

THE ROCKED COMPANY INC.
CUSTOMER AGREEMENT

By signing an Order Form that references this Customer Agreement (as may be amended, modified, supplemented and/or restated from time to time in accordance with its terms, this “**Agreement**”), or by signing up for our Platform for a free trial, you agree to all of the terms and conditions set forth in this Agreement. In consideration of the agreements contained below, the Parties hereby agree as follows:

1. **Definitions.** For purposes of this Agreement, the following terms will have the meanings ascribed to them below.
 - 1.1. “**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly, Controls, or is Controlled by, or is under common Control with, such Person including, without limitation, any general partner, managing member, officer or director of such Person, or any venture capital fund now or hereafter existing which is Controlled by one or more general partners or managing members, or shares the same management company with, such Person.
 - 1.2. “**Arbitration Agreement**” shall have the meaning assigned to it in Section 14.6.3 hereof.
 - 1.3. “**Authorized Users**” means the users identified in a corresponding Order Form as authorized to access the Platform.
 - 1.4. “**Claims**” means any and all claims, demands, causes of action, obligations, damages and liabilities of any nature whatsoever.
 - 1.5. “**Company**” means The RockED Company Inc., a Delaware corporation, and its successors and assigns.
 - 1.6. “**Company System**” means the Platform operated on the Company’s hosting servers or those of its hosting service provider intended to enable Subscriber to interact with the same via the worldwide web.
 - 1.7. “**Confidential Information**” means any information disclosed by one Party to the other, which, (a) if in written, graphic, machine readable or other tangible form is marked “Confidential” or “Proprietary” or which, if disclosed orally or by demonstration, is identified at the time of disclosure as confidential and reduced to a writing marked “Confidential” and delivered to the Receiving Party (as defined below) within thirty (30) days of such disclosure, or (b) by the nature of the circumstances surrounding the disclosure, ought in good faith to be treated as confidential. Notwithstanding any failure to so identify them, all technology or proprietary information underlying the Platform and the Company System shall be deemed Confidential Information of Company, and the Subscriber Data (as defined below) shall be deemed Confidential Information of Subscriber.
 - 1.8. “**Control**” means, (including, with correlative meaning, the terms “Controlling,” “**Controlled by**” and “**under common Control with**”), with respect to any Person, the possession, directly or indirectly, of the power to direct or cause the direction of the management, policies or investment decisions of such Person, whether through the ownership of voting securities, by contract or otherwise.

- 1.9. **“Disclosing Party”** shall have the meaning assigned to it in Section 12.1 hereof.
- 1.10. **“Documentation”** means any documentation or content whether in the form of audio, video, text, graphical or other format and in any medium provided by the Company for use with the Platform under this Agreement.
- 1.11. **“End-User(s)”** means Authorized Users of the Platform as more specifically identified in a corresponding Order Form.
- 1.12. **“Government”** shall have the meaning assigned to it in Section 14.3 hereof.
- 1.13. **“Governmental Authority”** means any domestic or foreign government or political subdivision thereof, whether on a federal, state or local level and whether executive, legislative or judicial in nature, including any agency, authority, board, bureau, commission, court, department or other instrumentality thereof.
- 1.14. **“Indemnified Party”** shall have the meaning assigned to it in Section 13.3 hereof.
- 1.15. **“Indemnifying Party”** shall have the meaning assigned to it in Section 13.3 hereof.
- 1.16. **“Infringing Materials”** shall have the meaning assigned to it in Section 13.4 hereof.
- 1.17. **“Intellectual Property Rights”** means all rights in, to, or arising out of:
(a) any U.S., international or foreign patent or any application therefore and any and all reissues, divisions, continuations, renewals, extensions and continuations-in-part thereof,
(b) inventions (whether patentable or not in any country), invention disclosures, improvements, trade secrets, proprietary information, know-how, technology and technical data, (c) copyrights, copyright registrations, mask works, mask works registrations, applications, moral rights, trademarks, and rights of personality, privacy and likeness, whether arising by operation of law, contract, license or otherwise, and (d) any other similar or equivalent proprietary rights anywhere in the world.
- 1.18. **“Licensed Materials”** means the Platform and the Documentation.
- 1.19. **“Loss”** or **“Losses”** shall mean any and all liabilities, losses, costs, claims, suits, damages, settlements, penalties and documented out-of-pocket expenses (including attorneys’ fees).
- 1.20. **“Marks”** means a Party’s corporate or trade name, trademark(s), logo(s), domain names or other identification of such Party.
- 1.21. **“Order Form”** means an ordering document signed by both Parties for a subscription or license to the Platform that refers to this Agreement.
- 1.22. **“Party”** means, individually, Subscriber or the Company; **“Parties”** means together, Subscriber and the Company.
- 1.23. **“Payment Provider(s)”** shall have the meaning assigned to it in Section 8.3 hereof.
- 1.24. **“Person”** shall be construed as broadly as possible and shall include an individual person, a partnership (including a limited liability partnership), a corporation, an association, a

