

## ThisWay Global Master Customer Agreement

PLEASE SCROLL DOWN AND READ CAREFULLY ALL TERMS AND CONDITIONS CONTAINED IN THIS MASTER CUSTOMER AGREEMENT (THIS “**AGREEMENT**”) BEFORE USING THE SOFTWARE DEFINED HEREIN AS THE “**PRODUCTS**”.

BY SIGNING AN ORDER FORM REFERENCING THESE TERMS, YOU AGREE TO THE FOLLOWING TERMS AND CONDITIONS GOVERNING YOUR USE OF THE “**PRODUCTS**” (DEFINED BELOW) OFFERED BY THISWAY GLOBAL, INC. (“**TWG**”) AND YOU ACKNOWLEDGE THAT YOU HAVE READ AND UNDERSTAND THIS AGREEMENT. IF YOU ARE ENTERING INTO THIS AGREEMENT ON BEHALF OF A TWG OR OTHER LEGAL ENTITY, YOU REPRESENT THAT YOU HAVE THE POWER AND AUTHORITY TO BIND SUCH ENTITY TO THIS AGREEMENT, IN WHICH CASE THE TERMS “**CUSTOMER**,” “**YOU**” AND “**YOUR**” SHALL REFER TO SUCH ENTITY OR INDIVIDUAL. IF YOU DO NOT HAVE SUCH AUTHORITY, OR IF YOU DO NOT AGREE WITH THIS AGREEMENT, DO NOT SIGN AN ORDER FORM, AND DO NOT INSTALL THE PRODUCT, AND YOU MAY NOT USE THE PRODUCT. THIS AGREEMENT IS EFFECTIVE WHEN CUSTOMER SIGNS AN ORDER FORM, OR CUSTOMER DOWNLOADS OR BEGINS USING THE PRODUCT, WHICHEVER IS EARLIER (“**EFFECTIVE DATE**”).

### I. PRODUCTS AND PRODUCT-RELATED WORK

A. **Definitions:** “**Applicant/Application**” means the individual record pertaining to an individual who has applied for a specific job opportunity. “**Authorized User**” means each of Customer’s employees, agents, and independent contractors who are authorized to access the Product pursuant to Customer’s rights under this Agreement. “**Job**” means a single open employment position, in one location, in Customer’s company. The use of the same job description in a different location qualifies as a different Job. “**Product-Related Work**” means Product-Related Work provided by TWG to Customer as described in the Order Form, including work relating to onboarding and training and implementation. “**Product**” means the services ordered by Customer through an Order Form, including, but not limited to, the designated AI4Jobs products made available to Customer as a service based on TWG’s proprietary AI/machine learning platform. “**Subscription**” means the annual-based plan for access to the Product hosted by TWG or its third party provider, as the case may be, including any associated downloadable components to the extent applicable. “**Order Form**” means the ordering document signed by the parties or online order that accompanies and is incorporated into this Agreement, including any service policies or other order-specific terms executed by the parties. “**Query**” means the initial search function being performed by Customer.

B. Subject to the terms of this Agreement and timely payment of all fees, TWG will use commercially reasonable efforts to provide Customer access to the Product specified in an associated Order Form, solely for Your internal, or for the benefit of Your customers’, business purposes. You agree that the Product are not contingent on the delivery of any future functionality or features, or dependent on any oral or written comments made by TWG regarding future functionality or features. As part of the registration process, Customer will identify an administrative username and password for Customer’s TWG account. TWG reserves the right to refuse registration of, or cancel passwords it deems inappropriate.

C. Subject to the terms of this Agreement and timely payment of all fees, TWG will provide the Product-Related Work to Customer as set forth in one or more Order Form(s). The Order Form will include: (a) a description of the Product-Related Work; (b) the schedule for the performance of the Product-Related Work;

and (c) the Fees applicable for the performance of the Product-Related Work. Each Order Form will incorporate the terms and conditions of this Agreement. Notwithstanding the foregoing, Customer agrees that a Customer representative must participate in an onboarding and training session provided by TWG.

D. Subject to the terms of this Agreement and timely payment of all fees, TWG will provide to Customer standard support for the Product at no additional charge in accordance with TWG's standard support policy. TWG will use reasonable commercial efforts to make the Product available not less than 99.9% of the time in any given month subject to scheduled downtime and other parameters imposed by TWG's web service provider. TWG will have no obligation to provide any additional services to Customer, including, training, implementation, or any support or maintenance in excess of TWG's standard support policy, unless Customer purchases such services as set forth in an Order Form.

