subscriber's lawful policies and procedures, (f) understands that any information generated through the Products is not an assessment or evaluation of any physician candidate, and further understands that the Company is not assembling or evaluating information about any physician candidate, and is not providing any opinions regarding information generated through the Products, (g) understands that Company is not verifying, and is not required or obligated to verify, any of such information as it pertains to Subscriber's physician candidate, that Company is not responsible or liable for any changes made by Subscriber or its Users to the information generated by the Product, and (h) represents, warrants and covenants that it has established and maintained, and shall continue to maintain during the term of this Agreement, a credentialing system that meets or exceeds the standards established by a nationally recognized accrediting body (e.g., The Joint Commission or the National Committee for Quality Assurance).

**5.2 FCRA and Similar State and Local Laws.** If Subscriber is a Credentialing Verification Organization, Subscriber represents and warrants that it (a) is a consumer reporting agency ("CRA") as defined by the Fair Credit Reporting Act ("FCRA"), (b) complies with all obligations imposed upon a CRA by the FCRA and/or similar state and local laws, rules, codes, statutes and regulations (including, but not limited to, federal or state agency regulations enacted pursuant to the foregoing), and (c) complies with any other applicable obligations imposed upon it by the FCRA and/or similar state and local laws, rules, codes, statutes and regulations (including, but not limited to, federal or state agency regulations enacted pursuant to the foregoing). Subscriber further represents and warrants that it will electronically or in a physical writing (a) make all legally required disclosures to, and obtain written authorization from, the subject of any credentialing verification that permits Subscriber to obtain and verify from the candidate's designated business and professional job references such information about the candidate's background, qualifications, prior employment and other information for employment as Subscriber's customer deems necessary, and to provide such information to Subscriber's customer.

**5.3 Enforcement.** As between the Company and Subscriber, it shall be the Subscriber's responsibility to ensure that all of its Users comply with the terms and conditions of this Agreement. The Subscriber shall promptly notify the Company of any suspected or alleged violation of the terms and conditions of this Agreement and shall cooperate with the Company with respect to investigation of any suspected or alleged violations. The Company may suspend or terminate Subscriber's or any User's access to the Products upon notice to the Subscriber and/or User if the Company reasonably determines that the Subscriber or any User has violated

the terms and conditions of this Agreement or if the Company determines, in its sole discretion, that Subscriber and/or User conduct could expose the Company to civil or criminal liability or reputational harm. The Subscriber shall be liable for any violations by any User and the acts or omissions of a User will be deemed to be Subscriber's own acts or omissions for the purposes of this Agreement.

**5.4 Restrictions.** The Subscriber shall not (a) attempt to interfere with or disrupt the Products or the Company Materials, (b) attempt to gain access to any systems or networks that connect thereto except for the express purpose of using the Products for its intended use, (c) attempt to scan or probe or attempt to hack, defeat, or compromise any security measures of the Products or the Company Materials, or any systems or networks operated by the Company, (d) allow access to the Products by anyone other than Users, (e) copy, modify, create a derivative work of, or distribute any portion of the Products or the Company Materials, (f) rent, lease, sublicense, resell, or provide access to the Products on a time-share or service bureau basis, (g) attempt to, or actually, reverse engineer, reverse assemble, disassemble, decompile, or otherwise analyze the Products or the Company Materials or otherwise attempt to discover any source code, trade secrets, algorithms, underlying designs or specifications or other proprietary rights embedded in or relating to the Products or the Company Materials, (h) copy any Products or Company Materials, in whole or in part, or (i) access the Products or the Company Materials in order to (1) build a competitive product or service or for any benchmarking purposes, (2) copy any features, functions or graphics of the Products or the Company Materials, or (3) use the Products or the Company Materials other than as set forth in Section 2.1.

**6. Reservation of Rights.** Notwithstanding anything in this Agreement to the contrary, the Company shall retain all exclusive right, title and interest in and to its Products and Company Materials. The Subscriber acquires no rights in the Products or Company Materials except as otherwise expressly set forth herein. The Company shall have a royalty-free, fully paid-up, worldwide, exclusive, perpetual, and irrevocable license to use or incorporate into the Product or Company Materials any of the Subscriber's or its employees' or agents' suggestions, ideas, enhancement requests, feedback, recommendations, or other information relating to the operation of the Products or the Company Materials.