joint stock company, a limited liability company, a trust, a joint venture, an unincorporated organization and a Governmental Authority.

- 1.25. “**Platform**” means the cloud-based interface created by Company where Subscriber accesses training, tools, and other Company service offerings, and all changes, corrections, bug fixes, enhancements, updates and other modifications thereto, whether made by or on behalf of Company, or any third party.
- 1.26. “**Receiving Party**” shall have the meaning assigned to it in Section 12.1 hereof.
- 1.27. “**Subscriber**” means the Person that has signed the Order Form or signed up for a free trial of the Company’s Platform and desires to license such Platform from the Company.
- 1.28. “**Subscriber Data**” means End-User information, including but not limited to name, address, browser activity, IP address or other geolocation data, mobile application activity, and mobile device identifier.
- 1.29. “**Subscription Fee(s)**” shall have the meaning assigned to it in the Order Form.
- 1.30. “**Term**” shall have the meaning assigned to it in the Order Form.
- 1.31. “**Terms of Use**” shall have the meaning assigned to it in Section 6.3 hereof.
- 2. **Order Forms/Subscriptions.** From time to time, the Company and Subscriber may execute one or more Order Forms in the form provided by the Company to Subscriber. Each Order Form will expressly refer to this Agreement, will form a part of this Agreement, and will be subject to the terms and conditions contained herein. An Order Form may only be amended, modified, supplemented and/or restated only by written agreement of the Parties.
- 3. **Responsibilities of Company.**
 - 3.1. The Company will host and maintain the Platform on servers operated and maintained by or at the direction of Company.
 - 3.2. The Company shall use commercially reasonable efforts to ensure availability of the Platform and necessary Company System and provide technical support of the Platform. The Company shall not be obligated to provide to Subscriber any new release of the Platform, or module thereof, or other software or services for which Company generally charges a separate fee.
- 4. **Responsibilities of Subscriber.**
 - 4.1. **Equipment.** Subscriber will be responsible for obtaining and maintaining at Subscriber’s sole cost and expense all the necessary computer hardware, mobile devices, software, modems, connections to the Internet and other items required to access the Company System.
 - 4.2. **Account Information.** Subscriber will provide as true, accurate, current and complete account information as commercially reasonable and maintain and promptly update all account information to ensure same.

