

TRAINWORKS - APPLICATION SERVICE PROVIDER AGREEMENT

This application service provider agreement (the "Agreement") sets out the terms and conditions pursuant to which TrainWorks International, Inc. (herein referred to as "TWI") will make the online **SkillsPlus for NATEF** edition of the SkillsPlus software system (herein referred to as "SkillsPlus" or the "SkillsPlus system") and related services (as defined herein) available on a TWI hosted basis to you, the user.

By using this system you signify that you agree to the terms governing the use of the TrainWorks Application Service and the SkillsPlus system.

1. TrainWorks International Inc. Application Service

During the Term of this Agreement and in accordance with the terms hereof, TWI will provide for the User access to and the use of the SkillsPlus system (as defined herein), and TWI shall provide and the User shall be entitled to receive such Support Services (as defined herein) and other related services that are provided for herein (such access, use and services referred to, collectively, as the "Service").

2. SkillsPlus Software

It is acknowledged that the SkillsPlus system is an assessment tracking software solution composed of various modules and components developed and owned exclusively by TWI and that any reference herein to SkillsPlus refers only to those modules and components that the User is entitled to access through the TWI Site in virtue of the Primary User of the account having paid the applicable fees.

3. Users

A User is defined as an individual, who by virtue or having been properly registered and whose organization account has been paid to reflect their participation is granted permission by TWI to utilize the SkillsPlus system.

There are two classifications of Users. A Primary User and Secondary User(s). A Primary User is identified as the first registered user within a given organization (school, company, etc.), to have established an account on the SkillsPlus system for working with the attainment records of students within a specific shop. In doing so the Primary User is solely responsible for payment of all applicable fees and for assigning a single Skill List to their designated shop. The Primary User is also responsible for all actions of any Secondary Users in complying with this agreement

Secondary Users are all other users of the system including other instructors who teach classes in the same shop at the same location as the Primary User; as well as students (and or their parents) who are assigned to classes in that shop. Secondary Users are subject to the same restrictions as the Primary User.

4. Skill List

For the purpose of the SkillsPlus for NATEF edition, a Skill List is defined as a list of skills, tasks, duties, extrapolated from a single NATEF task listing.

5. License

Subject to the provisions of this Agreement, TWI hereby grants to the Primary User a personal, non-exclusive, non-transferable, revocable license (the "License") for the use of the SkillsPlus system during the Term of this Agreement. The License allows for the Primary User (and their Secondary User designees) to access remotely and use (only through remote access) the SkillsPlus system by means of the TWI Web site located at a Web address provided to the Primary User by TWI (the "TWI Site"), for the Primary User's internal business purposes only and otherwise in accordance with this Agreement.

6. Restrictions

The Primary User agrees that it will not, and will not allow its employer, employees, students, or any agent of the user to:

- (a) reverse assemble, reverse engineer, decompile or otherwise attempt to derive source code from the SkillsPlus system or any module or component thereof;
- (b) copy, reproduce, modify, sell, lease, sublicense, market or commercially exploit in any way the TrainWorks Application Service, SkillsPlus system or any module or component thereof other than as expressly agreed to in this Agreement;
- (c) use, or permit the use of, the TrainWorks Application Service or any module or component thereof to perform information processing, data management or any other function whatsoever for any other person, entity or business including, without limitation, providing information processing or data management for a third party in any service bureau, time sharing, lease, distribution, resale, rental, application service provider agreement or any other arrangement;

(d) disclose or grant access to a User Access Code (as that term is defined herein), the TrainWorks Application Service or any module or component thereof to any third party other than one to whom TWI has consented in writing;

7. Access to TrainWorks Application Service

The User shall access the TrainWorks Application Service by means of the browser that is recommended by TWI and using equipment obtained by the User as further described in Section 13. The User shall access the TrainWorks Application Service through the TWI Site and by entering the appropriate access code (the "User Access Code") Subject to the terms of this Agreement, TWI shall either provide the User with tools to establish their User Access Code, or TWI shall issue the User Access Codes directly. In all cases the User will be solely responsible for any use thereof. For greater certainty, TWI will not be responsible for the use or misuse of any User Access Code.