E. TWG does not limit its customers on number of Queries. The limitations for total exported candidates are set forth in the Product descriptions.

## II. UIP/ IBM WATSONX ORCHESTRATE AND RESELLER PRODUCTS

A. This Section II applies to Customers that purchase, through an Order Form(s), the Product of TWG's Skill building and publication/reselling on IBM's watsonx Orchestrate platform ("**WYO**"), utilizing TWG's Universal Integration Platform ("**UIP**") (such Customers, the "**Skill Partners**"). In addition to these terms, TWG will provide, and Customer will complete with details, a detailed operational document(s) regarding the particular Skill(s) that TWG will build for Customer and the TWG Skill-building process.

B. A "**Skill**" is a singular API-enabled activity that automates a particular activity or function supported by Skill Partners on the Products. Skills can be either (a) out of the box, in the catalog, and available to everyone, or (b) custom for a single Customer, and not available to everyone. Regardless of Skill type, all Authorized Users require a license to utilize that Skill from the Skill Partner.

C. **Description of the UIP:** The UIP is TWG's proprietary Product that facilitates integration(s) and data flows between other systems to enable the usage of Skills on WYO. The current "**Minimum Requirements**" for application interfaces on the WYO are OAuth2 Authentication (password grant only) and OpenAPI v3.0.x specification, which may be updated by TWG from time to time.

D. **Skill Building Type:** Skill Partners shall order one of the following types of Products for each Skill, which determination is subject to discovery and approval by TWG:

1. **Standard Skill Products:** Skill Partner provides an application interface that meets the Minimum Requirements, and TWG will perform the initial Skill build for uploading the corresponding Skill to the WYO, with no requirement for involvement of UIP or other technology proprietary to TWG.

2. **Enhanced Skill Products:** Skill Partner provides an application interface that does not meet the Minimum Requirements, and TWG will use the UIP and/or other proprietary technology to build and support the corresponding Skill on WYO.

E. **Skill Process Flow:** The Products for this Section II consists of TWG building the Skill and reselling it to other WYO users. The process flow for this Product will be as follows:

F. Skill Partner will complete TWG's standard request form to build a Skill. TWG will evaluate Skill Partner's technology to determine the type of Skill and suitability of Skill, based on IBM guidelines.

G. Skill Partner will provide any additional information, API specification, authentication credentials, etc. requested by TWG in order for TWG to build the Skill and submit it for approval by IBM. Skill Partner will

make all changes to its application interface, and related information, required by TWG in order to obtain IBM approval and facilitate proper integration into WXO.

H. TWG will build the Skill and brand it pursuant to Skill Partner's approval.

I. TWG will submit the Skill again for approval by IBM. If so approved, TWG will upload the Skill to the WXO catalog, and TWG will maintain the Skill for the duration of the Agreement. If not approved, TWG will use commercially reasonable efforts to resolve the reason for disapproval (including modifying the Skill), and re-seek approval. However, if the Skill is still not approved, TWG shall issue a refund to Skill Partner for fees paid related to such Skill, less the cost of TWG's time and materials.

J. For Skills published on the WXO catalog, Skill Partner agrees to exclusively permit TWG to resell/offer such Skills to WXO users. TWG will not engage in any marketing or outreach related to Skills or Skill Partner, but will facilitate contract signing and payment collection at the point of sale for Skill Partner's Skills. TWG will work with the Skill Partner's sales team to establish a streamlined functional approach, to streamline the Skill buying process for users.

K. **Royalties:** Skill Partner will pay TWG a royalty fee (see specific amount in the Order Form) for these Products, calculated as a percentage of each contract sold to Skill Partner's Skill users. This percentage will be collected at the point of sale by TWG. TWG will invoice users, collect payment, and distribute revenue to Skill Partner in accordance with the applicable Order Form. TWG will not charge SP for existing customers already on the SP platform except for such customers' new purchases, such as IBM or other skills' licenses within WXO.

L. **Intellectual Property:** Skill Partner continues to own the application interface it delivers to TWG. TWG owns all of the intellectual property it creates in and for the Skills.