- 4.3. **Authorized Users.** Subscriber agrees and acknowledges that all Platform account credentials, access codes and passwords are personal to the individual to which it is issued. Subscriber is responsible for maintaining the confidentiality and security of all access codes and passwords issued and ensuring that each access code and password is only used by the individual authorized as an Authorized User. To the extent the Company may assign Subscriber with administrative rights to create access codes and passwords for Subscriber's personnel, Subscriber shall be responsible for issuing such access codes and passwords only to Authorized Users.
- 4.4. **Payment Information.** Subscriber shall maintain current credit card, debit card or other valid and chargeable electronic payment method information associated with its account in the Company System. In the event Subscriber changes payment method information associated with its account, Subscriber authorized the Company to charge the Subscription Fees to said payment method and account.
5. **Right to Monitor.** The Company will have the right to review and monitor all use of the Platform to ensure compliance with all of the terms of this Agreement.
6. **License Grant.**
- 6.1. **Grant.** Subject to the terms and conditions of this Agreement, the Company hereby grants to Subscriber a non-exclusive, non-transferable, non-sublicensable, fee-bearing, limited license during the Term to use the Platform via the Company System solely for use consistent with the terms of this Agreement. The Company may in its sole discretion modify, enhance or update or otherwise change the Platform.
- 6.2. **License Restrictions.** Subscriber shall not, and shall not permit any third party to:
- 6.2.1. use the Licensed Materials except to the extent permitted in Section 6.1;
 - 6.2.2. modify or create any derivative work of any part of the Licensed Materials;
 - 6.2.3. use or access the Licensed Materials unless such third party is also an Authorized User; or
 - 6.2.4. market, sublicense, publish, distribute, reproduce, assign, transfer, rent, lease or loan the Licensed Materials.
- 6.3. **Additional Terms of Use.** Subscriber agrees and acknowledges that the license granted herein and Subscriber's right and authorization to access the Platform or use the Licensed Materials is governed by and subject to the additional terms, conditions and obligation set forth in the Company's online Terms of Use ("**Terms of Use**") (available under rocked.us), which are incorporated by reference herein into this Agreement. Subscriber agrees that it, as well as all Subscriber personnel and End-Users shall at all times comply with and be subject to the Terms of Use. In the event of a conflict of between the terms and conditions of the Terms of Use and the terms and conditions of this Agreement, the provisions of this Agreement shall prevail.
- 6.4. **Reservation of Rights.** The Company reserves all rights to the Licensed Materials not otherwise expressly granted in this Section 6.

7. **License to Company.**

- 7.1. **Limited Subscriber Data License.** Subject to the terms and conditions of this Agreement, Subscriber hereby grants Company a limited, worldwide, non-transferable, non-exclusive, non-sublicensable, royalty-free license during the Term to use, reproduce, electronically distribute, transmit, have transmitted, perform, display, store, archive, and make derivative works of the Subscriber Data solely in order to enable the Platform to use the Company System. During the Term and thereafter, the Company shall have the right to aggregate and anonymize Subscriber Data and to publish such aggregated and anonymized (non-personally identifiable) data (or) benchmark studies. The Company shall have no right to use the Subscriber Data for any other purpose or share the Subscriber Data with anyone other than Subscriber without Subscriber's consent.
- 7.2. **Limited Trademark License; Marketing Materials.** Subscriber hereby grants the Company a royalty-free, non-exclusive, non-transferable, non-sublicensable, limited term license to use Subscriber's Marks solely for the purpose of and in connection with Subscriber's authorized use of the Platform. Such license shall be limited to the Term and for a period of six (6) months thereafter. During the Term, the Company may include Subscriber in any of the Company's customer lists and testimonials, solely for the purpose of identifying Subscriber as a customer of Company. Subscriber and the Company acknowledge that the provisions of this paragraph do not convey any right, title or ownership interest in Subscriber's Marks to Company.