8. Support Services

TWI shall provide online support services ("Support Services") to the Primary User via the TWI Site. Such services will include the HELP files provided within the SkillsPlus system and other online support services provided via the TWI site and at the sole discretion of TWI.

Toll free telephone access to User and Technical support will be provided, at the discretion of TWI, to the Primary User and will be limited to such support as deemed appropriate by TWI. TWI shall not be required to provide Support Services: (a) to any person other than the Primary User; and (b) in respect of any software other than the SkillsPlus system.

9. Fees

In consideration for providing the Services and the License, the Primary User shall pay to TWI the agreed upon annual fees noted at time of registration, without any set-off or deductions of any kind. TWI shall have the right to increase the Fees at any time during the Term of this Agreement provided that TWI shall give the Primary User prior notice of its intention to increase the Fees. The increase in the Fees shall be effective on the date stipulated in such notice, provided that the effective date shall be no earlier than 30 days from the date of such notice.

An account that is cancelled by the Primary User, may, under certain conditions, be re-activated at the request of the Primary User. In such cases TWI reserves the right to charge a reactivation fee equal to no less than the amount of fees that would have been charged to the account covering the time period between cancellation and re-activation.

10. Fee Payment

The User must provide TWI with valid check or Purchase Order information as a condition to signing up for the TrainWorks Application Service. TWI will automatically bill said Purchase Order. If for whatever reason TWI is unable to bill the Purchase Order then the Primary User shall have 15 days after receiving notification from TWI to make alternative arrangements for payment. Amounts which have not been paid within the 15 days of the Primary User receiving such notice will be subject to a late payment charge at the rate of 12% per annum calculated daily, payable monthly, on the amounts outstanding from the time such amounts become due until payment is received by TWI. Any amount received by TWI while late payment charges are outstanding will be applied first to interest owing.

11. Taxes

Prices set out herein are exclusive of all taxes and the Primary User shall pay (and TWI shall have no liability for), any taxes, tariffs, duties and other charges or assessments imposed or levied by any government or governmental agency in connection with this Agreement, including, without limitation, any federal, provincial, state and local sales, use, goods and services, value-added and personal property taxes on any payments due TWI in connection with the Services provided hereunder, except for tax based solely on the net income of TWI.

12. Remedies in the Event of Failure to Pay

If, after having been given ten days written notice, the Primary User defaults in payment of any amount when due or any interest thereon, then TWI may, in addition to any other rights or remedies at law or under this Agreement, and in its sole discretion, deny access to or use of the Service or the performance of any of its obligations under this Agreement until such failure is remedied, or terminate this Agreement.

13. Ownership

The User acknowledges and agrees that TWI shall retain and own all right, title and interest and all intellectual property rights (including copyrights, trade secrets, trade-marks and patent rights) in and to the SkillsPlus system and all related documentation and the TWI Site (collectively, the "TWI Materials") and all copies thereof, and that nothing herein transfers or conveys to the User any ownership right, title or interest in or to the TWI Materials or to any copy thereof or any license right with respect to same not expressly granted herein. The User agrees that it will not, either during or after the termination of this Agreement, contest or challenge the ownership of the intellectual property rights in the TWI Materials by TWI.

14. Ownership of the User Data

TWI acknowledges that all the User data, including data transmitted by the User to TWI for processing using the TrainWorks Application Service (“the User Data”) and the User systems used by the User to access the TrainWorks Application Service shall be and remain the property of the User. TWI shall have the right to use and reproduce the User Data solely to the extent necessary to provide the Services and fulfill its obligations to the User hereunder.