M. **Support:** IBM will provide "Level 1" and "Level 2" support to WXO users, in accordance with IBM's service level agreement. Skill Partner will provide all "Level 3" support to users in conjunction with IBM Customer Support as it pertains to Skill Partner's application.

N. If Skill Partner chooses not to continue the Products set forth in this Section II (i.e., no longer to be a Skill Partner), all Skill functionalities may cease due to lack of integration with UIP or any other TWG proprietary technology.

### III. INTELLECTUAL PROPERTY

A. Subject to the terms of this Agreement and timely payment of all fees, TWG grants to Customer and its Authorized Users a non-exclusive, revocable, non-transferable, non-sublicensable limited license during the Term (as defined below), to access the Product and the data provided by TWG through the Product, solely for Customer's internal, or for the benefit of Your customers', business purposes (and not for resale) and in accordance with any limitations set forth in the applicable Order Form.

B. Customer will not: (a) allow any third party to access the Product other than Authorized Users; (b) modify, adapt, alter or translate the Product; (c) sublicense, lease, sell, resell, rent, loan, distribute, transfer or otherwise allow the use of the Product for the benefit of any unauthorized third party; (d) reverse engineer, decompile, disassemble, or otherwise derive or determine or attempt to derive or determine the source code (or the underlying ideas, algorithms, structure or organization) of the Product or software, except to the extent the foregoing is prohibited by law; (e) interfere in any manner with the operation of the Product or the hardware and network used to operate the Product; (f) modify, copy or make derivative works based on any part of the Product; (g) access or use the Product to build a similar or competitive product or service; (h) attempt to access the Product through any unapproved interface; or (i) otherwise use the Product in any manner that exceeds the scope of use permitted under Section III.A or in a manner inconsistent with applicable law or this Agreement.

Customer acknowledges and agrees that the Product will not be used, and are not licensed for use, in connection with any of Customer's time-critical or mission-critical functions.

C. Customer shall continue to own its products, software, and services that it owned prior to the Effective Date. TWG shall own and retain all right, title and interest in and to (a) the Product and all improvements, enhancements or modifications thereto, (b) any software, applications, inventions, integrations (including to enable the usage of skills on IBM's watsonx Orchestrate platform), or other technology developed in connection with any Product-Related Work or support (unless otherwise expressly set forth in an Order Form), and (c) all intellectual property rights related to any of the foregoing. Except as expressly set forth herein, no express or implied license or right of any kind is granted to Customer regarding the Product, or any part thereof. All rights in and to the Product and Product-Related Work not expressly granted to Customer in this Agreement are reserved by TWG and its suppliers.

D. During the use of the Product, Customer may submit to TWG bug reports, comments, suggestions, enhancement requests, recommendations or other feedback provided by Customer, including Authorized Users (the "**Feedback**"), relating to the Product. By submitting Feedback, You hereby assign to TWG all rights, title, and interest in and to the Feedback. TWG will not identify Customer as the source of any such feedback.

E. Certain items of software may be provided to Customer with the Product and are subject to "open source" or "free software" licenses ("**Open Source Software**"). Some of the Open Source Software is owned by third parties. The Open Source Software is not subject to the terms and conditions of this Section III (Intellectual Property). Instead, each item of Open Source Software is licensed under the terms of the end-user license that accompanies such Open Source Software. Nothing in this Agreement limits Customer's rights under, or grants Customer rights that supersede, the terms and conditions of any applicable end user license for the Open Source Software. If required by any license for particular Open Source Software, TWG makes such Open Source Software, and TWG's modifications to that Open Source Software, available by written request at the notice address specified below.

#### IV. RESTRICTIONS AND RESPONSIBILITIES

A. Customer may not remove or export from the United States or allow the export or re-export of the Product or anything related thereto, or any information or results thereof in violation of any restrictions, laws or regulations of the United States Department of Commerce, the United States Department of Treasury Office of Foreign Assets Control, or any other United States or foreign agency or authority. As defined in FAR section 2.101, the Software and documentation are "commercial items" and according to DFAR section 252.2277014(a)(1) and (5) are deemed to be "commercial computer software" and "commercial computer software documentation." Consistent with DFAR section 227.7202 and FAR section 12.212, any use modification, reproduction, release, performance, display, or disclosure of such commercial software or commercial software documentation by the U.S. Government will be governed solely by the terms of this Agreement and will be prohibited except to the extent expressly permitted by the terms of this Agreement.

B. Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Product, including, without limitation, modems, hardware, servers, software, operating systems, networking, web servers and the like (collectively, "**Equipment**"). Customer shall also be responsible for maintaining the security of the Equipment.

C. TWG may register Authorized Users on the Product with unique usernames and passwords to enable Authorized Users to access the Product pursuant to this Agreement. Each username and password may only be used to access the Product during one (1) login session at a time. Customer will ensure that each username and password issued to an Authorized User will be used only by that Authorized User. Customer is responsible for maintaining the confidentiality of all Authorized Users' usernames and passwords, and is solely responsible for all activities that occur under Customer's account. Customer agrees: (a) not to allow a third party to use Customer's accounts, usernames or passwords at any time; and (b) to notify TWG promptly of any actual or

suspected unauthorized use of its account, usernames or passwords, or any other breach or suspected breach of this Agreement. TWG reserves the right to terminate any accounts, usernames, or passwords that TWG reasonably determines may have been used by an unauthorized third party. Authorized User accounts and their associated usernames and passwords cannot be shared or used by more than one individual Authorized User, but may be reassigned from time to time to a new Authorized User who is replacing a former Authorized User who has terminated employment or otherwise changed job status or function and no longer uses the Product. TWG is solely responsible for all access to and use of the Product by its Authorized Users and all access to and use of the Product through any Authorized User's account.

## V. CONFIDENTIALITY

A. Each party (the “**Receiving Party**”) understands that the other party (the “**Disclosing Party**”) has disclosed or may disclose business, technical or financial information relating to the Disclosing Party's business or other information the Receiving Party knows or a reasonable person should have known was confidential information of the Disclosing Party (hereinafter referred to as “**Confidential Information**” of the Disclosing Party). Confidential Information of TWG includes non-public information regarding features, functionality and performance of the Product. Confidential Information of Customer includes non-public data provided by Customer to TWG to enable the provision of the Product. The Receiving Party agrees: (i) to take reasonable precautions to protect such Confidential Information but no less than reasonable care, and (ii) not to use (except in performance of the Product or as otherwise permitted herein) or divulge to any third person any such Confidential Information. The Receiving Party shall limit its use of and access to the Disclosing Party's Confidential Information to only those of its employees or representatives whose responsibilities require such use or access and who are bound by obligations of confidentiality at least as protective as those herein.

B. The Disclosing Party agrees that the foregoing shall not apply with respect to any information that the Receiving Party can document (a) is or becomes generally available to the public, or (b) was in its possession or known by the Receiving Party prior to receipt from the Disclosing Party, or (c) was rightfully disclosed to it without restriction by a third party, or (d) was independently developed without use of any Confidential Information of the Disclosing Party. In addition, the Receiving Party may disclose Confidential Information to the extent that such disclosure is necessary for the Receiving Party to enforce its rights under this Agreement or is required by law or by the order of a court or similar judicial or administrative body, provided that (to the extent legally permissible) the Receiving Party promptly notifies the Disclosing Party in writing of such required disclosure and cooperates with the Disclosing Party if the Disclosing Party seeks an appropriate protective order.

C. At the Disclosing Party's request or upon termination or expiration of this Agreement, the Receiving Party will return to the Disclosing Party or destroy (or permanently erase in the case of electronic files) all copies of the Confidential Information that the Receiving Party does not have a continuing right to use under this Agreement, and the Receiving Party will, upon request, certify to the Disclosing Party its compliance with this sentence.

## VI. DATA PRIVACY

A. In performing the Product, TWG will comply with the TWG Privacy Policy incorporated herein by reference. The TWG Privacy Policy is subject to change at TWG's discretion, upon email notice to Customer; however, TWG policy changes will not result in a material reduction in the level of protection provided for Customer Data during the Term. Where Customer's use of the Product includes the processing of Customer Data by TWG that is subject to the General Data Protection Regulation (EU) 2016/679 (“**GDPR**”), such data processing by TWG as data processor complies with the requirements of the aforementioned. Where Customer's use of the Product includes the processing of California Consumer's Personal Information by TWG that are subject to the California Consumer Protection Act of 2018, and its implementing regulations, as amended or superseded from time to time (“**CCPA**”), such data processing by TWG as a “service provider” complies with the requirements of the CCPA. TWG shall process personal data and personal information on

behalf of and in accordance with Customer's instructions consistent with this Agreement and as necessary to provide the Product and will reasonably cooperate with Customer in its efforts to respond to requests by data subjects and/or California Consumers to exercise their rights under the GDPR or CCPA and to otherwise comply with the GDPR or CCPA.

