

MIDDESK TERMS AND CONDITIONS

These terms and conditions ("Middesk Terms and Conditions") govern Customer's use of the Middesk, Inc. ("Middesk") screening solutions that Partner is reselling to Customer ("Middesk Services").

1. RESTRICTIONS AND RESPONSIBILITIES

1.1 Customer will not, directly or indirectly: reverse engineer, decompile, disassemble or otherwise attempt to discover the source code, object code or underlying structure, ideas, know-how or algorithms relevant to the Middesk Services or any software, documentation or data related to the Middesk Services ("Software"); modify, translate, or create derivative works based on the Middesk Services or any Software (except to the extent expressly permitted by Partner or authorized within the Middesk Services); use the Middesk Services or any Software for timesharing or service bureau purposes or otherwise for the benefit of a third party; or remove any proprietary notices or labels.

1.2 Further, Customer may not remove or export from the United States or allow the export or re-export of the Middesk Services, Software or anything related thereto, or any direct product 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 these Middesk Terms and Conditions and will be prohibited except to the extent expressly permitted by the terms of these Middesk Terms and Conditions.

1.3 Customer represents, covenants and warrants that Customer will use the Middesk Services only in compliance with this Agreement and, as applicable, Middesk's Terms of Service and Privacy Policy which can be found at www.middesk.com (collectively, the "Policies") and all applicable laws and regulations. Customer hereby agrees to indemnify and hold harmless Middesk against any damages, losses, liabilities, settlements, and expenses (including without limitation costs and attorneys' fees) in connection with any claim or action that arises from an alleged violation of the foregoing or otherwise from Customer's use of Middesk Services or Software. Although Middesk has no obligation to monitor Customer's use of the Middesk Services, Middesk may do so and may prohibit any use of the Middesk Services it believes may be (or alleged to be) in violation of the foregoing.

1.4 Customer shall be responsible for obtaining and maintaining any equipment and ancillary services needed to connect to, access or otherwise use the Middesk Services, (including through Partner) 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, Customer account, passwords (including but not limited to administrative and user passwords) and files, and for all uses of Customer account or the Equipment with or without Customer's knowledge or consent.

2. CONFIDENTIALITY; PROPRIETARY RIGHTS

2.1 Proprietary Information of Middesk includes non-public information regarding features, functionality and performance of the Service. Customer agrees: (i) to take reasonable strict precautions to protect such Proprietary Information, and (ii) not to use (except for its own internal business purposes) or divulge to any third person any such Proprietary Information. Customer may disclose Proprietary Information in response to a valid order of a court or other governmental body or as otherwise required by law to be disclosed; provided that, Customer gives Middesk sufficient notice to enable the Middesk to take protective measures, and/or in any event only discloses the exact Proprietary Information, or portion thereof, specifically requested.

2.2 Middesk shall own and retain all right, title and interest in and to (a) the Middesk Services and Software, all improvements, enhancements or modifications thereto, and (b) all intellectual property rights related to any of the foregoing.

2.3 Notwithstanding anything to the contrary, Middesk shall have the right to collect and analyze data and other information relating to the provision, use and performance of various aspects of the Middesk Services and related systems and technologies (including, without limitation, search input

data, information concerning Customer's use of the Services, and data derived therefrom), and Middesk will be free (during and after the term hereof) to (i) use such information and data to improve and enhance the Middesk Services and for other development, diagnostic and corrective purposes in connection with the Middesk Services and other Middesk offerings, and (ii) disclose such data solely in aggregate or other de-identified form in connection with its business. No rights or licenses are granted except as expressly set forth herein.

3. WARRANTY AND DISCLAIMER

Middesk Services may be temporarily unavailable for scheduled maintenance or for unscheduled emergency maintenance, either by Middesk or by third-party providers, or because of other causes beyond Middesk's reasonable control. MIDDESK DOES NOT WARRANT THAT THE MIDDESK SERVICES OR SOFTWARE WILL BE UNINTERRUPTED OR ERROR FREE; NOR DOES IT MAKE ANY WARRANTY AS TO THE RESULTS THAT MAY BE OBTAINED FROM USE OF THE MIDDESK SERVICES OR SOFTWARE. EXCEPT AS EXPRESSLY SET FORTH IN THIS SECTION, THE MIDDESK SERVICES AND SOFTWARE ARE PROVIDED "AS IS" AND MIDDESK DISCLAIMS ALL WARRANTIES, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE AND NON-INFRINGEMENT.

4. LIMITATION OF LIABILITY

IN NO EVENT WILL MIDDESK'S AGGREGATE LIABILITY AND DAMAGES ARISING OUT OF THIS AGREEMENT EXCEED THE AMOUNTS CUSTOMER ACTUALLY PAID TO MIDDESK (THROUGH PARTNER) DURING THE TWELVE (12) MONTH PERIOD PRECEDING THE DATE OF THE CLAIM. THE LIMITATIONS AND DISCLAIMERS OF LIABILITY SET FORTH IN THIS SECTION WILL APPLY EVEN IF ANY LIMITED REMEDY SPECIFIED IN THIS AGREEMENT IS FOUND TO HAVE FAILED OF ITS ESSENTIAL PURPOSE AND REGARDLESS OF THE THEORY OF LIABILITY.

NOTWITHSTANDING ANYTHING TO THE CONTRARY, EXCEPT FOR BODILY INJURY OF A PERSON, MIDDESK 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 TO CUSTOMER 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 FOR LOSS OR INACCURACY OR CORRUPTION OF DATA OR INFORMATION OR COST OF PROCUREMENT OF SUBSTITUTE GOODS, SERVICES OR TECHNOLOGY OR LOSS OF BUSINESS; (B) FOR ANY INDIRECT, EXEMPLARY, INCIDENTAL, PUNITIVE, RELIANCE, INCIDENTAL, SPECIAL OR CONSEQUENTIAL DAMAGES; (C) FOR ANY MATTER BEYOND MIDDESK'S REASONABLE CONTROL; OR (D) FOR ANY AMOUNTS THAT, TOGETHER WITH AMOUNTS ASSOCIATED WITH ALL OTHER CLAIMS, EXCEED THE FEES PAID BY CUSTOMER TO Partner FOR THE MIDDESK SERVICES IN THE 12 MONTHS PRIOR TO THE ACT THAT GAVE RISE TO THE LIABILITY, IN EACH CASE, WHETHER OR NOT MIDDESK HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

5. THIRD PARTY BENEFICIARIES

Middesk is a third party beneficiary of this Agreement as it relates to these Middesk Terms and Conditions.

6. MISCELLANEOUS

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. These Middesk Terms and Conditions are not assignable, transferable or sublicensable by Customer except with Middesk's prior written consent. Middesk may transfer and assign any of its rights and obligations under these Terms and Conditions without Customer's consent. 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. 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 Middesk 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 will be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or e-mail; 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. This Agreement shall be governed by the laws of the State of New York without regard to its conflict of laws provisions.