15. Access to TrainWorks Application Service

The User is responsible for obtaining all hardware, software and services which are necessary to connect to the TWI Site and access the Services including without limitation, all computers, Web browsers, and services provided by an Internet service provider. All such facilities and services shall comply with TWI’s interface specifications for the Services described in the SkillsPlus Documentation or as otherwise required by TWI.

16. User Security Responsibilities

To the extent deemed necessary by the User, the User shall implement security procedures necessary to limit access to the Service to the Primary and Secondary User(s). The Primary User shall notify TWI immediately if there is a security breach or unauthorized use of the Service. The Primary User shall permit TWI to attend at the Primary User's premises on reasonable notice in order to review/audit the User's use of the SkillsPlus system and the TrainWorks Application Service.

17. User Data

TWI will not be responsible or liable for any loss, damage or inconvenience suffered by the User or by any third person arising out of the use of the Service by the User.

18. User Systems

TWI shall have no responsibility for the performance, adequacy, accuracy, concurrency or other matters related to the User systems.

19. Export

The User agrees that it shall not export or re-export the SkillsPlus system or any copies thereof, either directly or indirectly, outside of the jurisdiction in which such materials are accessed by Users except in compliance with all applicable laws, ordinances and regulations. The User shall have the exclusive obligation to ensure that any export of the SkillsPlus system is in compliance with all applicable export laws and the laws of any foreign country.

20. Provision of Releases

At its sole option, TWI shall be entitled to prepare new versions of the SkillsPlus system that TWI generally makes available to the Users (“Update Releases”). TWI exclusively shall determine whether Update Releases shall be included in the SkillsPlus system provided pursuant to the Services. At any time, TWI may install any Update Releases and use same to provide the Services.

21. Right to Modify the TrainWorks Application Service

(1) TWI may from time to time, in its sole discretion, change some or all of the functionality or any component of the TrainWorks Application Service or make any modification for the purpose of improving the performance, service quality, error correction or to maintain the competitiveness of the Service.

(2) If TWI desires to make any modification which would adversely affect the use of the SkillsPlus system, TWI shall provide the User with 30 days prior notice (the "Notice Period") in writing of its intention to make such modification, including a description of its impact on the TrainWorks Application Service and the Services.

22. Confidential Information

(1) Each party acknowledges that confidential information (including trade secrets and confidential technical, financial and business information (collectively, “Confidential Information”) may be exchanged between the parties pursuant to this Agreement. Each party shall use no less than the same means it uses to protect its similar confidential and proprietary information, but in any event not less than reasonable means, to prevent the disclosure and to protect the confidentiality of the Confidential Information of the other party. Each party agrees that it will not disclose or use the Confidential Information of the other party except for the purposes of this Agreement and as authorized herein. The User will promptly report to TWI any unauthorized use or disclosure of TWI’s Confidential Information that the User becomes aware of and provide (at the expense of TWI or its licensors) reasonable assistance to TWI (or its licensors) in the investigation and prosecution of any such unauthorized use or disclosure.

(2) Notwithstanding Section 22(1) the Recipient of Confidential Information may use or disclose the Confidential Information to the extent that such Confidential Information is: (i) already known by the Recipient without an obligation of confidentiality, (ii) publicly known or becomes publicly known through no unauthorized act of the Recipient, (iii) rightfully received from a third party without any obligation of confidentiality, (iv) independently developed by the Recipient without use of the Confidential Information of the Disclosing Party, (v) approved by the Disclosing Party for disclosure, or (vi) required to be

disclosed pursuant to a requirement of a governmental agency or law so long as the Recipient provides the other party with notice of such requirement prior to any such disclosure and takes all reasonable steps available to maintain the information in confidence.

(3) The Primary User shall, and shall cause all Secondary Users to, safeguard and maintain the Confidential Information of TWI in strict confidence and shall not, and shall cause all Secondary Users not to, disclose, provide, or make such Confidential Information or any part thereof available in any form or medium to any person except those who have a need to access such TWI Confidential Information in order to enable the User to exercise its rights under this Agreement. The User also agrees not to: (i) disclose to third parties (whether in writing or orally) any benchmark test data related to the TrainWorks Application Service, and (ii) use TWI's Confidential Information to create any computer software or documentation that is substantially similar to the SkillsPlus system.

