

Training Services Terms & Conditions

VERSION 400.1.1

This Agreement sets forth the terms and conditions under which Service Provider will provide certain Training Services (as described in Exhibit A hereto) to Customer. By submitting to Service Provider a registration request in the form attached hereto as Exhibit B ("Registration Request") indicating which Training Services Customer is requesting, Customer agrees to be bound by the terms and conditions of this Agreement, including all terms and conditions contained and/or referenced herein, as such terms and conditions may be modified by Service Provider from time to time, and all such terms shall be deemed accepted by Customer. Customer warrants and represents that it has the legal right and authority to order and use the Training Services as contemplated by this Agreement. In the event of a conflict between the terms of any other agreements between Service Provider and Customer, the terms of this Agreement shall prevail. This Agreement comes into effect on the date Service Provider sends Customer a confirmation of the registration ("Registration Confirmation") for Training Services as selected by Customer in such registration (the "Effective Date") and continues until terminated as hereinafter provided.

1. TRAINING SERVICES.

1.1 Service Provider will provide the Training Services identified in Registration Confirmation for the period, at the location (or via the means), and at the rates set forth on said Registration Confirmation (which packages and rates are set forth on Exhibit A hereto. "Training Services" shall include all training and related products and services to be undertaken by Service Provider on behalf of the Customer as provided for in the Registration Confirmation in accordance with this Agreement. Training Services conducted on-site and/or part on-site and part by other means such as online or distance learning shall be defined as "On-Site Training". Training Services not conducted onsite, including Training Services conducted via online or distance learning methods or means shall be defined as "Virtual Training".

1.2 Service Provider may subcontract its obligations under this Agreement provided that Service Provider shall remain ultimately liable for the performance of subcontractor in accordance with this Agreement.

2. TRAINING MATERIALS; CONFIDENTIALITY.

2.1 Service Provider shall retain all title, copyright and other proprietary and intellectual property rights in or related to the Training Services, including, without limitation, all software (including the Training Software as defined in Section 2.2. below), documentation and other associated training materials, data, information, processes, practices and platforms, including all modifications, additions and improvements

thereto, and in all copies and in any form or format of all or any portion thereof (collectively, the "Training Materials"). Customer agrees to maintain in strictest confidence and trust at all times, the Training Services (and any other information or materials provided by Service Provider which by their nature would be considered proprietary or confidential by a reasonable person) and the Training Materials. Unauthorized recording, copying, transmission or other distribution or use of the Training Services and/or Training Materials is strictly prohibited. Customer's use of the Training Materials shall be in accordance with the terms and conditions of this agreement and any license agreement for the Service Provider's product for which the Training Services are being performed in connection with such product.

2.2 Customer shall not sell, transfer, redistribute, license, sublicense or otherwise allow any use of any software utilized by Service Provider in providing the Training Services ("Training Software") or any portion thereof to any unauthorized party or users not referenced in the Registration Confirmation, or copy, translate, adapt, modify, decompile or reverse assemble (including specifically any security or source code) or any portion thereof, nor shall Customer analyze or otherwise examine any such Training Software or any portion thereof for reverse engineering purposes. Service Provider or its Training Software suppliers ("Suppliers"), as applicable, shall retain all title, copyright and other proprietary rights in or related to the Training Software and in all copies of all or any portion thereof. Customer does not acquire any rights, express or implied, in the Training Software by entering into this Agreement. All rights not specifically granted to Customer herein are specifically excluded from the scope of this Agreement and are hereby reserved by Service Provider. Following the termination of this Agreement for any reason, Customer shall discontinue all use and access to any Training Software and promptly return all copies thereof to Service Provider.

2.3. Customer is responsible for and must provide all connection and other equipment and services necessary to use the Training Materials (including the Training Software) and Training Services. Customer must maintain all appropriate hardware, software and connection requirements for such Services to operate and be delivered by Service Provider. Failure to deliver any Services for reasons of hardware, software or connection requirements will not be the responsibility of Service Provider.

