

Mobile Application End User License Agreement

This Mobile Application End User License Agreement ("**Agreement**") is a binding agreement between you ("**End User**" or "**You**") and PREMIER HEALTHCARE STAFFING, LLC ("**Company**"). This Agreement governs your use of the underlying mobile application (including all related documentation, the "**Application**"). The Application is licensed, not sold, to you.

BY DOWNLOADING/INSTALLING/USING THE APPLICATION, YOU

(A) ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT;

(B) REPRESENT THAT YOU ARE 18 YEARS OF AGE OR OLDER/OF LEGAL AGE TO ENTER INTO A BINDING AGREEMENT; AND

(C) ACCEPT THIS AGREEMENT AND AGREE THAT YOU ARE LEGALLY BOUND BY ITS TERMS. IF YOU DO NOT AGREE TO THESE TERMS, DO NOT DOWNLOAD/ INSTALL/USE THE APPLICATION AND DELETE IT FROM YOUR MOBILE DEVICE.

1. Access Grant. Subject to the terms of this Agreement, Company grants You a limited, rescindable, non-exclusive, and nontransferable license to access and utilize the Application using official Access Credentials. Said Access Credentials provide You the ability to :

(a) download, install, and use the Application on a single mobile device owned or otherwise controlled by You ("**Mobile Device**") strictly in accordance with these Terms and Conditions, which shall include and subject same to compliance with privacy laws and discretion of materials regarding health and wellness of persons, including children below the age of 13 ("**Student**")

(b) Company reserves the right to rescind Access Credentials should the Company discover or suspect that You have violated one or more of the Access Grant Restrictions listed below in Section 2. The Application registered to You is being used by a person other than You, and/or You have used the Application in a manner or for a purpose for which it was not intended, such as data mining.

2. Access Grant Restrictions. You shall not:

(a) copy the Application, except as expressly permitted by this license;

(b) modify, translate, adapt, or otherwise create derivative works or improvements, whether or not patentable, of the Application;

(c) reverse engineer, disassemble, decompile, decode, or otherwise attempt to derive or gain access to the source code of the Application or any part thereof;

(d) remove, delete, alter, or obscure any trademarks or any copyright, trademark, patent, or other intellectual property or proprietary rights notices from the Application, including any copy thereof;

(e) rent, lease, lend, sell, sublicense, assign, distribute, publish, transfer, or otherwise make available the Application, or any features or functionality of the Application, to any third party for any reason, including by making the Application available on a network where it is capable of being accessed by more than one device at any time;

(f) remove, disable, circumvent, or otherwise create or implement any workaround to any copy protection, rights management, or security features in or protecting the Application; or

(g) use the Application in, or in association with, any act that is contrary to any rule, regulation, law, or condition herein.

3. Reservation of Rights. You acknowledge and agree that the Application is provided under license, and not sold, to you. You do not acquire any ownership interest in the Application under this Agreement, or any other rights thereto other than to use the Application in accordance with the license granted, and subject to all terms, conditions, and restrictions, under this Agreement. Company reserves and shall retain its entire right, title, and interest in and to the Application, including all copyrights, trademarks, and other intellectual property rights therein or relating thereto, except as expressly granted to You in this Agreement.

4. Improvements. Company may solicit or received suggestions, comments, ideas, improvements, or the like for the Application from You. You acknowledge that any such suggestion, comment, idea, and/or improvement is given freely, and that Company can utilize such suggestion, comment, idea, and/or improvement in any manner Company sees fit without compensation or acknowledgement to You.

5. Registration. To utilize the Application, You will be provided with the ability to register yourself as a user, therein becoming a Registered User. In becoming a Registered User, You agree to:

a) provide true, accurate, current, and complete information about yourself as prompted. This information is herein referred to as Registration Data for the Application;

b) maintain and update the Registration Data to keep it true, accurate, current, and complete;

c) represent that You are of legal age, sound mind and legally able to enter into a binding contract

d) represent that You are a licensed physician, nurse, therapist, social worker, school psychologist, learning disabilities teacher consultant, and/or school administrator;

e) confirm You are not barred from using the Application by the Company;

f) confirm You are obtaining Access Credentials for yourself and not another.

g) confirm You have not already registered and have other Access Credentials.