8. **Payment.**

- 8.1. **Subscription Fees.** In consideration for the license granted by Company under this Agreement, Subscriber shall pay the Company the Subscription Fees in the amount set forth in the Order Form in accordance with the terms set forth therein. The Subscription Fees are subject to change with each new Order Form. The Subscription Fees are non-refundable except as expressly provided in this Agreement or any Order Form.
- 8.2. **Payment Cards/Payment Terms.** By submitting an Order Form, Subscriber authorizes the Company to charge the credit card, debit card, or other electronic payment method provided by Subscriber in the Order Form for the Subscription Fee monthly, or as otherwise may be provided for in the corresponding Order Form. Subscriber's failure to maintain current payment card information or other alternative payment method may result in interruption, suspension or termination of access to the Platform. No reimbursements shall be made for terminations mid-month for the remaining unused portion of the month except as expressly provided in this Agreement or any Order Form.
- 8.3. **Third-Party Payment Providers.** The Company utilizes third party payment providers to process credit or debit card payments on Company's behalf (the "**Payment Provider(s)**"). The Payment Provider's policies govern the processing of Subscriber's payment, and Subscriber must refer to those policies and not this Agreement to determine its rights and liabilities. Subscriber may refer to the Company's Privacy Policy (available on rocked.us) for a current list of Payment Providers.

9. **Ownership.**

- 9.1. **Subscriber.** Subject to Section 7 above, as between Subscriber and the Company, Subscriber shall retain all right, title and interest in and to the Subscriber Data,

Subscriber's Marks and all Intellectual Property Rights therein. Subject to Section 7 above, nothing in this Agreement will confer on the Company any right of ownership or interest in the Subscriber Data, Subscriber's Marks or the Intellectual Property rights therein.

- 9.2. **Company.** As between Subscriber and the Company, the Company shall retain all right, title and interest in and to Company Marks, the Platform, the Company System, any changes, corrections, bug fixes, enhancements, customizations, updates and other modifications thereto, and all Intellectual Property Rights therein, and as between Subscriber and the Company, all such rights shall vest in and be assigned to the Company including any modifications, derivations, enhancements, compilations or changes to or from any of the foregoing by or on behalf of Subscriber in relation to Subscriber's use of the Platform. Nothing in this Agreement will confer on Subscriber any right of ownership or interest in the Company Marks, Platform, the Company System, or the Intellectual Property rights therein.

10. **Limited Platform Warranty.**

- 10.1. **Scope of Limited Warranty.** The Company warrants to Subscriber that during the Term, the Platform will perform substantially in accordance with the terms of Company's Documentation. The foregoing warranty shall not apply to interruptions of service, inaccessibility, downtime, or performance issues of the Platform (a) caused by factors outside of the Company's reasonable control, (b) that result from any improper actions or inactions of Subscriber or any third parties, or (c) that result from Subscriber's data structure, operating environment or equipment.

- 10.2. **Disclaimer of Any Other Warranties.** EXCEPT FOR THE EXPRESS, LIMITED WARRANTY PROVIDED IN THIS SECTION 10, THE COMPANY MAKES NO WARRANTIES, EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE LICENSED MATERIALS, THE PLATFORM, COMPANY SYSTEM, OR ANY OTHER ACCOMPANYING MATERIAL PROVIDED HEREUNDER. THE COMPANY SPECIFICALLY DISCLAIMS ALL OTHER WARRANTIES, EXPRESS AND IMPLIED, INCLUDING WITHOUT LIMITATION THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, THOSE ARISING FROM A COURSE OF DEALING OR USAGE OR TRADE, AND OF UNINTERRUPTED OR ERROR-FREE SERVICE, AND ALL SUCH WARRANTIES ARE HEREBY EXCLUDED TO THE FULLEST EXTENT PERMITTED BY LAW. EXCEPT AS EXPRESSLY PROVIDED HEREIN AND IN ANY ORDER FORM, THE PLATFORM IS PROVIDED ON AN "AS IS", "AS AVAILABLE" BASIS.

11. **Term; Termination.**

- 11.1. **Term.** The Term of this Agreement shall be as set forth in the Order Form.