## **7. Confidentiality.**

**7.1 Confidential Information.** Each party hereto (the "Disclosing Party") acknowledges the competitive value and confidential and proprietary nature of the other party's (the "Receiving Party") proprietary or confidential information, whether in verbal, written or some other tangible medium (collectively, the "Confidential Information") and the damage that could result to the Disclosing Party if any part of the Confidential Information were disclosed to any third party or if the Receiving Party uses the Confidential Information to directly or indirectly compete with the Disclosing Party or for any other reason that is not expressly authorized by this Agreement. The Receiving Party agrees that neither the Receiving Party nor the Receiving Party's Representatives (as hereinafter defined) will, directly or indirectly, (a) use the Confidential Information in any way other than as needed expressly pursuant to this Agreement, or (b) disclose to any third party or use for Receiving Party's own benefit or for the benefit of any third party, all or any part of the Confidential Information, except as expressly provided for herein or except as required for use of the Products. The Receiving Party shall be entitled to disclose the Confidential Information only to those employees, officers, agents and advisers of the Receiving Party (collectively, the "Representatives") necessary for the purposes above provided that the Receiving Party advises each such Representative of the obligations contained herein and that by receiving such information, the Representatives are agreeing to be bound by this Agreement. The Receiving Party shall be responsible for any breach of this Agreement by the Receiving Party's Representatives and shall indemnify and hold the Disclosing Party harmless from any and all claims, damages and losses, including attorneys' fees, resulting from such breach by the Receiving Party. Notwithstanding anything to the contrary in this Agreement, the Company may retain and use generic, aggregated data of Subscriber which is derived from usage of the Products and does not identify Subscriber in order to provide and improve its Products.

**7.2 Exclusions.** Notwithstanding anything in this Section 7 to the contrary, Confidential Information shall not include any information that (a) is or becomes generally known to the public without breach of any obligation owed to the Disclosing Party, (b) was known to the Receiving Party prior to its disclosure by the Disclosing Party without breach of any obligation owed to the Disclosing Party, (c) is received from a third party without breach of any obligation owed to the Disclosing Party, or (d) was independently developed by the Receiving Party.

**7.3 Compelled Disclosure.** The Receiving Party may disclose Confidential Information of the Disclosing Party if disclosure is reasonably necessary in the opinion of Receiving Party to (a) comply with legal or administrative process (including to, civil and criminal subpoenas, court orders or other compulsory disclosures), or (b) enforce this Agreement. Disclosure is permitted pursuant to this Section 7.3 provided the Receiving Party gives the Disclosing Party prior notice of such compelled disclosure (to the extent legally permitted) and reasonable assistance, at the Disclosing Party's cost, if the Disclosing Party wishes to contest the disclosure. If the Receiving Party is compelled by law to disclose the Disclosing Party's Confidential Information as part of a civil proceeding to which the Disclosing Party is a party, and the Disclosing Party is not contesting the disclosure, the Disclosing Party will reimburse the Receiving Party for its reasonable cost of compiling and providing secure access to and use of such Confidential Information.

**7.4 Protection of Confidential Information.** Except as otherwise permitted in writing by the Disclosing Party, the Receiving Party shall use the same degree of care that it uses to protect the confidentiality of its own confidential information of like kind (but in no event less than reasonable care) not to disclose or use any Confidential Information of the Disclosing Party for any purpose outside the scope of this Agreement.

## **8. Warranties; Exclusive Remedies; Disclaimers.**

**8.1 Subscriber Warranty.** Subscriber represents and warrants that it has been duly authorized under applicable agreements or corporate laws to enter into this Agreement.

**8.2 Company Performance Warranty.** The Company warrants that it shall provide all Products in a professional, workmanlike manner. As the Company's sole liability and Subscriber's sole and exclusive remedy for any breach of the foregoing warranty, the Company shall re-provide any defective Products at no additional cost and use diligent efforts to remediate any material non-conformities in the Products within a reasonable time (or, if the Company has failed to remediate any such non-conformity or provide a reasonable workaround within thirty (30) days, the Subscriber may at its option terminate the Order Form with respect to the Products with no additional liability). Notwithstanding the foregoing, the Company shall not be responsible for any defects or non-conformities that arise from (a) Subscriber's misuse of Products or breach of this Agreement, (b) any modification of Products by a person other than the Company or its authorized subcontractors, (c) Subscriber's failure to maintain minimum technology standards for use of the Products as specified by the Company from time to time, or (d) an event of Force Majeure as provided in Section 11.4 below.

**8.3 Subscriber Data Warranty.** Subscriber warrants that (a) the provision of any Subscriber data, content or materials (or any of the foregoing as it pertains to Subscriber's physician candidates) (collectively, "Data") to the Company hereunder is in compliance with Subscriber's privacy policies and all applicable legal and regulatory requirements, including the FCRA and similar state and local laws, (b) such Data, and Subscriber's Users' aggregation and/or distribution of content using the Products do not infringe upon or violate the rights of any third party, and (c) Subscriber has obtained all permissions, consents and authorizations from Users or other persons required for Subscriber's usage of the Products and aggregation and/or distribution of content, and Subscriber will provide the Company with evidence of any required permission, consent and/or authorization upon request.