6. Unauthorized Use. Access Credentials are for use by You alone. You may not share any Access Credentials with anyone nor place such credentials in any forum that is accessible by another. Should it be discovered that Access Credentials are lost, stolen, or used by another, You shall immediately inform Company of the security breach. You are responsible for logging out of every session of use and securing the device used to access your account. You are responsible for all activities that occur using your Access Credentials. You acknowledge that You will accept all responsibility for use of Applications by children and minors who may access your equipment.

7. Your Account. You acknowledge that You have no ownership rights, either implicit or implied, in your account or entries made into your account. You further acknowledge that all rights in and to your account are owned by and inure to the benefit of Company.

8. Necessary Equipment And Access. You are solely responsible for the equipment, software and network access required to download and run the Application. You are solely responsible for all fees and costs of owning, maintaining and operation your equipment and access to a data network.

9. Collection and Use of Your Information. You acknowledge that when You download, install, or use the Application, Company may use automatic means (including, for example, cookies and web beacons) to collect information about your Mobile Device and about your use of the Application. You also may be required to provide certain information about yourself as a condition to downloading, installing, or using the Application or certain of its features or functionality, and the Application may provide You with opportunities to share information about yourself with others. By downloading, installing, using, and providing information to or through this Application, You consent to Company having access to this information and to use this information to better its products and services. Company has the right to save collected data and to provide access to such collected data to third parties at the discretion of the Company.

10. Geographic Restrictions. The Content and Services are based in the state of New Jersey in the United States and provided for access and use only by persons located in the United States. You acknowledge that you may not be able to access all or some of the Content and Services outside of the United States and that access thereto may not be legal by certain persons or in certain countries. If You access the Content and Services from outside the United States, you are responsible for compliance with local laws.

11. Updates. Company may from time to time in its sole discretion develop and provide Application updates, which may include upgrades, bug fixes, patches, other error corrections, and/or new features (collectively, including related documentation, "**Updates**").

Updates may also modify or delete in their entirety certain features and functionality. You agree that Company has no obligation to provide any Updates or to continue to provide or enable any particular features or functionality. Based on your Mobile Device settings, when your Mobile Device is connected to the internet either:

- (a) the Application will automatically download and install all available Updates; or
- (b) You may receive notice of or be prompted to download and install available updates.

You shall promptly download and install all Updates and acknowledge and agree that the Application or portions thereof may not properly operate should You fail to do so. You further agree that all Updates will be deemed part of the Application and be subject to all terms and conditions of this Agreement.

12. Consent And Compliance If not already obtained through school districts and/or Family Educational Rights and Privacy Act (FERPA), You shall obtain any and all consents (including consents of the legal guardians of a minor or cognitively disabled person), including the permission for the collection, use, processing, transfer, and disclosure of personal data prior to accessing or entering such personal data into Application. You shall maintain copies of all consents. As to any consent or data made available to Company that requires obtaining consent, You confirms that You have notified and obtained consent from all necessary persons (including guardians, students, teachers, interns, aides, principals, and other such personnel) and have taken all other actions that may be necessary to ensure that use of the data or materials provided hereunder complies with all applicable laws, regulations, municipal, district and administrative polies. You acknowledges and agrees that You must properly enter data and settings while using Application. You will verify the accuracy of the data and settings entered into Application. Company has no liability arising from any inaccuracy of data or settings selected or entered by You.

13. Hosting. The Application will be hosted by an authorized subcontractor (herein Hosting Service Provider) that has been engaged by Company and will be accessed to You via a data network and You's equipment. Hosting Service Provider will be solely responsible for maintaining a backup of content. Hosting Service Provider will be solely responsible for ensuring that software is operational, virus free and unhacked. Any damages that may be caused by viruses, program hacking, malware or other unauthorized program code is the sole responsibility of the Hosting Service Provider. The Hosting Service Provider is an independent third party that is not controlled by Company. Accordingly, in no event will Company be liable for any direct, general, special, incidental, indirect, or consequential damages arising out of the use or inability to use any service due to problems, errors or outages associated with functions of servers or other equipment maintained or operated by Hosting Service Provider, even if Company has been advised as to the possibility of such problems occurring.