11.2. **Termination.**

- 11.2.1. **By Either Party.** This Agreement or any Order Form may be terminated by either Party during the Term:

- (a) Upon thirty (30) days prior written notice if the other Party shall have materially breached or defaulted in the performance of any of its material obligations hereunder, and such breach or default shall have continued for thirty (30) days after written notice of such breach and intent to terminate this Agreement therefor was provided to the breaching Party by the nonbreaching Party. Any such termination shall become effective at the end of such thirty (30) day period unless the breaching Party has cured any such breach or default prior to the expiration of the thirty (30) day period;
- (b) Immediately, if the other Party (i) makes a general assignment for the benefit of creditors, (ii) admits in writing its inability to pay debts as they come due, (iii) voluntarily files a petition or similar document initiating any bankruptcy or reorganization proceeding, or (iv) involuntarily becomes the subject of a petition in bankruptcy or reorganization proceeding and such proceeding shall not have been dismissed or stayed within sixty (60) days after such filing.

11.2.2. **By Company.** This Agreement or any Order Form may be terminated by Company during the Term immediately upon a violation or breach of the Terms of Use by Subscriber, Subscriber personnel or any End-User.

11.2.3. **Effect of Termination/Survival.** Upon the termination or expiration of this Agreement, all obligations of the Parties hereunder shall terminate, except that (a) all payment obligations accrued hereunder prior to termination or expiration shall survive such termination, and (b) each Party's obligations under Sections 6.2, 6.3, 9, 10.2, and 12-14, as well as all Sections, terms or conditions of this Agreement which, by their nature, are intended to survive, shall survive termination or expiration of this Agreement for any reason.

12. **Confidentiality.**

12.1. **Nondisclosure.** Each Party (each a "Receiving Party") agrees that it (a) shall use and reproduce the Confidential Information of the other Party (the "Disclosing Party") only for purposes of exercising its rights and performing its obligations under this Agreement and only to the extent necessary for such purposes, (b) shall restrict disclosure of such Confidential Information to the Receiving Party's employees, consultants, or advisors who have a bona fide need to know for such purposes, and (c) shall not disclose such Confidential Information to any third party without the prior written approval of the Disclosing Party. The foregoing obligations shall be satisfied by the Receiving Party through the exercise of at least the same degree of care used to restrict disclosure and use of its own information of like importance, but not less than reasonable care. All third parties to whom the Receiving Party discloses Confidential Information must be bound in writing by obligations of confidentiality and non-use at least as protective of such information as this Agreement. Notwithstanding the foregoing, it shall not be a breach of this Agreement for the Receiving Party to disclose Confidential Information if compelled to do so under law, in a judicial or other governmental investigation or proceeding, provided that, to the extent permitted by law, the Receiving Party has given the Disclosing Party prior notice and reasonable assistance to permit the Disclosing Party a reasonable opportunity to object to and/or limit the judicial or governmental requirement to disclosure.

- 12.2. **Exceptions.** Notwithstanding anything to the contrary herein, neither Party shall be liable for using or disclosing information that such Party can prove (a) was in the public domain at the time it was disclosed or has entered the public domain through no fault of the Receiving Party, (b) was rightfully known to the Receiving Party, without restriction, at the time of disclosure, as demonstrated by files in existence at the time of disclosure, (c) is disclosed with the prior written approval of the Disclosing Party, (d) was independently developed by the Receiving Party without any use of the Confidential Information, as demonstrated by files created at the time of such independent development, (e) becomes rightfully known to the Receiving Party, without restriction, from a source other than the Disclosing Party without breach of this Agreement by the Receiving Party and otherwise not in violation of the Disclosing Party's rights, or (f) is disclosed generally to third parties by the Disclosing Party without restrictions similar to those contained in this Agreement.
- 12.3. **Remedies.** The Receiving Party agrees that a breach of this Section 12 may result in immediate and irreparable harm to the Disclosing Party that money damages alone may be inadequate to compensate. Therefore, in the event of such a breach, the Disclosing Party will be entitled to seek equitable relief, including but not limited to a temporary restraining order, temporary injunction or permanent injunction without the posting of a bond or other security.