23. Protection of Proprietary Rights

The User shall not remove any proprietary, copyright, patent, trademark, design right, trade secret, or any other proprietary rights legends from the TWI Materials.

24. Right to Perform Services for Others

The User recognizes that TWI is in the business of providing computer and information technology services and may perform services for other persons similar to the Services. Subject to TWI's confidentiality obligations pursuant to Section 22 TWI retains the right and nothing shall prevent TWI from using any ideas, concepts, methods, processes, know-how, organization, techniques or any software, including the TWI Materials, in providing any services to any third person.

25. Limited Warranty

TWI warrants that the Service will substantially conform to the related SkillsPlus Documentation. For any breach of this warranty or the failure of TWI to provide the Service as required herein (a "Deficiency"), the Users sole and exclusive remedies and TWI's entire obligations hereunder shall be for TWI to provide the Services that are the subject of the Deficiency. The remedies in this Section are expressly in lieu of any or all other remedies which may be available to the User resulting from the furnishing, the failure to furnish or the quality of any Service. TWI does not warrant the accuracy of any data or information furnished to the User that is created from the User Data, the User Systems or software supplied by the User.

26. Warranty Disclaimer

(1) Except as expressly provided herein, TWI expressly disclaims any and all representations, warranties and conditions of any kind or nature, express or implied, including without limitation, representations, warranties and conditions of satisfactory quality, performance, merchantability, merchantable quality, durability, fitness for a particular purpose, title and those arising by statute or otherwise in law or from a course of dealing or use of trade. The User acknowledges and agrees that the licensors and suppliers of TWI make no direct warranty of any kind to the User under this agreement.

(2) TWI does not represent or warrant that: (i) The services or TrainWorks application service will meet the User's business requirements; (ii) The services or TrainWorks application service will be error-free or uninterrupted or that the results obtained from its use will be accurate or reliable; or (iii) All deficiencies in the services or TrainWorks application service can be found or corrected. Further, the TrainWorks application service may be interrupted or unavailable for the purposes of performing maintenance or upgrades. TWI will not be responsible for: (a) service impairments caused by acts within the control of the User; (b) interoperability of specific User applications or equipment; (c) inability of the User to access or interact with any other service provider through the Internet, other networks or users that comprise the Internet or the informational or computing resources available through the Internet; (d) interaction with other service providers, networks, users or informational or computing resources through the Internet; (e) service provided by other service providers; or (f) performance impairments caused elsewhere on the Internet.

27. Limit of Liability

(1) For any breach or default by TWI of any of the provisions of this agreement, or with respect to any claim arising here from or related hereto, TWI's entire liability, shall in no event exceed any of the following: (i) The fees paid to TWI by the User pursuant to this agreement in the calendar year in respect of which the cause of action first arose even if the cause of action is a continuing one, or (ii) in the aggregate with respect to all claims made under or related to this agreement, the amount paid by the Primary User under this agreement. (2) In no event will TWI be liable for special, incidental, indirect, or consequential loss or damage, lost business revenue, loss of profits, loss of data, loss of cover, damages for delay, punitive or exemplary damages, failure to realize expected profits or savings or any claim against the customer by any other person, even if TWI has been advised of the possibility of any such losses or damages. (3) TWI shall not be liable for unauthorized access to or alteration, theft, loss or destruction of any data, equipment or the services, including without limitation through accident, fraudulent means or devices, or any other method. (4) TWI shall be liable to the User as expressly provided in this agreement but shall have no other obligation, duty, or liability whatsoever in contract, tort (including negligence) or otherwise to the User. The limitations, exclusions and disclaimers in this agreement shall apply irrespective of the nature of the cause of action, demand, or action by the User, including but not limited to breach of contract, negligence, tort, or any other legal theory and shall survive a fundamental breach or breaches or the failure of the essential purpose of this agreement or of any remedy contained herein.