3. PAYMENT PROVISIONS AND FEES UPON CANCELLATION AND RESCHEDULING.

3.1 Customer shall pay in advance all fees relating to its registration for any Training Services at the

rates then in effect for such Training Services. For situations where credit card payment is utilized, the Customer shall maintain a current authorization for Service Provider to debit the Customer's credit card account for such amounts. In addition, the Customer shall provide Service Provider with a current street address and Internet e-mail address for future communications and shall notify Service Provider of any change of the address. For situations where the Customer's credit card issuing financial institution has been notified of a payment dispute, the Customer agrees that proof of Training Services usage by the Customer constitutes the Customer's authorization to submit payment request to Credit Card issuing financial institution. Service Provider may, in addition, to any other remedies for nonpayment that it has at its sole discretion and without notice to the Customer, (a) suspend its performance under this Agreement and deny the Customer and (or) the Customer's designated users' access to and use of the Service until the Customer is back in good standing, or (b) terminate this Agreement and the Customer and (or) the Customer's designated users' access to and the use of the Training Services.

3.2 Service Provider may impose, and if imposed Customer shall pay, a late payment charge on the unpaid balance of overdue invoices hereunder equal to the lesser of (a) one and one-half percent (1.5%) per month (eighteen percent (18%) per annum) or (b) the maximum rate allowed by law. Such charge shall accrue from the payment due date until the date such payment is made in full.

3.3 In addition to the charges due under this Agreement, Customer agrees to pay amounts equal to any taxes or fees resulting from this Agreement, or any activities hereunder, exclusive of taxes based upon Service Provider's net income. For any On-Site Training Services Training Services ("Training Software") or any portion thereof to any unauthorized party or users not referenced in the Registration Confirmation, or copy, translate, adapt, modify, decompile or reverse assemble (including specifically any security or source code) or any portion thereof, nor shall Customer analyze or otherwise examine any such Training Software or any portion thereof for reverse engineering purposes. Service Provider or its Training Software suppliers ("Suppliers"), as applicable, shall retain all title, copyright and other proprietary rights in or related to the Training Software and in all copies of all or any portion thereof. Customer does not acquire any rights, express or implied, in the Training Software by entering into this Agreement. All rights not specifically granted to Customer herein are specifically excluded from the scope of this Agreement and are hereby reserved by Service Provider. Following the termination of this Agreement for any reason, Customer shall discontinue all use and access

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3.4 For any On-Site Training Services requested by Customer and agreed to by Service Provider, Customer shall reimburse Service Provider for actual, reasonable travel and out-of-pocket expenses incurred.

3.5 All Training Services must be completed by Customer within ninety (90) calendar days of payment for those Training Services or such Training Services will be forfeited by the Customer without any obligation on Service Provider's part to refund such fees to Customer for such forfeited Training Services. Service Provider requires no less than fourteen (14) calendar days' prior written notice to cancel and reschedule any On-Site Training Services and no less than twenty-four (24) hours prior written notice to cancel and reschedule any Virtual Training Services. Cancelled Training Services must be rescheduled and attended by Customer within fourteen (14) calendar days of the original course date or funds paid by Customer for such Training Services will be forfeited. Service Provider shall have the right to substitute Virtual Training Services for any cancelled On-Site Training Services. Failure of Customer to provide the required notification of any cancellation and rescheduling to Service Provider will result in 100% charge for the Training Services plus any non-refundable travel, accommodations or other expenses incurred by Trainer relating to such cancelled Training Services prior to such cancellation. If Customer does not attend a scheduled course without the proper prior notification, it will result in full forfeiture of the funds and no reschedule will be allowed.

3.6 Service Provider may cancel or reschedule a scheduled class at its sole discretion. If Service Provider cancels or reschedules a class that Customer has a Registration Confirmation for, Service Provider will endeavor to notify Customer upon not less than one (1) weeks' notice in advance of the originally scheduled class. Customer will receive a credit for the full amount paid by Customer for any such cancellation or rescheduling by Service Provider and Service Provider and Customer shall mutually agree upon new dates and times to reschedule the class, to be held by Service Provider and attended to by Customer within fourteen (14) calendar days of the date of the originally scheduled class, unless the parties agree otherwise in writing. Notwithstanding the foregoing, Service Provider is not liable to Customer for any costs, expenses or liabilities, including any travel or accommodation costs, incurred by Customer in the event that Service Provider cancels or reschedules any Training Services.