13. **Indemnification; Limitations on Damages.**

- 13.1. **Indemnification by Subscriber.** Subscriber shall indemnify, defend and hold the Company and its officers, directors, employees, agents, successors and assigns harmless from and against any and all Losses resulting from or arising out of (a) Subscriber's breach of this Agreement, any Order Form, the Terms of Use, or any other applicable Company policy or terms applicable to this Agreement and the rights granted hereunder, (b) any negligence or willful misconduct with respect to the provision or use of the Company System by Subscriber, or (c) any claim that the Subscriber Data or Subscriber Marks violates any applicable statute, regulation, or law, or infringes any intellectual property right or other legal right of any third party.
- 13.2. **Indemnification by the Company.** The Company shall indemnify, defend and hold Subscriber and its officers, directors, employees, agents, successors and assigns harmless from and against any and all Losses resulting from or arising out of (a) the Company's breach of this Agreement or any Order Form, or (b) any claim that the Platform or Company System violates any applicable statute, regulation, or law, or infringes any intellectual property right or other legal right of any third party. This indemnity does not apply to, and the Company will have no obligation to Subscriber for, any infringement or misappropriation claim that arises from (i) modifications to the Company System by anyone other than the Company, (ii) modifications to the Company System based upon specifications furnished by Subscriber, (iii) Subscriber's use of the Company System other than as specified in this Agreement, in the applicable Documentation, or in the Terms of Use, (iv) use of the Company System in conjunction with third-party software, hardware or data other than that approved by the Company, (v) use of the Licensed Materials or Company System by any individual not an Authorized User, or (vi) any combination of the foregoing.
- 13.3. **Procedure.** A Party seeking indemnification (the "**Indemnified Party**") shall promptly notify the other Party (the "**Indemnifying Party**") in writing of any Claim; provided that,

the failure to provide such notice shall not relieve the Indemnifying Party of its indemnification obligations hereunder except to the extent of any material prejudice directly resulting from such failure. The Indemnified Party shall provide the Indemnifying Party all reasonable information and assistance regarding such Claim. The Indemnifying Party shall bear full responsibility for, and shall have the right to solely control, the defense (including any settlements) of any Claim; provided that, (a) the Indemnifying Party shall keep the Indemnified Party informed of, and consult with the Indemnified Party in connection with the progress of such litigation or settlement, and (b) the Indemnifying Party shall not settle any such Claim in a manner that does not unconditionally release the Indemnified Party without the Indemnified Party's written consent, not to be unreasonably withheld or delayed.

13.4. Third Party Infringement. In the event any portion of the Platform or Company System is held or believed by the Company, or any portion of the Subscriber Data or Subscriber Marks are held or believed by Subscriber, to infringe or misappropriate Intellectual Property Rights of any third party (such portion to be deemed the “**Infringing Materials**”) in any place where the Company System is used or accessed, then in addition to any other rights in this Section 13, the Company (where the Infringing Materials are the Company System) or Subscriber (where the Infringing Materials are the Subscriber Data or Subscriber Marks) shall, at its sole expense and at its option: (a) obtain from such third party the right for the other Party to continue to use the Infringing Materials, (b) modify the Infringing Materials to avoid and eliminate such infringement or misappropriation, as the case may be, (c) upon mutual agreement with the other Party, remove and disable the Infringing Materials, or (d) if none of the foregoing remedies is commercially feasible, terminate this Agreement.

13.5. EXCLUSION OF INCIDENTAL AND CONSEQUENTIAL DAMAGES. EXCEPT FOR BREACH OF SECTIONS 6, 7, 12, OR 14.4 AND INDEMNIFICATION FOR THIRD-PARTY DAMAGES ARISING UNDER THIS SECTION 13, NEITHER PARTY WILL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, INCIDENTAL, CONSEQUENTIAL, SPECIAL, OR EXEMPLARY DAMAGES ARISING OUT OF OR RELATED TO THIS AGREEMENT, EVEN IF THE OTHER PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES AND REGARDLESS OF WHETHER SUCH LIABILITY SOUNDS IN CONTRACT, NEGLIGENCE, TORT, STRICT LIABILITY, WARRANTY, OR OTHERWISE.