(5) Neither party shall be responsible or liable for any loss, damage or inconvenience suffered by the other or by any third person, to the extent that such loss, damage or inconvenience is caused by the failure of the other party to comply with its obligations under this Agreement.

(6) Neither party may bring an action, regardless of form, arising out of or related to this Agreement (other than to recover fees or expenses due to TWI) more than two years after the cause of action has arisen or the date of discovery of such cause, whichever is later.

(7) The User agrees to indemnify and hold TWI, its affiliates, employees, officers, directors and shareholders harmless from and against any claims, suits, actions or proceedings (a "claim") brought and damages, costs (including attorney's fees) or judgments awarded against TWI that arise from or in connection with: (i) Claims by any person or entity to the extent that such Claims are based upon or arise out of the User's use of the Services or the User's actions; (ii) breach by the User of this Agreement; or (iii) the User's failure to comply with all applicable laws. TWI shall give the User prompt written notice of such claims, permit the User to defend and/or settle such claims, and give the User all information and assistance reasonably requested by the User in connection with such claims.

28. Term of Agreement

This Agreement and the License granted herein shall be self-renewing on an annual basis and will continue until this Agreement is terminated by either party, the accepted provisions for which are included under Section 29 "Termination".

29. Termination

This Agreement may be terminated:

- (a) by TWI if the Primary User fails to make any payment when due or any interest thereon to TWI under this Agreement and fails to cure such default within ten (10) days of receiving notice in writing from TWI to do so;
- (b) by the Primary User by providing written notice to TWI thirty (30) days in advance of the termination date;
- (c) by either party in the event the other party materially breaches any of its duties, obligations or responsibilities under this Agreement and fails to cure such breach or provide the other party with an acceptable plan for curing such breach within sixty (60) days after receipt by the breaching party of written notice specifying the breach; or
- (d) by either party in the event: (i) a receiver, trustee, administrator, or administrative receiver should be appointed for the party or its property; (ii) the party makes an assignment for the benefit of creditors; (iii) any proceedings should be commenced against the party under any bankruptcy, insolvency, or debtor's relief law, and such proceedings shall not be vacated or set aside within fifteen (15) days from the date of commencement thereof; or (iv) the party should be liquidated or dissolved.

30. Effect Of Termination

Except to the extent agreed to in writing by the parties, upon the termination of this Agreement:

- (a) TWI shall be entitled to immediately cease providing the Services;
- (b) TWI shall be entitled to immediately terminate the User's access to the TrainWorks Application Service;
- (c) the Primary User shall forthwith pay to TWI all amounts owing under this Agreement on the date of termination;
- (d) where the Primary User has paid fees for 12 months in advance, TWI shall refund to the Customer such amount less any monthly charges calculated in accordance with this agreement, less an amount equal to one month's fees and other fees that may be due and owing for services rendered as of the date of termination;
- (e) the User shall immediately and permanently cease to use, in any manner whatsoever, the TrainWorks Application Service, the User Access Codes and the SkillsPlus Documentation; and
- (f) the License granted under Section 5 will automatically terminate.

31. Account Reactivation

A Primary User who initiates a termination of an account, may request in writing to TWI that such account be reactivated. Such a request must be received no later than 90 days from the date on which the termination of the account became effective. To do so will in effect "void" your original cancellation. As such you will be responsible for accrued subscription fees (along with any other applicable fees) dating back your date of cancellation.

32. Return of Confidential Information

Upon the termination of this Agreement for any reason whatsoever, each party may request of the other that all documents, information, data and/or software however recorded, which contain any of the other's Confidential Information be returned, provided that the party shall be entitled to charge a reasonable fees and materials charge for doing so. If no request is received for the return of Confidential Information within 30 days of the termination of this Agreement, the Confidential Information shall be destroyed within a reasonable time thereafter and shall not be used for any purpose whatsoever.