14. Customer Responsibilities. Customer understands and agrees that You shall review any calculations made by using the Application and satisfy You that those calculations are correct; and if Customer uses the Application for reimbursement or payment from parents, school, district or other people/agencies, Company shall have no responsibility, and You shall have sole responsibility, to submit information and claims for such reimbursement or payment. Company does not warrant that the Application, or the results derived there from, will meet the requirements expected by You, or that the operation of the Application will be uninterrupted or error-free. You is solely responsible for obtaining and maintaining, at its own expense, all hardware, software, and services needed to use the Application, including any and all servers, computers, and Internet access services. In connection with the performance of the Application, You shall provide Company with all such cooperation and assistance as they may reasonably request, or otherwise may reasonably be required, to enable Company to perform its obligations and exercise its rights, under and in accordance with the terms and conditions of this Agreement.

15. Fees and Purchase Agreement; Purchase Orders.

a) Sale of Service, not Software. The purpose of these Terms of Service is for You to secure Access Credentials to the Application. All fees specified and paid by You under these Terms of Service will be considered solely in furtherance of this purpose. In no way are these fees paid considered payment for the sale, license, or use of the software and technology underlying the Application, and, furthermore, any use of such software and technology by You in furtherance of this Terms of Service will be considered merely in support of the purpose of this Terms of Service.

b) Orders and Purchase Orders. An “**Order**” is a document that specifies the specific services ordered and the fees to be paid. An Order may take the form of: (a) an electronic form (e.g., an order placed online through a Company website), (b) an order form generated by Company and executed by both parties, or (c) a purchase order that You submit and pursuant to which You are provided access to the services. Unless You have entered into a separate Customer Agreement, your access to and use of any services is governed by these Terms of Service and the terms of the applicable Order, provided however that the only terms contained in a purchase order that will have any force or effect are the services ordered and the price to be paid. All other terms contained in any purchase order are expressly rejected. All fees and charges will be specified in the applicable Orders. Except as otherwise provided in the applicable Orders, Company will invoice You in U.S. Dollars and You will pay all fees, charges, and expenses via check, credit card, debt card, or ACH. Without prejudice to its other rights and remedies, if Company does not receive any payment by the due date set forth in the applicable Orders, Company may assess a late payment charge on the unpaid amount at the rate of 1.5% per month or the highest rate allowed under applicable law, whichever is less. If for any reason Company’s personnel travel to your facility or otherwise in connection with the services under these Terms of Service or the applicable Orders, You will be responsible

for the reasonable costs of transportation, lodging, meals, and the like for Company's personnel.

16. Payment. For certain services You may elect, or You may be required, to provide a valid credit card. By submitting the credit card, You authorize us to charge to your credit card the fees or charges applicable to your Account as specified in any Order, or if any Order is renewing automatically, in accordance with the fees, charges, and billing terms in effect at the time of the renewal and a fee or charge is due and payable. You agree that Company is not required to provide You any additional notice. Your agreement with your credit card issuer governs your use of the designated credit card and You must refer to that agreement to determine your rights and liabilities in connection with your use of your credit card. You agree to immediately notify Company of any change in your billing address or the credit card used for payment. If You desire to cancel any service that is subject to automatic renewal, it is the sole responsibility of You to contact Company and formally request cancellation of said service and participate in the cancellation procedure.

