
TERMS OF SERVICE

Last modified: March 2021

This Terms of Service (“TOS”) governs your access to and use of the AOTA online Fieldwork Performance Evaluation (FWPE) services offered by AOTA through the [Formstack](#) platform (the “Service”). When you execute an order form for the Service as well as any other written agreement pertaining to or related to the Service (“Order Form”) referencing this TOS, the Order Form and this TOS together form an agreement (the “Agreement”) between the person or entity executing the Order Form and this TOS (“You” or “User” or “Your”) and the American Occupational Therapy Association, Inc. (“AOTA,” “We” or “Our” or “Us”).

If you are agreeing to this TOS as an individual on behalf of your company, then "You" or "User" or "Your" means your company and you are binding your company to this TOS. You represent and warrant that you have the legal power and authority to enter into this TOS and that, if User is an entity, this TOS is entered into by an employee or agent with all necessary authority to bind that entity to this TOS.

By using one or more of Our Services, you agree to be immediately bound by this TOS. If you do not wish to be bound by this TOS, you have no permission to use Our Services and must stop using them immediately. We expressly reserve the right to change this TOS from time to time on our website, with electronic notice to You. You acknowledge and agree that it is your responsibility to review this TOS from time to time and to familiarize yourself with any modifications posted online or electronically via email or in-application notification. For Users not previously bound by this TOS, this TOS is effective immediately. For Users that are bound by a prior version of this TOS, this new version of our TOS shall become effective within fourteen (14) days of the date they are posted on our website, https://www.aota.org/FWPE_TOS. Your continued use of Our Services and/or products after such modifications become effective will constitute agreement to abide by and be bound by the modified TOS.

We provide the Service to You through an account we hold with our vendor Formstack. In addition to this TOS, your use of the Service is governed by Formstack's [Privacy Policy](#), [Acceptable Use Policy](#) and [Data Security](#).

1. SUBSCRIPTION

1.1 Provision of Service. We shall make the Service available to You pursuant to this Agreement and the relevant Order Form during the subscription term indicated on the Order Form (the “Term”). You agree that Your purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any oral or written public comments made by Us regarding future functionality or features.

1.2 Upgrades. Any upgrades to the specific version of the Service for which You have purchased a subscription that We generally make available to all subscribers will be added without additional charge. In some scenarios, AOTA may offer advanced features to its Users to test its products.

1.3 Setup. AOTA will provide only those setup services indicated on the Order Form, subject to timely payment of the setup fee (if any) and Your provision of all reasonable cooperation, information and materials, including provision of any logos or branding assets needed for any template design.

2. ACCESS; RESTRICTIONS ON USE

2.1 Access. Subject to the restrictions and limitations set forth in this Agreement, AOTA hereby grants to User a nonexclusive, nontransferable, limited right, during the Term, to: (i) access and use the Service through a compatible web browser; and (ii) place the code provided by AOTA within the User website(s) indicated in the Order Form (the “Sites”) in order to cause the Service’s form upload tool (the “Upload Tool”) to appear on the Site(s) for purposes of enabling Site end users to upload forms to the Service, in each case subject to and according to this Agreement and all applicable documentation, solely for User’s internal use. Except to the extent otherwise set forth on the Order Form, User may only access and use the Service for User’s own internal business purposes and not for the benefit of any third party including any of User’s own clients, customers, users, or partners. For the avoidance of doubt, the Upload Tool is part of the Service. You may not make any changes to the Level II Fieldwork Performance Evaluation Tool.

2.2 General Restrictions and Limitations. Section 2.1 sets forth the entirety of User’s right to access and use the Service. User has no right to (a) enable any third party to access and use the Service; (b) modify or create any derivative work based upon the Service or AOTA Technology (as defined below); (c) engage in, permit or suffer to continue any unauthorized copying, reselling or distribution of the Service or AOTA Technology; (d) grant any sublicense or other rights to the Service or AOTA Technology; (e) reverse engineer, disassemble or decompile all or any portion of, or attempt to discover or recreate the source code for, any AOTA Technology; (f) remove, obscure or alter any intellectual property rights notice related to the AOTA Technology; or (g) use the Service in violation of Formstack’s [Acceptable Use Policy](#). User may not use any automated means, including agents, robots, scripts, or spiders, to access or manage User’s Service account, other than any such means which are intentionally made available by AOTA. User will ensure that all access to and use of the Service by User, or otherwise through User’s facilities, equipment, identifiers or passwords, will be in accordance with the terms of this Agreement and will be made and used solely for proper and legal purposes, and will be conducted in a manner that does not violate any law, rule or regulation, or the rights of any third party.