B. **"Customer Data"** means any content and information provided or submitted by, or on behalf of, Customer for use with the Product, including non-public data. Customer shall own all right, title and interest in and to the Customer Data. Customer grants TWG a non-exclusive, transferable, sublicensable, worldwide, irrevocable, royalty-free and fully paid license (a) to use the Customer Data as necessary for purposes of providing and improving the Product during the Term, and (b) to perpetually use the Customer Data in an aggregated or other de-identified form to: (i) to improve and enhance the Product and for other development, diagnostic and corrective purposes in connection with the Product and other TWG offerings; (ii) provide analytics and benchmarking services; and (iii) generate and disclose statistics regarding use of the Product and in connection with TWG's business. All rights in and to the Customer Data not expressly granted to TWG in this Agreement are reserved by Customer.

C. Customer is solely responsible for any and all obligations with respect to the accuracy, quality and legality of Customer Data. Customer represents and warrants that it has obtained all third-party licenses, consents and permissions needed to grant TWG the licenses in Section III.A and for TWG to use the Customer Data to provide the Product. Customer represents and warrants that any Customer Data will not (a) infringe any copyright, trademark, or patent; (b) misappropriate any trade secret or otherwise violate any third-party's rights; (c) be deceptive, defamatory, obscene, pornographic or unlawful; (d) contain any viruses, worms or other malicious computer programming codes intended to damage TWG's system or data; and (e) otherwise violate the rights of a third party or applicable privacy regulation. Customer represents, covenants, and warrants that Customer will use the Product only in compliance with TWG's standard published policies then in effect and all applicable laws and regulations.

## VII. PAYMENT OF FEES

A. Fees for the Product are described in an associated Order Form (the **"Fees"**). The Fees are exclusive of all taxes, levies or duties imposed by taxing authorities, and You shall be responsible for payment of all such taxes, levies or duties, excluding only United States (federal or state) taxes based solely on TWG's income.

B. The Product will be deemed subscribed from the date specified in the applicable Order Form (the **"Contract Date"**) for a twelve-month Subscription (the **"Subscription Period"**).

C. Under the Subscription, Customer's credit card will be charged the Fees on the Contract Date. Customer agrees to pay TWG the fees described in the applicable Order Form for the Product and Product-Related Work in accordance with the terms therein. If Customer's use of the Product exceeds the limitations per service level set forth on the Order Form or otherwise requires the payment of additional fees (per the terms of this Agreement), the parties will negotiate in good faith a reasonable fee adjustment (which may include Customer purchasing a subscription for a higher tier of Product at TWG's then-current commercial rate, or as set forth in quote provided by TWG).

D. TWG reserves the right (in addition to any other rights or remedies TWG may have) to discontinue the Product and suspend all Authorized Users' and Customer's access to the Product if any Fees are more than thirty (30) days overdue until such amounts are paid in full. Customer agrees to maintain and provide to TWG complete, accurate and up-to-date Customer billing, credit card (if applicable), and contact information at all times.

E. The Subscription Period may be renewed upon mutual agreement of the parties (each such period, a **"Renewal Term"**). TWG agrees that it will notify Customer at least sixty (60) days and then thirty (30) days before the end of a Subscription Period for the parties to discuss and consider renewal. Upon an indication of

non-renewal, Customer may continue to access the applicable Product until the end of the then-current Subscription Period. Customer will not be eligible for a prorated refund of any portion of the Product fees paid for the then-current term. If Customer believes that TWG has billed Customer incorrectly, Customer must contact TWG no later than sixty (60) days after the closing date on the first billing statement in which the error or problem appeared, in order to receive an adjustment or credit, at the sole discretion of TWG. Inquiries should be directed to TWG's customer support department.

F. TWG may choose to bill through an invoice, in which case, full payment for invoices issued in any given month must be received by TWG thirty (30) days after the mailing date of the invoice. Unpaid amounts are subject to a finance charge of 1.5% per month on any outstanding balance, or the maximum permitted by law, whichever is lower, plus all expenses of collection and may result in immediate termination of Product. Customer shall be responsible for all taxes associated with Product other than U.S. taxes based on TWG's net income.