17. Sales Taxes. Company's fees are net of any applicable sales tax that may be due in connection with the services provided under these Terms of Service. If Company determines that You are subject to sales taxes and Company has a legal obligation to collect a sales tax from You in connection with these Terms of Service, Company shall collect such sales tax in addition to any fees described. If any services, or payments for any services, under these Terms of Service are subject to sales tax in any jurisdiction and You have not remitted the applicable sales tax to Company, You will be responsible for the payment of such sales tax and any related penalties or interest to the relevant tax authority, and You will indemnify Company for any liability or expense we may incur in connection with such sales tax. Upon Company's request, You will provide us with official receipts issued by the appropriate taxing authority, or other such evidence that You have paid all applicable taxes. For purposes of this section, "sales tax" shall mean any sales or use tax and any other tax measured by sales proceeds that is the functional equivalent of a sales tax where the applicable taxing jurisdiction does not otherwise impose a sales or use tax.

18. Automatic Renewal. Your Order may continue year-to-year until terminated in accordance with these Terms of Service. After the initial term of your Order, and again after any subsequent terms, your Order will automatically commence on the first day following the end of such period (each a "**Renewal Commencement Date**") and continue for an additional equivalent period at Company's then-current price for such Services. You agree that your account will be subject to this automatic renewal feature unless You cancel your subscription prior to the Renewal Commencement Date. If You do not wish your Account to renew automatically, or if You want to change or terminate your Services, please contact Company. If You cancel your services, You may use your services until the end of your then-current term; your services will not be renewed after your then-current term expires. However, You will not be eligible for a prorated refund of any portion of the fees paid for the then-current term. By accessing the services, You authorize Company to charge your credit card now, and again at the beginning of any subsequent term. Upon renewal of your services, if Company does not receive payment from your credit card, (a) You agree to pay all amounts due on your account upon demand, and (b) You agree that Company may either terminate or suspend your services and continue to attempt

to charge your credit card until payment is received (upon receipt of payment, your Account will be activated and for purposes of automatic renewal, your new services commitment period will begin as of the day payment was received).

19. Third-Party Provider. Company uses a “*Payment Service Provider*” as third-party service providers for payment services (e.g., card acceptance, merchant settlement, and related services). By licensing the Application, You agree to be bound by the Payment Service Provider’s Privacy Policy, as applicable and hereby consent and authorize Company and the Payment Service Provider to share any information and payment instructions You provide with third party service providers to the extent required to complete your transactions

20. Remedies.

a) Violations. If Company becomes aware of any possible violations by You of these Terms of Service, Company reserves the right to investigate such violations. If, as a result of the investigation, Company believes that improper activity has occurred, Company reserves the right to refer the matter to, and to cooperate with, any and all applicable authorities. Likewise, Company has the right to protect its reputation, copyrights, service marks, and trademarks. If Company believes that activities conducted or endorsed by You are harmful to Company and/or Companies reputation, Company can take any legal action against You to stop such harm from occurring. Company is entitled, except to the extent prohibited by applicable law, to disclose any information or materials on or in Application, including User Content, in Company’s possession in connection with your use of Application, to (a) comply with applicable laws, legal process or governmental request; (b) enforce the Terms of Service; (c) respond to any claims that any of your User Content violates the rights of third parties; (d) respond to your requests for customer service; or (e) protect the rights, property or personal safety of Company or the public, and all enforcement or other government officials, as Company in its sole discretion believes to be necessary or appropriate.

b) Breach. If Company determines, in its sole discretion, that You have breached any portion of these Terms of Service, or have otherwise demonstrated conduct inappropriate for Application, Company reserves the right to:

1. Warn You via e-mail (to any e-mail address You have provided to Company) that You have violated the Terms of Service;
2. Delete any User Content provided by You or your agents to Company Technology;
3. Discontinue your registrations with any services;
4. Discontinue your access to and use of any services;
5. Notify or send User Content to and fully cooperate with the proper law enforcement authorities for further action; and/or
6. Pursue any other action which Company deems to be appropriate.