13.6. MAXIMUM AGGREGATE LIABILITY. EXCEPT FOR BREACH OF SECTIONS 6, 7, 8, 12, OR 14.4 AND INDEMNIFICATION LIABILITY ARISING UNDER THIS SECTION 13, THE MAXIMUM LIABILITY OF EITHER PARTY FOR ANY CLAIMS ARISING IN CONNECTION WITH THIS AGREEMENT WILL NOT EXCEED THE AGGREGATE AMOUNT OF THE DISCRETE VALUE OF SERVICES PROVIDED UNDER THIS AGREEMENT IN THE SIX-MONTH PERIOD PRIOR TO THE EVENT GIVING RISE TO LIABILITY. SUBSCRIBER ACKNOWLEDGES THAT THE AMOUNTS PAYABLE HEREUNDER ARE BASED IN PART ON THESE LIMITATIONS. THE PARTIES AGREE THAT THESE LIMITATIONS SHALL APPLY NOTWITHSTANDING ANY FAILURE OF ESSENTIAL PURPOSE OF ANY LIMITED REMEDY.

14. Miscellaneous.

- 14.1. **Assignment.** Neither Party may assign, sublicense, delegate or otherwise transfer any of its rights or obligations under this Agreement without the prior written consent of the other Party. Notwithstanding the foregoing, either Party may, without the consent of the other Party, assign this Agreement to an entity merging with, consolidating with, or purchasing substantially all its assets or stock; provided that, the assignee shall assume all rights and obligations under this Agreement. Any permitted assignment of this Agreement shall be binding upon and enforceable by and against the Parties' successors and assigns; provided that, any unauthorized assignment shall be null and void and constitute a breach of this Agreement.
- 14.2. **Entire Agreement.** This Agreement, any Order Form, the Terms of Use, any Order Form, and any other applicable Company policy or terms applicable to this Agreement, and any amendments hereto or thereto and any incorporations by reference herein, constitute the entire agreement between the Parties and supersede all previous agreements, oral or written, with respect to the subject matter of this Agreement. This Agreement may not be amended, modified, supplemented and/or restated without the prior written consent of both Parties.
- 14.3. **Restricted Rights.** If Subscriber is an agency, department or entity of the United States Government ("**Government**"), Subscriber agrees, that (a) use, reproduction, release, modification or disclosure of the Platform, or any part thereof, including technical data, is restricted in accordance with Federal Acquisition Regulation (FAR) 12.212 for civilian agencies and Defense Federal Acquisition Regulation Supplement (DFARS) 227.7202 for military agencies, (b) the Platform is a commercial product, which was developed at private expense, and (c) use of the Platform by any Government agency, department or other agency of the Government is further restricted as set forth in this Agreement. This is not applicable for a Subscriber with registered entities outside of the United States of America.
- 14.4. **Import and Export Requirements.** Subscriber acknowledges and agrees that the Licensed Materials are subject to export control laws and regulations. Subscriber may not download or otherwise export or re-export the Licensed Materials or any underlying information or technology except in full compliance with all applicable laws and regulations, in particular, but without limitation, United States export control laws. None of the Licensed Materials or any underlying information or technology may be downloaded or otherwise exported or re-exported: (a) into, or to a national or resident of, any country to which the United States has embargoed goods, or (b) to anyone on the U.S. Treasury Department's list of specially designated nationals or the U.S. Commerce Department's list of prohibited countries or debarred or denied persons or entities. Subscriber hereby agrees to the foregoing and warrants that neither Subscriber nor any End-User is located in, or under the control of, or a national or resident of any such country or on any such list. This is not applicable for a Subscriber with registered entities outside of the United States of America.
- 14.5. **Force Majeure.** Except with respect to payment obligations arising under this Agreement, neither Party shall be liable nor responsible to the other Party, nor be deemed to have defaulted under or breached this Agreement, for any failure or delay in fulfilling or performing any term of this Agreement, when and to the extent such failure or delay is caused by or results from acts beyond such Party's reasonable control, including, without limitation: (a) acts of God, (b) flood, fire, earthquake, or explosion, (c) war, invasion, hostilities (whether war is declared or not), terrorist threats or acts, riot, or other civil