You may not access or use the Service if You are Our direct competitor, except with Our prior written consent. In addition, you may not access the Service for purposes of monitoring its availability, performance or functionality, or for any other benchmarking or competitive purposes.

Additionally, You may not access or use the Service to: (1) promote or provide instructions or information about how to engage in illegal conduct, commit illegal activities or promote physical harm or injury; (2) spread, incite, promote or justify racial hatred, xenophobia, antisemitism or other forms of hatred based on intolerance, including but not limited to: intolerance expressed by aggressive nationalism and ethnocentrism, discrimination and hostility against minorities, migrants and people of immigrant origin or any other form deemed contrary to fundamental human rights and freedoms; or (3) involve any illegal activities or activities that are contrary to morality or public order.

If the Order Form specifies that User is receiving a free trial of the Service, then notwithstanding anything else to the contrary, User’s right to access and use the Platform is limited to User’s internal evaluation of the features and functionality of the Service.

2.3 End User Privacy. User acknowledges and agrees that any content uploaded by Site end users using the Upload Tool is subject to the [AOTA Privacy Policy](#) and [Formstack’s Privacy Policy](#).

2.4 End User Content. User acknowledges and agrees that AOTA may remove, or may request User to remove, any end user content from the Service: that AOTA reasonably believes to violate any third party intellectual property right, right of privacy or publicity, other third party right or any law, rule or regulation; or (ii) that AOTA reasonably believes may expose AOTA to any civil or criminal liability. User shall promptly comply with any such request by AOTA. User acknowledges and agrees that AOTA has no obligation to monitor the content provided by Site end users or stored within the Service by User, and shall have no responsibility or liability with respect thereto. **AOTA IS A THIRD-PARTY INTERMEDIARY WHO SOLELY**

TRANSFERS CONTENT FROM THE END USER TO THE USER. AOTA IS NOT RESPONSIBLE FOR ANY COPYRIGHT INFRINGEMENT, PRIVACY OR MISAPPROPRIATION CLAIMS, OR ANY OTHER CIVIL LIABILITY RESULTING FROM THE USERS USE OF THE CONTENT.

2.5 Suspension. AOTA may suspend or terminate the Service (in whole or in part) at any time if AOTA reasonably determines that such action is warranted to: (i) prevent errors or any other harm with respect to the Service; the Sites or other websites or online services; (ii) respond to User's breach of this Agreement, or (iii) limit AOTA's liability.

2.6 License to AOTA. User hereby grants AOTA a worldwide, non-exclusive, royalty-free license during the Term to: (i) use, reproduce, store, and otherwise process all content uploaded by User to the Service for the purpose of providing the Service to the User and creating and publishing statistical and anonymous research reports based on content uploaded by User; (ii) to collect, use and disclose data relating to User's usage of the Service ("Usage Data") in order to provide and improve the Service; (iii) use Usage Data for AOTA's internal business purposes and metrics; (iv) disclose Usage Data generally where it is aggregated with similar data relating to other AOTA Users or partners and is not identified as relating to User; (v) process all content, Usage Data, and other information as reasonably required for AOTA to maintain with Formstack the account through which the Services are provided.

2.7 Reservation of Rights. Subject to the limited rights expressly granted hereunder, as between the User and AOTA, AOTA owns and reserves all right, title and interest in and to the Service, all software used by AOTA to make the Service available and any and all software, technology or materials created, developed, conceived, reduced to practice or provided by AOTA or its licensors (all of the foregoing, "AOTA Technology"), including without limitation all intellectual property rights related to any of the foregoing. No rights are granted to User hereunder other than as expressly set forth herein.