21. Warranties and Disclaimers.

a) Mutual. Each party states that the party's execution, delivery, and performance of these Terms of Service (a) have been authorized by all necessary action of the governing body of the party; (b) do not violate the terms of any law, regulation, or court order to which such party is subject or the terms of any agreement to which the party or any of its assets may be subject; and (c) are not subject to the consent or approval of any third party.

b) *By You.* You state that You have the full legal right to provide the User Content and that the User Content will not (a) infringe any intellectual property rights of any person or entity or any rights of publicity, personality, or privacy of any person or entity, including as a result of failure to obtain consent to provide Personal Data or otherwise private information about a person if such consent is not obtained through a school district and/or FERMA; (b) violate any law, statute, ordinance, regulation, or agreement, including school or district policies; or (c) constitute disclosure of any confidential information owned by any third party.

c) *By Company.* Company states that the Services will perform substantially in accordance with the specifications specifies in the then-current Documentation for 90 days after the Effective Date of these Terms of Service. In the event of a non-conformance of any Service, reported to and verified by Company, Company will make commercially reasonable efforts to correct such non-conformance. Your sole remedy is limited to the replacement, repair, or performance, at Company's option, of defective Services. Notwithstanding the foregoing, any Third-Party Materials will be subject only to such third-party terms and any warranties therein.

d) *Disclaimers.* You expressly understand and agree that to the extent permitted by applicable law, your use of the services is at your sole risk, and the services are provided on an "as is" and "as available" basis, with all faults. Except as expressly provided in these Terms of Service, Company and its licensors expressly disclaim all warranties, representations, and conditions of any kind, whether express, implied, or statutory, as to any aspect of the services or other products, including warranties of merchantability and fitness for a particular purpose. Company and its licensors do not warrant that the services will be uninterrupted, or error-free; nor do they make any warranty as to the results that may be obtained from use of the services.

22. Third-Party Materials. The Application may display, include, or make available third-party content (including data, information, applications, and other products, services, and/or materials) or provide links to third-party websites or services ("**Third-Party Materials**") Advertisements by third parties are subject to approval by Company and may/may not be subject to an advertising fee as decided on a case-by-case basis by Company.. You

acknowledge and agree that Company is not responsible for Third-Party Materials, including their accuracy, completeness, timeliness, validity, copyright compliance, legality, decency, quality, or any other aspect thereof. Company does not assume and will not have any liability or responsibility to You or any other person or entity for any Third-Party Materials.

Third-Party Materials and links thereto are provided solely as a convenience to You, and You access and use them entirely at your own risk and subject to such third parties' terms and conditions.

23. Term and Termination.

a) The term of Agreement commences when You download the Application/acknowledge your acceptance and will continue in effect until terminated by You or Company as set forth herein.

b) You may terminate this Agreement by deleting the Application and all copies thereof from your Mobile Device. Upon termination there are no pro-rata refunds of fees paid.

c) Company may terminate this Agreement at any time without notice. In addition, this Agreement will terminate immediately and automatically without any notice if You violate any of the terms and conditions of this Agreement.

d) Upon termination:

(i) all rights granted to You under this Agreement will also terminate;
and

(ii) You must cease all use of the Application and delete all copies of the Application from your Mobile Device and account.

e) Termination will not limit any of Company's rights or remedies at law or in equity.

24. No Subsequent Registration. If your registration with or ability to access services, or any other Company community is discontinued by Company due to your violation of any portion of these Terms of Service or for conduct otherwise inappropriate for the community, then You agree that You shall not attempt to re-register with or access the services or any Company community through use of a different member name or otherwise, and You acknowledge that You will not be entitled to receive a refund for fees related to those services to which your access has been terminated. If You violate the immediately preceding sentence, Company reserves the right, in its sole discretion, to immediately take any or all the actions set forth in these Terms of Service without any notice or warning to you.