**8.4 Disclaimer.** EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE COMPANY MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND THE COMPANY SPECIFICALLY DISCLAIMS ALL EXPRESS AND IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. COMPANY EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE COMPANY APPLICATION WILL BE FREE FROM ERRORS, DELAYS, INTERRUPTIONS, VIRUSES OR MALICIOUS CODE OR WILL ALWAYS BE AVAILABLE, THAT ALL ERRORS WILL BE CORRECTED, OR THAT THE PRODUCTS WILL MEET SUBSCRIBER'S REQUIREMENTS OR WILL IMPROVE SUBSCRIBER'S FINANCIAL RESULTS. NO CREDITS FOR FUTURE USE OF THE PRODUCT WILL ACCRUE TO SUBSCRIBER FOR CONTRACTED-FOR BUT UNUSED PRODUCTS.

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

**9.1 Limitation of Liability.** IN NO EVENT SHALL COMPANY'S AGGREGATE, CUMULATIVE MAXIMUM LIABILITY ARISING OUT OF OR RELATED TO THIS AGREEMENT AND THE ORDER FORM, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, EXCEED IN THE AGGREGATE THE TOTAL AMOUNT PAID TO COMPANY BY SUBSCRIBER IN THE TWELVE (12) MONTHS PRECEDING THE INCIDENT.

**9.2 Exclusion of Consequential and Related Damages.** IN NO EVENT SHALL EITHER PARTY HAVE ANY LIABILITY TO THE OTHER PARTY FOR ANY LOST PROFITS, DATA OR REVENUES OR FOR ANY INDIRECT, SPECIAL, INCIDENTAL, EXEMPLARY, CONSEQUENTIAL, COVER OR PUNITIVE DAMAGES HOWEVER CAUSED, WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, AND WHETHER OR NOT SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. THE LIMITATIONS OF LIABILITY IN THIS SECTION 9 SHALL BE ENFORCEABLE EVEN IF A REMEDY FAILS IN ITS ESSENTIAL PURPOSE.

## **10. Indemnity.**

**10.1 Intellectual Property Indemnity.**(a) The Company agrees to defend, indemnify and hold harmless Subscriber from and against any and all damages, costs, losses or expenses, including reasonable attorneys' fees, arising from or in connection with any third party claim, allegation, or action, that the Product provided under this Agreement infringes such third party's valid United States patent, copyright or trademark.

(b) Without limiting the Company's liability under Section 10.1(a), the parties hereto agree that, in the event that any Product, or a part thereof, is held, or in the Company's sole opinion, may be held to constitute an infringement, the Company, at its option and expense, may either: (i) procure the right to continue using the Product, (ii) modify such Product such that they become non-infringing, or (iii) replace the same with a non-infringing product. If the Company determines that it is not commercially reasonable to perform any of these alternatives, then (x) Subscriber must cease use of the allegedly infringing Product, and (y) either party hereto may immediately terminate the Agreement and all applicable Order Forms without further liability to the other. The Company shall, however, in no event be liable for any use of the Product after Subscriber has received written instructions from the Company to cease using the Product.

(c) Notwithstanding the provisions of this Agreement to the contrary, the Company will have no liability to the extent that the infringement or alleged infringement arises from: (i) the use of the Product in any manner other than as specified by this Agreement or applicable statement of work, Order Form, exhibit or appendix or otherwise approved by the Company in writing, (ii) modification or alteration of the Product by the Subscriber, (iii) use of the Product by Subscriber or any of its assignees in combination with products or services not purchased hereunder where the Product would not otherwise be infringing, (iv) use of the Product by Subscriber or a third party in an application or environment for which the Product was not designed or contemplated, or (v) any specific instructions or requested changes to the Product provided by Subscriber to the Company.

(d) This Section 10.1 states the Company's entire liability and Subscriber's sole and exclusive remedy for infringement or misappropriation of intellectual property rights or proprietary rights of any kind.