unrest, (d) government order or law, including executive orders, (e) actions, embargoes, or blockades, (f) national or regional emergency, (g) epidemic, pandemic, viral or communicable disease outbreak (including COVID-19 (coronavirus)), (h) quarantines, (i) strikes, labor stoppages or slowdowns, or other industrial disturbances, (j) shortage of adequate power, or (k) other similar causes beyond Supplier's control (each, a "Force Majeure Event"). The Party impacted by a Force Majeure Event shall promptly give notice to the other Party of the Force Majeure Event and shall use reasonable efforts to end the failure or delay and ensure the effects of such Force Majeure Event are minimized. A Force Majeure Event shall not entitle a Party to terminate this Agreement or to any damages under this Agreement.

14.6. Governing Law/Choice of Forum Dispute Resolution.

14.6.1. This Agreement shall be governed by and interpreted in accordance with the laws of the State of New York without giving effect to its conflicts of law rules.

14.6.2. The Parties recognize that Sections 6.2, 6.3, 7.1, 9, and 12 are necessary for the protection of the business and goodwill of the Parties and are considered by the Parties to be reasonable for such purpose. The Parties agree that any breach of such Sections would cause the other Party substantial and irreparable damage and therefore, in the event of any such breach, in addition to other remedies which may be available, the non-breaching Party shall have the right to seek specific performance and other injunctive and equitable relief in a court of law, subject to the choice of jurisdiction and forum provisions of Section 14.6.4.

14.6.3. Except with respect to claims (a) alleging intellectual property infringement, or (b) seeking equitable relief, the Parties mutually agree that all claims, disputes or controversies arising out of this agreement shall be resolved according to the arbitration agreement between the Parties as more fully set forth in the Terms of Use ("**Arbitration Agreement**").

14.6.4. For all claims, disputes or controversy that are not resolved according to the Arbitration Agreement, the Parties consent to the exclusive jurisdiction and venue of the state and federal courts of New York County, New York.

14.7. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given when delivered (a) by email to the address provided in the corresponding Order Form with receipt confirmed, or (b) three days after being mailed by registered or certified mail (postage prepaid, return receipt requested) to the address provided in the corresponding Order Form. Either Party may change its contact information by providing the other Party with written notice of the change in accordance with this Section 14.7.

14.8. Relationship of Parties. The Parties are independent contractors and will have no right to assume or create any obligation or responsibility on behalf of the other Party. Neither Party shall hold itself out as an agent of the other Party. This Agreement will not be construed to create or imply any partnership, agency, joint venture or formal business entity of any kind.

- 14.9. Severability.** If any provision of this Agreement is held invalid or unenforceable, it shall be replaced with the valid provision that most closely reflects the intent of the Parties and the remaining provisions of the Agreement will remain in full force and effect.
- 14.10. Headings.** The headings of the articles and paragraphs contained in this Agreement are inserted for convenience and are not intended to be part of or to affect the interpretation of this Agreement.
- 14.11. Construction; Advice of Counsel.** The Parties acknowledge and agree that the Agreement has been jointly prepared and its provisions will not be construed more strictly against either Party as a result of its participation in such preparation. Each Party acknowledges and represents that, in executing this Agreement, it has had the opportunity to seek advice as to its legal rights from legal counsel and that the person signing on its behalf has read and understood all of the terms and provisions of this Agreement.