2.8 Intellectual Property. You represent that You own or otherwise have all necessary rights, licenses and consents with respect to all content that is received, posted, transmitted or stored by You, on Your behalf, or Your users in connection with the Service. You shall not upload, post or make available in connection with the Service any copyrighted, trademarked or other proprietary material without the express written permission of the owner of the copyright, trademark or other proprietary right. Additionally, in the event there is a dispute about copyright or proprietary right, the burden of determining that the material is not protected by copyright or other proprietary right rests with You. In the event damages result from an infringement, misappropriation or other violation of copyrights, proprietary rights, or any other harm resulting from submissions of content by You, Your users, or otherwise on Your behalf, You shall be solely liable for any damage resulting from such infringement.

2.9 Trademarks. The AOTA name and other AOTA graphics, logos, and service names, such as are trademarks of AOTA. AOTA's trademarks may not be used in connection with any product or service that is not AOTA's, in any manner that is likely to cause confusion among Users, or in any manner that disparages or discredits AOTA. There may be other trademarks, service marks, graphics and logos used in connection with Our Service and these may be the trademarks of other third parties. Your use of Our Service does not grant you a right or license to reproduce or otherwise use any AOTA or third party trademarks. Except as set out in these Terms, reproduction and storing of any third party content or User Content from Our Service is prohibited without written permission from the copyright holder of the content.

3. SUPPORT

3.1 Resources. Subject to the terms and conditions of this Agreement, AOTA shall provide commercially reasonable technical support to User regarding use of the Service and any errors within the Service during AOTA's normal business hours at no additional charge.

3.2 Support Procedures. User's support contacts may submit requests for technical support through e-mail or by phone. User's contacts will be asked to provide their company name and contact information. AOTA will use commercially reasonable efforts to respond to each case within forty eight (48) hours and will use commercially reasonable efforts to promptly resolve each case. Actual resolution time will depend on the nature of the case and the resolution. A resolution may consist of a fix, workaround or other solution in AOTA's reasonable determination.

4. FEES AND PAYMENTS

4.1 Fees. User shall pay AOTA the fees set forth on the Order Form. Except as otherwise specified herein or in an Order Form (i) fees are based on services purchased and payable in advance, and (ii) payment obligations are non-cancelable, and fees paid are non-refundable.

4.2 Invoicing and Payment Terms. The Order Form sets forth whether User is paying via check or by credit card. If User is paying by credit card, AOTA will charge the credit card number provided by User for each fee specified on the Order Form as it becomes due and payable. If User is paying by check, AOTA will issue User invoices for each fee on the Order Form as it becomes due and payable. All such invoices are payable **immediately upon receipt** of the invoice. If User payment is delayed, AOTA has the right to suspend or terminate the Service.

User may elect to provide a purchase order or similar document to AOTA in connection with payments due hereunder. While User may use pre-printed purchase orders for the sake of convenience, no terms or conditions set forth on any purchase order or other document provided by User in connection with payments hereunder shall be of any force or effect.

4.3 Overdue Charges. If any charges are not received from User by the due date, then at AOTA's discretion, (a) such charges may accrue late interest at the rate of 1.5% of the outstanding balance per month, or the maximum rate permitted by law, whichever is lower, from the day such payment was due until the date paid, and/or (b) AOTA may condition future subscription renewals and Order Forms on payment terms shorter than those specified in Section 4.2.

4.4 Taxes. All fees are net of taxes. User will pay or reimburse all taxes, duties and assessments, if any due, based on or measured by amounts payable to AOTA in any transaction between User and AOTA under the Agreement (excluding taxes based on AOTA's income) together with any interest or penalties assessed thereon, or furnish AOTA with evidence acceptable to the taxing authority to sustain an exemption therefrom

5. TERM AND TERMINATION

5.1 Term. This Agreement shall continue until the end of the Term unless earlier terminated as set forth herein, thereafter, unless otherwise specified in the Service Order Form, this Agreement shall automatically renew for successive periods of one year each unless either party gives the other party written notice of non-renewal at least thirty (30) days prior to the renewal date. The Fees may automatically adjust for each renewal period in accordance with AOTA's then-standard pricing.

5.2 Termination by User. The Agreement may be terminated by User upon AOTA's bankruptcy, reorganization, or assignment for the benefit of creditors.

5.3 Termination by AOTA. AOTA may terminate this Agreement (i) if User defaults in the timely payment of any amounts due AOTA and fails to cure within ten (10) days of receipt of written notice; (ii) immediately if User fail upon written notice to remove any content pursuant to Section 2.4; (iii) in the event of a material breach by User of any other provision of the Agreement and User fails to cure such breach within thirty (30) days of written notice; or (iv) upon User's bankruptcy, reorganization or assignment for the benefit of creditors.