4. LIMITATION OF LIABILITY.

DISCLAIMER OF WARRANTIES. THE CUSTOMER EXPRESSLY AGREES THAT USE OF THE TRAINING SERVICES AND TRAINING MATERIALS (INCLUDING

THE TRAINING SOFTWARE) (COLLECTIVELY, THE "SERVICES") IS AT THE CUSTOMER'S SOLE RISK. NEITHER SERVICE PROVIDER NOR ANY OF ITS CONTRACTORS, SUPPLIERS, LICENSORS, EMPLOYEES, OR AGENTS OR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICES, WARRANTS THAT THE SERVICE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES SERVICE PROVIDER OR ANY OF ITS CONTRACTORS, SUPPLIERS, LICENSORS, EMPLOYEES OR AGENTS MAKES ANY WARRANTY AS TO THE RESULTS TO BE OBTAINED FROM USE OF THE SERVICES. THE SERVICES ARE MADE AVAILABLE ON AN "AS IS" BASIS WITHOUT WARRANTIES OF ANY KIND, EITHER EXPRESS OR IMPLIED, INCLUDING BUT NOT LIMITED TO WARRANTIES OF TITLE OR IMPLIED WARRANTIES OF MERCHANTABILITY, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE, OTHER THAN THOSE WARRANTIES WHICH ARE IMPLIED BY AND INCAPABLE OF EXCLUSION, RESTRICTION, OR MODIFICATION UNDER THE LAWS APPLICABLE TO THIS AGREEMENT. NEITHER SERVICE PROVIDER NOR ANY OF ITS CONTRACTORS, SUPPLIERS, LICENSORS, EMPLOYEES, OR AGENTS OR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICES SHALL BE LIABLE FOR ANY DIRECT, INDIRECT, INCIDENTAL, SPECIAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES ARISING OUT OF USE OF THE SERVICES OR INABILITY TO USE THE SERVICES OR OUT OF ANY BREACH OF ANY WARRANTY. IN NO EVENT WILL SERVICE PROVIDER OR ANY OF ITS CONTRACTORS, SUPPLIERS, LICENSORS, EMPLOYEES, OR AGENTS OR ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICES BE LIABLE FOR ANY CLAIM, WHETHER IN CONTRACT, TORT OR ANY OTHER THEORY OF LIABILITY, EXCEED THE AMOUNTS PAID BY THE CUSTOMER, IF ANY, FOR THE SERVICES FOR THE TWELVE-MONTH PERIOD PRECEDING THE EVENT FORMING THE BASIS OF THE CLAIM. SERVICE PROVIDER AND ITS CONTRACTORS, SUPPLIERS, LICENSORS, EMPLOYEES AND AGENTS AND ANYONE ELSE INVOLVED IN CREATING, DELIVERING OR MAINTAINING THE SERVICES ARE INTENDED BENEFICIARIES OF THIS SECTION. THE PROVISIONS OF THIS SECTION SHALL SURVIVE TERMINATION, EXPIRATION OR COMPLETION OF THIS AGREEMENT.

5. INDEMNIFICATION.

The Customer agrees to indemnify, defend and hold harmless Service Provider, its parent, subsidiaries, independent representatives, contractors, Suppliers, licensors and the employees, agents, successors and assigns of all such entities, from and against any and all claims and damages that are based upon or arising out of (i) any willful or negligent act(s) or omission(s) of Customer, its employees or agents, or (ii) any breach of the terms and conditions of this Agreement by Customer, its employees or agents.