33. Survival

The parties hereto agree that the provisions hereof requiring performance or fulfillment after the expiry or earlier termination of this Agreement shall survive such expiry or earlier termination. The provisions of this Agreement relating to ownership, confidential information, warranty disclaimer, and limits of liability shall survive the expiration or termination of this Agreement.

34. Independent Contractor

TWI employees shall not be deemed at any time to be employees or servants of the User and TWI is and shall remain an independent contractor for all purposes. Unless otherwise agreed to in writing, TWI does not undertake to perform any obligation of the User, whether regulatory or contractual, or to assume any responsibility for the User's business or operations.

35. General

(a) **Notice.** TWI may give notice by means of a general notice through the Service, electronic mail to your e-mail address on record in TWI's account information, or by written communication sent by first class mail to your address on record in TWI's account information. You may give notice to TWI at any time by any of the following: electronic mail to

contact@twionline.com; letter delivered by nationally recognized overnight delivery service or first class postage prepaid mail to TWI at the following address: TrainWorks International, Inc., 21 Abbott Road, North Reading, Massachusetts 01864

(b) **Forces Beyond Reasonable Control.** If the performance of this Agreement, or any obligation thereunder except the making of payments hereunder is prevented, restricted, or interfered with by reason of: fire, flood, earthquake, explosion or other casualty or accident or act of God; strikes or labor disputes; inability to procure or obtain delivery of parts, supplies, power, telecommunication services, equipment or software from suppliers, war or other violence; any law, order proclamation, regulation, ordinance, demand or requirement of any governmental authority; or any other act or condition whatsoever beyond the reasonable control of the affected party, the party so affected shall be excused from such performance to the extent of such prevention, restriction or interference; provided, however, that the party so affected shall take reasonable steps to avoid or remove such cause of non-performance and shall resume performance hereunder with dispatch whenever such causes are removed.

(c) **User Rights.** Nothing in this Agreement shall create or vest in the User any right, title, or interest in the TrainWorks Application Service or the TWI Materials other than the limited right to use the Service under the terms and conditions of this Agreement. All such rights shall remain in TWI.

(d) **Severability.** To the extent that any provision, portion or extent of this Agreement is deemed to be invalid, illegal or unenforceable, such provision, portion or extent shall be severed and deleted or limited so as to give effect to the intent of the parties insofar as possible and the remainder of this Agreement, as the case may be, shall remain binding upon the parties.

(e) **Assignment.** The Primary User may not, without TWI's prior written consent, assign or transfer this Agreement, or any of its rights or obligations under this Agreement to any third person (in this Section an "Assignee") except to an Affiliate, or as part of the sale of all of the assets of the User, provided that: (i) the Assignee undertakes in writing to TWI to fully perform and be bound by the provisions of this Agreement; (ii) the Assignee does not develop or market products or services competitive with the SkillsPlus system or the TrainWorks Application Service; and (iii) the User shall indemnify and hold TWI harmless from and against the breaches and defaults of the Assignee under the Agreement. TWI may assign this Agreement to any third person without the consent of the User provided that TWI shall notify the User in writing of any such assignment. TWI may delegate to affiliates of TWI and to agents, suppliers and contractors of TWI any of the obligations herein imposed upon TWI and TWI may disclose to any such persons any information required by them to perform the duties so delegated to them, but such delegation shall not relieve TWI of its performance obligations hereunder.

(f) **Waiver and Amendment.** TWI reserves the right to change the terms and conditions of this Agreement or its policies relating to the Service at any time and shall notify you of such change in accordance with the notification provisions hereof. Continued use of the Service for more than thirty (30) days after any such change shall constitute your consent to such changes.

(g) **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Massachusetts without reference to its conflict or choice of law rules or principles. The Customer hereby submits to the non-exclusive jurisdiction of the courts of the Commonwealth of Massachusetts for any legal action arising out of this Agreement or the performance of the obligations hereunder or thereunder.