## **VIII. TERM AND TERMINATION**

A. The Agreement shall commence on the Effective Date and continues as long as any Order Form remains in effect, unless earlier terminated in accordance with this Agreement (the "**Term**").

B. Either party may terminate this Agreement immediately upon written notice to the other party if the other party materially breaches this Agreement or fails to pay Fees due, and such breach remains uncured more than forty-five (45) days after receipt of written notice of such breach. Upon termination or expiration of this Agreement, (i) all rights granted to Customer under this Agreement will immediately cease; (ii) Customer may not thereafter use the Product; (iii) TWG may delete any information or content Customer has provided to TWG through use of the Product; (iv) Customer will comply with the obligations to return or destroy all Confidential Information of TWG as set forth in Section V; and (v) any amounts owed to TWG under this Agreement will become immediately due and payable. Sections I.A, III.B, III.C, IV.A, V, VI.B, VI.C, VII, VIII.B, and IX through XII will survive expiration or termination of this Agreement for any reason.

## **IX. DISCLAIMER OF WARRANTY**

Product may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance. HOWEVER, TWG DOES NOT WARRANT THAT THE PRODUCTS WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE PRODUCTS. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE PRODUCTS AND PRODUCT-RELATED WORK ARE PROVIDED "AS IS" AND "AS AVAILABLE" AND TWG DISCLAIMS ALL REPRESENTATION AND WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, TITLE, FITNESS OR SUFFICIENCY FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT OR ARISING FROM THE COURSE OF DEALING BETWEEN THE PARTIES OR USAGE OF TRADE. TWG DOES NOT WARRANT THAT THE PRODUCTS, PROFESSIONAL PRODUCTS OR ANY DELIVERABLES WILL BE PROVIDED WITHOUT DEFECT OR ERROR, WITH COMPLETE ACCURACY OR CURRENCY, OR THAT ANY APPLICANT WILL BE QUALIFIED OR SATISFACTORY TO CUSTOMER.

## **X. LIMITATION OF LIABILITY**

A. NOTWITHSTANDING ANYTHING TO THE CONTRARY, TWG AND ITS SUPPLIERS (INCLUDING BUT NOT LIMITED TO ALL EQUIPMENT AND TECHNOLOGY SUPPLIERS), OFFICERS, AFFILIATES, REPRESENTATIVES, CONTRACTORS AND EMPLOYEES SHALL NOT BE RESPONSIBLE OR LIABLE WITH RESPECT TO ANY SUBJECT MATTER OF THIS AGREEMENT OR TERMS AND CONDITIONS RELATED THERETO UNDER ANY CONTRACT, NEGLIGENCE, STRICT LIABILITY OR OTHER THEORY: (A) FOR ERROR OR INTERRUPTION OF USE OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, PRODUCTS OR TECHNOLOGY OR LOSS OF BUSINESS;

(B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND TWG'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO TWG FOR THE PRODUCTS UNDER THIS AGREEMENT IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT TWG HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

B. The parties agree that the limitations of liability set forth in this Section X will survive and continue in full force and effect despite any failure of consideration or of an exclusive remedy. The parties acknowledge that the prices have been set and the Agreement entered into in reliance upon these limitations of liability and that all such limitations form an essential basis of the bargain between the parties.

## **XI. INDEMNITY**

A. You shall indemnify, defend and hold TWG its affiliates, and their officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities, settlements and expenses (including reasonable attorneys' fees and costs) arising out of, or in connection with an actual or alleged (i) a breach of this Agreement by You, Your employees or agents, (ii) the unlawful use of the Product or any part thereof by You, Your employees or agents, or (iii) a third party infringement, misappropriation or any violation of a third-party's rights due to TWG system's or the Product's access to, or possession, manipulation, processing, or use of Customer Data.