6. TERM AND TERMINATION.

This Agreement shall commence on the Effective Date and shall continue until completion of Training Services in accordance with the Registration Confirmation and terms of this Agreement. Either party may terminate this Agreement by written notice to the other party in the event such other party neglects or fails to perform or observe any material term or obligation and fails to remedy such neglect or failure for a period of ten (10) days after written notice thereof from the non-defaulting party. Further, Service Provider may terminate this Agreement and cancel the Training Services to the Customer without cause upon thirty days (30) prior written notice to Customer. In the event that Service Provider terminates the Agreement, Service Provider will provide a refund to Customer for any unused portion of the Training Services paid in advance by the Customer. Except as otherwise expressly provided herein, termination of this Agreement, however occurring, shall neither relieve Customer of any accrued obligations to pay money to Service Provider nor entitle Customer to any refund of fees for Training Services or other amounts paid hereunder. Sections 2.1, 2.2, 3.1, 3.2, 3.3, 4, 5, 6 and 7 shall survive any termination or expiration of this Agreement.

7. NON-SOLICITATION OF EMPLOYEES.

Customer acknowledges that the training and qualifications of Service Provider employees are unique and that the loss of these employees may affect Service Provider's competitiveness and continued commercial success. It is expressly agreed and understood that for a period of three (3) years following the rendering of Service Provider's Training Services under this Agreement, Customer agrees that they will not, directly or indirectly, by themselves or as a partner or in any relationship with any other person or entity, recruit from Service Provider, or hire, any of Service Provider's employees or consultants, or induce, solicit, or influence any employee or consultant of Service Provider to terminate or curtail his or her employment or engagement with Service Provider, without Service Provider's prior written consent. The covenants and obligations of the parties set forth in this Section shall be specifically enforceable in addition to and not in limitation of any other legal or equitable remedies, including monetary damages.

8. SUCCESSORS AND ASSIGNS.

Restrictions on Assignment. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors, assigns, heirs, beneficiaries, estates, executors and personal representatives.

9. GOVERNING LAW

Venue and Jurisdiction. This Agreement shall be

governed by the laws of the State of New York, without reference to conflict of laws principles. The parties irrevocably submit to the jurisdiction and venue of the federal courts sitting in the Eastern and Southern Districts of New York or any New York state courts in the counties of Nassau and Suffolk, for the purpose of any suit, action or proceeding arising out of this Agreement. The parties hereby irrevocably waive the defense of an inconvenient forum to the maintenance of any such suit, action or proceeding.

10. SEVERABILITY AND REFORMATION.

In the event that any provision of this Agreement, or any word, phrase, clause, sentence or other portion thereof, should be held to be unenforceable or invalid for any reason, Service Provider and the Customer hereby expressly authorize any appropriate court or administrative body to modify or delete such provision or portion thereof in such a manner so as to make this Agreement, as modified, legal and

enforceable to the fullest extent permitted under applicable laws. In the event that any part of this Agreement is declared by any court or other judicial or administrative body to be null, void or unenforceable, said provisions shall survive to the extent it is not so declared, and all of the other provisions of this Agreement shall remain in full force and effect.

11. AMENDMENTS; WAIVERS.

Except as otherwise expressly provided in this Agreement, this Agreement may be amended or modified, and any of the terms, covenants, representations, warranties or conditions hereof may be waived, only by a written instrument executed by the parties hereto, or in the case of a waiver, by the party waiving compliance. The waiver by any party of any condition or of the breach of any provision, term, covenant, representation or warranty contained in this Agreement, in any one or more instances, shall not be deemed to be nor construed as a further

or continuing waiver of any such condition or of the breach of any other provision, term, covenant, representation or warranty of this Agreement or as a waiver of any other provision of this Agreement.

12. SECTION HEADINGS.

The section headings in this Agreement are inserted solely as a matter of convenience and for reference and are not a part of this Agreement.

13. ENTIRE AGREEMENT.

This Agreement (including all schedules hereto, which are all hereby incorporated herein by reference) contains the entire understanding and agreement between the parties hereto with respect to the matters contemplated herein and supersedes and replaces all prior and contemporaneous agreements and understandings, oral or written, with regard to such matters.