25. Dispute Resolution. Please read the following arbitration agreement in this section (“*Arbitration Agreement*”) carefully. It requires You to arbitrate disputes with Company and limits the way You can seek relief from us.

a) **Applicability of Arbitration Agreement.** You agree that any dispute, claim, or request for relief relating in any way to your access or use of the Company Technology, or to any aspect of your relationship with Company, will be resolved by binding arbitration, rather than in court. **This Arbitration Agreement will apply, without limitation, to all disputes or claims and request for relief that arose or were asserted before the Effective Date of these Terms of Service or any prior version of these Terms of Service.**

b) *Arbitration Rules and Forum.* The Federal Arbitration Act governs the interpretation and enforcement of this Arbitration Agreement. To begin an arbitration proceeding, You must send a letter requesting arbitration and describing your dispute or claim or request for relief to an agreed to professional arbitrator. You may choose to have the arbitration conducted by telephone, based on written submissions, or in person at a mutually agreed location. Any judgment on the award rendered by the arbitrator may be entered in any court of competent jurisdiction.

c) *Authority of Arbitrator.* The arbitrator will have exclusive authority to (i) determine the scope and enforceability of this Arbitration Agreement, and (ii) resolve any dispute related to the interpretation, applicability, enforceability, or formation of this Arbitration Agreement including any assertion that all or any part of this Arbitration Agreement is void or voidable. The arbitration will decide the rights and liabilities, if any, of You and Company. The arbitration proceeding will not be consolidated with any other matters or joined with any other cases or parties. The arbitrator will have the authority to grant motions dispositive of all or part of any claim. The arbitrator will issue a written award and statement of decision describing the essential findings and conclusions on which the award is based, including the calculation of any damages awarded. The arbitrator has the same authority to award relief on an individual basis that a judge in a court of law would have. The award of the arbitrator is final and binding upon You.

d) **Waiver of Jury Trial.** You waive any constitutional and statutory rights to sue in court and have a trial in front of a judge or a jury. You are instead electing that all disputes, claims, or request for relief will be resolved by arbitration under this Arbitration Agreement. An arbitrator can award on an individual basis the same relief as a court and must follow these Terms of Service as a court would. However, there is no judge or jury in arbitration, and court review of an arbitration award is subject to very limited review.

e) **Waiver of Class or Other Non-Individualized Relief.** All disputes, claims, and requests for relief within the scope of this Arbitration Agreement must be arbitrated on an individual basis and not party of a class action or collective basis, only individual relief is available, and claims of more than one

customer or user cannot be arbitrated or consolidated with those of any other customer or user. If a decision is issued stating that applicable law precludes enforcement of any of this subsection's limitations as to a given dispute, claim, or request for relief, then such aspect must be severed from the arbitration and brought in the State or Federal Courts located in the State of New Jersey. All other disputes, claims, or requests for relief shall be arbitrated.

26. Disclaimer of Warranties. THE APPLICATION IS PROVIDED TO END USER "AS IS" AND WITH ALL FAULTS AND DEFECTS WITHOUT WARRANTY OF ANY KIND. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, COMPANY, ON ITS OWN BEHALF AND ON BEHALF OF ITS AFFILIATES AND ITS AND THEIR RESPECTIVE LICENSORS AND SERVICE PROVIDERS, EXPRESSLY DISCLAIMS ALL WARRANTIES, WHETHER EXPRESS, IMPLIED, STATUTORY, OR OTHERWISE, WITH RESPECT TO THE APPLICATION, INCLUDING ALL IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, AND NON-INFRINGEMENT, AND WARRANTIES THAT MAY ARISE OUT OF COURSE OF DEALING, COURSE OF PERFORMANCE, USAGE, OR TRADE PRACTICE. WITHOUT LIMITATION TO THE FOREGOING, COMPANY PROVIDES NO WARRANTY OR UNDERTAKING, AND MAKES NO REPRESENTATION OF ANY KIND THAT THE APPLICATION WILL MEET YOUR REQUIREMENTS, ACHIEVE ANY INTENDED RESULTS, BE COMPATIBLE, OR WORK WITH ANY OTHER SOFTWARE, APPLICATIONS, SYSTEMS, OR SERVICES, OPERATE WITHOUT INTERRUPTION, MEET ANY PERFORMANCE OR RELIABILITY STANDARDS, OR BE ERROR-FREE, OR THAT ANY ERRORS OR DEFECTS CAN OR WILL BE CORRECTED.

SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF OR LIMITATIONS ON IMPLIED WARRANTIES OR THE LIMITATIONS ON THE APPLICABLE STATUTORY RIGHTS OF A CONSUMER, SO SOME OR ALL OF THE ABOVE EXCLUSIONS AND LIMITATIONS MAY NOT APPLY TO YOU.

27. Limitation of Liability. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT WILL COMPANY OR ITS AFFILIATES, OR ANY OF ITS OR THEIR RESPECTIVE LICENSORS OR SERVICE PROVIDERS, HAVE ANY LIABILITY ARISING FROM OR RELATED TO YOUR USE OF OR INABILITY TO USE THE APPLICATION, VIRUSES OR OTHER HACKS ADDED BY THIRD PARTIES TO THE APPLICATION OR THE CONTENT AND SERVICES FOR:

a) PERSONAL INJURY, PROPERTY DAMAGE, LOST PROFITS, COST OF SUBSTITUTE GOODS OR SERVICES, LOSS OF DATA, LOSS OF GOODWILL, BUSINESS INTERRUPTION, COMPUTER FAILURE OR MALFUNCTION, OR ANY OTHER CONSEQUENTIAL, INCIDENTAL, INDIRECT, EXEMPLARY, SPECIAL, OR PUNITIVE DAMAGES.

b) DIRECT DAMAGES IN AMOUNTS THAT IN THE AGGREGATE EXCEED THE AMOUNT ACTUALLY PAID BY YOU FOR THE APPLICATION.

THE FOREGOING LIMITATIONS WILL APPLY WHETHER SUCH DAMAGES ARISE OUT OF BREACH OF CONTRACT, TORT (INCLUDING NEGLIGENCE), OR OTHERWISE AND REGARDLESS OF WHETHER SUCH DAMAGES WERE FORESEEABLE OR COMPANY WAS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES. SOME JURISDICTIONS DO NOT ALLOW CERTAIN LIMITATIONS OF LIABILITY SO SOME OR ALL OF THE ABOVE LIMITATIONS OF LIABILITY MAY NOT APPLY TO YOU.

28. Indemnification. You agree to indemnify, defend, and hold harmless Company and its officers, directors, employees, agents, affiliates, successors, and assigns from and against any and all losses, damages, liabilities, deficiencies, claims, actions, judgments, settlements, interest, awards, penalties, fines, costs, or expenses of whatever kind, including attorneys' fees, arising from or relating to your use or misuse of the Application or your breach of this Agreement, including but not limited to the content You submit or make available through this Application.

29. US Government Rights. The Application is commercial computer software, as such term is defined in 48 C.F.R. §2.101. Accordingly, if You are an agency of the US Government or any contractor therefor, You receive only those rights with respect to the Application as are granted to all other end users under license, in accordance with (a) 48 C.F.R. §227.7201 through 48 C.F.R. §227.7204, with respect to the Department of Defense and their contractors, or (b) 48 C.F.R. §12.212, with respect to all other US Government licensees and their contractors.]

30. Severability. If any provision of this Agreement is illegal or unenforceable under applicable law, the remainder of the provision will be amended to achieve as closely as possible the effect of the original term and all other provisions of this Agreement will continue in full force and effect.

31. Governing Law. This Agreement is governed by and construed in accordance with the internal laws of the State of New Jersey without giving effect to any choice or conflict of law provision or rule. Any legal suit, action, or proceeding arising out of or related to this Agreement or the Application shall be instituted exclusively in the federal courts of the United States or the courts of the State of New Jersey. You waive any and all objections to the exercise of jurisdiction over You by such courts and to venue in such courts.

32. Entire Agreement. This Agreement and our Privacy Policy constitute the entire agreement between You and Company with respect to the Application and supersede all prior or contemporaneous understandings and agreements, whether written or oral, with respect to the Application.

33. Waiver. No failure to exercise, and no delay in exercising, on the part of either party, any right or any power hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any right or power hereunder preclude further exercise of that or any other right hereunder. In the event of a conflict between this Agreement and any applicable purchase or other terms, the terms of this Agreement shall govern.