5.4 Effect of Termination. Unless otherwise agreed upon by the parties, AOTA will have no obligation to provide the Service to User after the effective date of the termination; User will pay AOTA any amounts payable for User's use of the Service through the effective date of the termination. No refunds of prepaid fees shall be made to User in connection with any termination, except that if User terminates this Agreement under Section 5.1, AOTA will refund any pre-paid fees by User on a pro-rated basis based on the services provided as of the date of termination. Sections 2.2, 2.6, 2.7, 2.8, 2.9, 4 (with respect to accrued payment obligations), 5.4, 6.2, 9, 10 and 11 shall survive any expiration or termination of this Agreement.

6. DISCLAIMER OF WARRANTIES

6.1 Our Warranties. We represent and warrant that: (i) We have validly entered into this Agreement and have the legal power to do so; and (ii) to the best of Our knowledge, the software We use that underlies the Service does not infringe on any intellectual property rights of any third party.

6.2 Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, THE SERVICE IS PROVIDED "AS IS" AND AOTA MAKES NO REPRESENTATIONS OR WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, AND AOTA SPECIFICALLY DISCLAIMS ALL IMPLIED WARRANTIES, INCLUDING ANY WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW. AOTA DOES NOT WARRANT THAT ACCESS TO OR USE OF THE SERVICE SHALL BE UNINTERRUPTED OR ERROR-FREE OR THAT DEFECTS WILL BE CORRECTED. AOTA MAKES NO WARRANTY REGARDING THE RESULTS OF USE OF THE SERVICE.

7. PUBLICITY/PRESS

Each Party shall be allowed to refer to the other as a User of or service provider to (as the case may be) on its website and in marketing materials, including but not limited to case studies, blog posts and webinars, provided that such reference shall not imply an affiliation, sponsorship, or endorsement of the other. Other than as provided in the foregoing sentence, neither Party shall issue any public announcement regarding the subject matter herein without the prior written approval of the other.

8. INDEMNIFICATION

8.1 Indemnity by AOTA. AOTA shall at its option either defend and/or settle any claim made by a third party against User or any of its directors, officers, employees or contractors alleging that the Service, as provided by AOTA, infringes a copyright or misappropriates a trade secret of a third party (a "Claim"); provided that User (a) promptly gives AOTA written notice of the Claim; (b) gives AOTA sole control of the defense and settlement of the Claim (provided that AOTA may not settle any Claim without User's prior written consent that would impose any restrictions on User's business activities, such consent not to be unreasonably withheld, delayed or conditioned); and (c) provides to AOTA all reasonable assistance, at AOTA's expense. If a Claim is sustained in a final judgment from which no further appeal is taken or possible, then AOTA will pay or otherwise satisfy any monetary award entered against User as part of such final judgment to the extent that such award is adjudged in such final judgment to arise from such infringement. If AOTA, in its sole discretion, believes a Claim or an adverse judgment in connection with a Claim is likely, then AOTA may, at its option, (x) obtain a license from the applicable third party claimant that allows User to continue the use of the Service, (y) modify the Service to be non-infringing, or (z) if neither (x) nor (y) is available to AOTA at a commercially reasonable terms, terminate this Agreement upon written notice to User. THE FOREGOING STATES AOTA'S ENTIRE LIABILITY AND USER'S EXCLUSIVE REMEDIES FOR INTELLECTUAL PROPERTY RIGHTS INFRINGEMENT.

AOTA will have no liability for any infringement claim that (i) is based on modification of the Service by or at the direction of User; (ii) results from User's failure to use an updated version of the Service made available to User; (iii) is based on the

combination or use of the Service with any third party software, program, device or materials; or (iv) results from User's use of the Service in a manner that is inconsistent with its intended use or is in breach of this Agreement.