**10.2 Subscriber Indemnity.** Subscriber shall indemnify, defend and hold harmless the Company and its officers, directors, shareholders, affiliates, employees, agents, successors and assigns (collectively, the "Company Indemnified Parties"), from any and all liabilities, judgments, costs, losses, damages and expenses (including reasonable attorneys' fees and court costs), in connection with any claim, suit, action, judgment or other proceeding brought or threatened by a third

party against any of the Company Indemnified Parties, and relating to, based upon or arising out of or in connection with (a) any breach of, or failure to comply with, this Agreement (including, but not limited to, any breach of Subscriber's warranties, representations, obligations and/or covenants set forth in the Agreement) by Subscriber, (b) any failure by Subscriber to make the disclosure and obtain the authorization required by Section 5.2 hereof, (c) any changes, modifications or variations requested by Subscriber to the Company's Materials or Products, (d) any breach of, or failure to comply with, Section 5 hereof, and (e) any act or omission on the part of Subscriber or its Users that constitutes gross negligence or willful misconduct.

#### **11. General.**

**11.1 Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld); provided, however, that the Company may assign this Agreement, without consent of Subscriber, to any affiliated entity or wholly owned subsidiary or in connection with a change of control (including through the issuance of securities), merger, acquisition, corporate reorganization, or sale of substantially all of the assets or business of the Company's business unit to which this Agreement relates. Any assignment in contravention of this Section shall be null and void. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.

**11.2 No Third Party Beneficiaries; Relationships, No Waiver; Severability.** There are no third-party beneficiaries to this Agreement. The parties are independent contractors. This Agreement does not create a partnership, franchise, joint venture, agency, fiduciary or employment relationship between the parties. No failure or delay by either party in exercising any right under this Agreement shall constitute a waiver of that right. If any provision of this Agreement is held by a court of competent jurisdiction to be contrary to law, the provision shall be modified by the court and interpreted so as best to accomplish the objectives of the original provision to the fullest extent permitted by law, and the remaining provisions of this Agreement shall remain in effect.

**11.3 Governing Law; Waiver of Jury Trial.** This Agreement, and any disputes arising out of or related hereto, shall be governed exclusively by the internal laws of the Commonwealth of Pennsylvania, without regard to its conflicts of laws rules or the United Nations Convention on the International Sale of Goods. The state and federal courts located in Philadelphia, Pennsylvania shall have exclusive jurisdiction to adjudicate any dispute arising out of or relating to this Agreement. Each party hereby consents to the exclusive jurisdiction of such courts. EACH PARTY ALSO HEREBY WAIVES ANY RIGHT TO JURY TRIAL IN CONNECTION WITH ANY ACTION OR LITIGATION IN ANY WAY ARISING OUT OF OR RELATED TO THIS AGREEMENT.

**11.4 Force Majeure.** Excluding the Subscriber's obligation to pay all fees hereunder, neither party shall be liable to the other party for any delay, failure in performance, loss or damage due to fire, explosions, power blackouts, earthquakes, floods, strikes, embargo, labor disputes, acts of civil or military authority, war, terrorism, acts of God, interruption or failure of telecommunication, digital transmission links, internet failures and delays or other causes similar to the foregoing.

**11.5 Entire Agreement; Conflict.** This Agreement, including any Order Forms entered into hereunder, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. No modification, amendment, or waiver of any provision of this Agreement or any Order Form shall be effective unless it is in writing and physically signed or accepted electronically by the party against which the modification, waiver or amendment is sought to be enforced. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any Order Form, the terms of this Agreement shall prevail (except in relation to the length of the Initial Term). Notwithstanding any language to the contrary therein, no terms or conditions stated in a Subscriber purchase order or in any other Subscriber order documentation or communications shall be incorporated into or form any part of this Agreement, and all such terms or conditions shall be null and void.

**11.6 Attribution.** Each party hereby grants to the other party a royalty free, non-exclusive license during the term of this Agreement to use its trademarks, Product marks and other proprietary indicia of the other party to establish a client or vendor (as applicable) list on its website and in its marketing materials. Each party will comply with the other party's reasonable written requests as to the usage, display and presentation of such trademarks, Product marks or other proprietary indicia. Except as expressly provided above, neither party may use the other party's trade or Product marks or reference the other party in any publicity or marketing materials without such other party's prior written consent.

**11.7 U.S. Export Law.** Subscriber acknowledges that the Products 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 Products in any manner that would violate applicable law, including but not limited to applicable export control laws and regulations.

**11.8 Non-Solicitation.** Subscriber agrees that, without the prior written approval of the Company, Subscriber and/or its affiliates shall not, directly or indirectly, during the term of this Agreement and for a period of two (2) years following the expiration or termination of this Agreement (a) solicit, induce, influence, or attempt to solicit, induce or influence, any employee or consultant of the Company to terminate his or her employment or engagement with the Company, or (b) hire, engage, retain or employ, or attempt to hire, engage, retain or employ, any employee or consultant of the Company (or any employee or consultant that was employed or engaged by the Company during the twelve (12) month period prior to hire, engagement, retention or employment by Subscriber) in any capacity.