B. If any action is instituted by a third party against You based upon a claim that the Product, as provided, infringes a copyright, registered patent or trademark, then TWG shall indemnify, defend and hold You and your affiliates, officers, directors, employees, and agents harmless from and against any and all claims, costs, damages, losses, liabilities and expenses (including reasonable attorneys' fees and costs) arising out of with such claim as are finally awarded against You or paid in settlement of such claim. TWG also may, at its option and expense: (i) procure for You the right to continue using the Product, (ii) replace or modify the Product so that it is no longer infringing but continues to provide comparable functionality, or (iii) terminate this Agreement and Your access to the Product and refund any amounts previously paid for the Product attributable to the remainder of the then-current term of this Agreement. TWG will have no liability to You for any infringement action that arises out of a breach of the terms and conditions of this Agreement by You or of the use of the Product (A) after it has been modified by You or a third party without TWG's prior written consent, (B) in combination with any other service, equipment, software or process not provided by TWG where the combination is the basis for the infringing activity, or (C) any use of the Product not in accordance with this Agreement. THIS SECTION SETS FORTH THE ENTIRE OBLIGATION OF PLACE TECHNOLOGY AND YOUR EXCLUSIVE REMEDY AGAINST TWG OR ANY OF ITS AFFILIATES OR SUPPLIERS FOR ANY INFRINGEMENT CLAIM.

C. A party seeking indemnification under this Section XI will: (a) give written notice of the claim promptly to the other party, (b) give the other party sole control of the defense and settlement of the claim, and (c) provide to the other party all available information and assistance.

## **XII. MISCELLANEOUS**

Any delay in the performance of any duties or obligations of either party (except the payment of Fees owed) will not be considered a breach of this Agreement if such delay is caused by an act of God, labor dispute, shortage of materials, governmental order, riot, war, fire, earthquake, flood, power outage, pandemic or epidemic or any other event beyond the control of such party, provided that such party uses reasonable efforts, under the circumstances, to notify the other party of the cause of such delay and to resume performance as soon as possible. If any provision of this Agreement is found to be unenforceable or invalid, that provision will be limited or eliminated to the minimum extent necessary so that this Agreement will otherwise remain in full force and effect and enforceable. This Agreement is not assignable, transferable or sublicensable by a party except with the other party's prior written consent, except that a party may



assign this Agreement without such consent to its successor in interest by way of merger, acquisition or sale of all or substantially all of its assets. The terms of this Agreement will be binding upon the parties and their respective successors and permitted assigns. Any assignment in violation of this Section will be void. This Agreement is the complete and exclusive statement of the mutual understanding of the parties and supersedes and cancels all previous written and oral agreements, communications and other understandings relating to the subject matter of this Agreement, and that no waivers of any breach of this Agreement and no modifications or amendments of this Agreement shall be effective unless in writing and signed by an authorized representative of both parties. No waiver of any breach of this Agreement, and no course of dealing between the parties, shall be construed as a waiver of any subsequent breach of this Agreement. The relationship between the parties under this Agreement is that of independent contractors; no agency, partnership, joint venture, or employment is created as a result of this Agreement and Customer does not have any authority of any kind to bind TWG in any respect whatsoever. In any action or proceeding to enforce rights under this Agreement, the prevailing party will be entitled to recover costs and attorneys' fees. All notices under this Agreement will be in writing and sent, if to TWG to [contact@thiswayglobal.com](mailto:contact@thiswayglobal.com) and if to Customer by emailing the Customer's point of contact under its account, provided, however, that with respect to any notices relating to breaches of this agreement or termination, a copy of such notice will also be sent in writing to the other party at the address set forth on the signature page to the Order Form, and will be deemed to have been duly given when received, if personally delivered; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested. Each party may change its address for receipt of notice by giving notice of such change to the other party. This Agreement shall be governed by the laws of the State of Texas without regard to its conflict of laws provisions. Customer hereby expressly consents to the personal jurisdiction and venue in the state and federal courts for Travis County, Texas for any lawsuit filed there against Customer by TWG arising from or related to this Agreement. The United Nations Convention on Contracts for the International Sale of Goods does not apply to this Agreement. In the event of any breach or apparent breach by either party of the provisions of this Agreement, the other party shall be entitled, in addition to all other remedies, to seek an injunction, whether interlocutory or preliminary, and to seek any other equitable relief, before any U.S. court, restraining any such breach. Each party agrees to submit to the jurisdiction of, and agrees that venue is proper in, the aforesaid courts in any such legal action or proceeding. In the event of a conflict between the provisions of this Agreement and the terms of any Order Form, this Agreement shall control, except to the extent that the Order Form expressly states that it supersedes specific language in the Agreement. Any pre-printed terms in an order document or written purchase authorization that add to, or conflict with or contradict, any provisions in this Agreement will have no legal effect.