8.2 Indemnity by User. User shall defend, indemnify and hold AOTA and its directors, officers, employees and contractors harmless from and against any and all claims, actions, demands, suits, damages, losses, liabilities, costs and expenses (including but not limited to attorney's fees) arising from: (i) User's use of and access to the Service, including any content transmitted or received by User; (ii) User's violation of any term of the Agreement; (iii) User's violation of any third-party right, including without limitation any right of privacy, publicity rights or intellectual property rights; (iv) User's violation of any applicable law, rule or regulation; and (v) the receipt, posting, transmission or storage of any content by or on behalf of User; provided, that AOTA: (a) promptly gives User written notice of the claim; (b) gives User sole control of the defense and settlement of the claim (provided that User may not settle any claim without AOTA's prior written consent that would impose any restrictions AOTA's business activities, such consent not to be unreasonably withheld, delayed or conditioned); and (c) provides to User all reasonable assistance, at User's expense.

9. CONFIDENTIALITY

9.1 "Confidential Information" means any and all information that is disclosed by either party to the other party, either directly or indirectly, in writing, orally or by inspection of tangible objects, which if disclosed in writing or tangible form is marked as "Confidential," or with some similar designation, or if disclosed orally or by inspection or observation, is identified as being proprietary and/or confidential at the time of disclosure and is confirmed as such in writing within fifteen (15) days of the disclosure. In the case of AOTA, Confidential Information includes the features and functionality of the Service, whether current or planned, as well as all AOTA's plans for future products and services. Confidential Information does not include information that: (i) is or becomes generally known to the public through no fault of or breach of this Agreement by the receiving party; (ii) is rightfully known by the receiving party at the time of disclosure without an obligation of confidentiality; (iii) is independently developed by the receiving party without use of the disclosing party's Confidential Information; or (iv) the receiving party rightfully obtains from a third party without restriction on use or disclosure.

9.2 Each party shall not use the other party's Confidential Information except as necessary to exercise its rights or perform its obligations under this Agreement. Each party shall not disclose the other party's Confidential Information to any third party except to those of its employees, subcontractors, and advisers that need to know such Confidential Information for the purposes of this Agreement, provided that each such employee and subcontractor is subject to a written agreement that includes binding use and disclosure restrictions that are at least as protective of Confidential Information as those set forth herein. Each party will use all reasonable efforts to maintain the confidentiality of all Confidential Information of the other party in its possession or control, but in no event less than the efforts that party ordinarily uses with respect to its own proprietary information of similar nature and importance. The foregoing obligations will not restrict either party from disclosing Confidential Information of the other party: (i) pursuant to the order or requirement of a court, administrative agency, or other governmental body, provided that the party required to make such a disclosure gives reasonable notice to the other party to contest such order or requirement; or (ii) on an as-needed, confidential basis to its legal or financial advisors. In addition, each party may disclose the terms and conditions of this Agreement: (a) as required under applicable securities regulations and (b) on a confidential basis to current or prospective investors or acquirers of such party.

10. LIMITATION OF LIABILITY

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, IN NO EVENT SHALL AOTA OR ITS DIRECTORS OR EMPLOYEES BE LIABLE FOR ANY INDIRECT, PUNITIVE, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR EXEMPLARY DAMAGES, INCLUDING WITHOUT LIMITATION DAMAGES FOR LOSS OF PROFITS, GOODWILL, USE, DATA OR OTHER INTANGIBLE LOSSES, THAT

RESULT FROM THE USE OF, OR INABILITY TO USE, THE SERVICE OR ANY OTHER ASPECT OF THIS AGREEMENT, REGARDLESS OF WHETHER AOTA HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGE. UNDER NO CIRCUMSTANCES WILL AOTA BE RESPONSIBLE FOR ANY DAMAGE, LOSS OR INJURY RESULTING FROM HACKING, TAMPERING OR OTHER UNAUTHORIZED ACCESS OR USE OF THE SERVICE OR YOUR ACCOUNT OR THE INFORMATION CONTAINED THEREIN.

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, AOTA ASSUMES NO LIABILITY OR RESPONSIBILITY FOR (I) ANY PERSONAL INJURY OR PROPERTY DAMAGE, OF ANY NATURE WHATSOEVER, RESULTING FROM ACCESS TO AND USE OF THE SERVICE, INCLUDING ANY USE BY END USERS OF THE UPLOAD TOOL; (II) ANY ERRORS OR OMISSIONS IN, OR ANY LOSS OR DAMAGE INCURRED AS A RESULT OF THE USE OF, ANY MATERIALS POSTED, TRANSMITTED, OR OTHERWISE MADE AVAILABLE THROUGH THE SERVICE; (III) DAMAGE CAUSED BY THE POSTING, TRANSMISSION OR STORAGE OF YOUR DATA, OR (IV) THE DEFAMATORY, OFFENSIVE, OR ILLEGAL CONDUCT OF ANY END USER OR THIRD PARTY. IN NO EVENT SHALL AOTA, ITS DIRECTORS, OFFICERS, EMPLOYEES, CONTRACTORS OR LICENSORS BE LIABLE TO USER FOR ANY CLAIMS, PROCEEDINGS, LIABILITIES, OBLIGATIONS, DAMAGES, LOSSES OR COSTS IN AN AMOUNT EXCEEDING THE AGGREGATE AMOUNT PAID OR PAYABLE TO AOTA HEREUNDER DURING THE 6 MONTHS PRECEDING THE DATE THE CLAIM FIRST AROSE.

THIS LIMITATIONS OF LIABILITY SECTION APPLIES WHETHER THE ALLEGED LIABILITY IS BASED ON CONTRACT, TORT, NEGLIGENCE, STRICT LIABILITY, OR ANY OTHER BASIS.

11. MISCELLANEOUS

11.1 Relationship of the Parties. The parties are independent contractors with respect to each other. This Agreement does not constitute and shall not be construed as constituting a partnership or joint venture among the parties hereto, or an employee-employer relationship.

11.2 Assignment. User may not assign its rights or delegate its obligations under this Agreement, whether by operation of law, merger or otherwise, without the prior written consent of AOTA, which such consent shall not be unreasonably withheld. AOTA may assign this Agreement in connection with any merger or acquisition of all or substantially all of AOTA's capital stock or assets.

11.3 Waiver. The failure or delay of either party to insist in any one or more instances upon performance of any of the terms, covenants or conditions of this Agreement or to exercise any right, power or privilege under this Agreement, shall not operate or be construed as a relinquishing of future performance under this Agreement or as a waiver of any of the same or similar rights, powers or privileges in the future, and the obligation of the other party with respect to such future rights or performance shall continue in full force and effect as if such failure or delay never occurred.

11.4 Notices. All notices and correspondence under this Agreement shall be in writing and shall be delivered by personal service, express courier, or certified mail, return receipt requested, to the addresses first set forth in the Order Form, or at such different address as may be designated by such party by written notice to the other party from time to time. All notices shall be deemed received and effective upon receipt if delivered personally or sent by express courier, and seven (7) days after mailing if sent by certified mail. Notices for failure to make payment hereunder may be sent by email.

11.5 Severability. If any provision of this Agreement is determined by a court to be, or becomes, invalid, unenforceable or illegal, such provision shall be (a) modified to be made valid, enforceable and legal in such a manner as to best effectuate the manifest intent of the parties on the date hereof, or (b) deemed eliminated where such modification is not practicable; and the remainder of this Agreement shall remain in effect in accordance with its terms as modified by such modification or deletion.

11.6 Construction. Paragraph headings used in this Agreement are for reference purposes only and shall not be interpreted to limit or affect in any way the meaning of the language contained in such paragraphs. No provision of this Agreement will be construed against either party as the drafter thereof. In the event of any conflict between any provision of this TOS and any provision of the Order Form, this TOS shall control except to the extent that such conflicting provision specifically references the section or subsection of this TOS that is being superseded.

11.7 Venue, Governing Law. This Agreement is and all transactions hereunder shall be governed by and construed in accordance with the substantive law (but not the conflict of laws rules) of the State of Maryland. Each party hereby irrevocably consents to the exclusive jurisdiction of the state and federal courts located in Montgomery County, Maryland, over any action, suit or proceeding arising hereunder.

11.8 Force Majeure. Neither party will be responsible for any failure or delay in its performance under this Agreement (other than performance of payment obligations) due to causes beyond its reasonable control, including, but not limited to, labor disputes, strikes, lockouts, internet or telecommunications failures, shortages of or inability to obtain labor, energy, or supplies, war, terrorism, riot, acts of God or governmental action, pandemics, acts by hackers or other malicious third parties and problems with the Internet generally, and such performance shall be excused to the extent that it is prevented or delayed by reason of any of the foregoing.

11.9 Entire Agreement. This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and shall supersede all previous oral and written proposals, negotiations, representations, commitments, and other communications between the parties.