



Making the Workplace and Community Safer.

## Software License Agreement

Please read this Software License Agreement (the “Agreement”) carefully before signing the Order Form. The following terms and conditions of the Agreement will be legally binding on the Licensee upon execution of the Order Form. The definitions of certain capitalized terms used in this Agreement are located in Section 1 below.

This Agreement governs Your use of American Safety & Health Institute, Inc. (dba Health and Safety Institute) and Affiliated Companies (collectively “HSI”) products and services.

If You are entering into this Agreement on Your own behalf, then the terms “You,” “Your” and “Licensee” mean the individual entering into this Agreement and such individual is personally bound by all of the terms and conditions of this Agreement. If You are entering into this Agreement on behalf of a company, You represent and warrant that You are acting in your capacity as an authorized representative or agent of such company and that You have the authority to bind such company to the terms and conditions of this Agreement. If You are entering into this Agreement on behalf of a company, the terms “You,” “Your” and “Licensee” also mean such company and all of its directors, managers, officers, employees, and agents to the extent of their use of the Training and LMS, and/or action or inaction in connection with this Agreement, as the case may be.

This Agreement was last updated on June 8, 2018. It is effective between You and Us on the date You enter into an Order Form, which is subject to this Agreement.

### 1. Definitions.

The following definitions and/or terms shall have the meanings set forth below.

“Affiliated Companies” means any of the following entities Summit Training Source, Inc., Comprehensive Loss Management, Inc., Safetec Compliance Systems, Inc., Vivid Learning Systems, Inc., and MEDIC First Aid Inc.

“Agreement” means this Software License Agreement and the Licensee’s Order Form.

“CAT” means HSI’s proprietary course authorship tool which is available through the HSI LMS. CAT is not included in all LMS access packages.

“CAT Generated Training” means instructional materials created by Licensee through the CAT.

“Default” shall have the meaning set forth in Section 6.

“Laws” has the meaning set forth in Section 3.

“Licensee Materials” means any Licensee course or other individual documents, video clips, data files or other information or materials uploaded to HSI’s LMS by Licensee which is not specific to an individual Licensee account and is not HSI content.

“LMS” means the Learning Management System owned or licensed by HSI and used to deliver the Training and or services along with all software documentation (if applicable).

“Order Form” means the documents for placing orders hereunder that are entered into between You and Us from time to time, including any addenda and supplements thereto. By entering into an Order Form hereunder, a Licensee agrees to be bound by the terms of this Agreement as if it were an original party hereto.

“Period of Agreement” means the time period set forth in the Order Form defining the initial period of time that the Licensee shall have the right to use the Training and/or LMS and any renewal periods arising from Section 5 of this Agreement.

“Related Parties” has the meaning set forth in Section 4.

“Training” means the training services, programs, and content contained on electronic media that have been created by HSI or which HSI has the rights to license to others.

“We,” “Us,” “Our,” or “HSI” means Health and Safety Institute.

“You,” “Your,” or “Licensee” means the user of the Training and/or LMS if purchased on an individual basis or the company (or other legal entity) for which you are accepting this Agreement, and all LMS users of such company (for which You are responsible for ensuring their compliance with this Agreement).

## **2. Licensor**

HSI is the owner and Licensor of, or has rights to license, the Training and LMS, pursuant to the terms and conditions of this Agreement.

## **3. Grant of Limited License; Restrictions**

Subject to the terms of this Agreement, including but not limited to HSI’s timely receipt of all fees owed by you under the Order Form(s), HSI hereby grants to Licensee a nonexclusive, non-transferable, limited, royalty-free license to use the Training and LMS along with other products and services summarized in the Order Form, during the Period of Agreement.

The Training and LMS shall be used solely for Your internal training purposes only and cannot be resold, sublicensed, or used for other commercial purposes. The license is for only the specified number of users in the Order Form (additional seat licenses can be procured through an Order Form amendment signed by the Parties). Licensee is required to maintain records of all uses and users of the Training. Notwithstanding the foregoing, You acknowledge that HSI may also maintain and monitor Your uses and users for the purpose of ensuring compliance with this Agreement. Upon reasonable request, HSI shall have the right to audit Licensee’s records including Licensee’s access to the Training to verify compliance with this Agreement. If such audit, or HSI’s internal audit, reveals that any users above the number licensed in the Order Form have enrolled in or accessed the Training or LMS during the Period of Agreement, then HSI will invoice Licensee for such additional users at the per-user price listed in the Order Form.

You may not access or use the Training or LMS for any purposes which are not consistent with applicable federal, state or local laws, rules or regulations (“Laws”). It is Your sole responsibility to determine which Laws are applicable to your particular use(s) of the Training and LMS. Any violation by you of Laws in Your use of the Training or LMS shall be deemed, immediately and retroactive to the first such use, an event of Default.

You may not access or use the Training or LMS for any directly competitive purposes, except with Our prior written consent, but in any case, you agree not to use the Training or LMS in any way that is directly competitive with HSI, namely, using it to competitively position other training or learning management systems, whether it be Your own or a third party’s which you are associated with directly or indirectly.

### **3.1 Access to Course Authorship Tool (CAT)**

Where CAT access is included on the Order Form, Licensee shall have a non-exclusive, limited, non-transferrable, non-sublicensable right and license, to use the CAT to: (a) create CAT Generated Training solely for Licensee’s internal training purposes; (b) add Licensee Materials within certain Training offered in the LMS; and (c) modify existing HSI content contained within such Training, both for the sole purpose of customizing Training to fit more specifically the needs of Licensee’s organization, provided that any Licensee Materials added and any modifications to Training contained within such courses shall not include information that is, or could reasonably be considered to be: (i) contradictory to any information included in the Training; (ii) contradictory to applicable Laws; or (iii) otherwise a violation, or result in a violation, of any of the terms of this Agreement. HSI shall determine in its sole discretion which Training offered in the LMS may be customized as described above. Licensee Materials shall remain the property of Licensee. All rights, title and interest in and to the Training, and any and all modifications to or derivative works thereof shall be owned exclusively by HSI. LICENSEE WILL BE SOLELY RESPONSIBLE FOR REGULATORY COMPLIANCE AND ACCREDITATION OF ANY LICENSEE MATERIALS ADDED TO TRAINING. TRAINING THAT HAS BEEN CUSTOMIZED USING THE AUTHORSHIP TOOLS ARE NOT ELIGIBLE FOR CAPCE CONTINUING EDUCATION HOURS (“CEHs”). NO CEHs WILL BE ISSUED FOR LICENSEE MATERIALS ADDED TO SUPPLEMENT TRAINING UNDER ANY CIRCUMSTANCES. LICENSEE MAY MAKE NO CLAIMS REGARDING THE APPROVAL, CERTIFICATION OR ACCREDITATION OF ANY HSI TRAINING MODIFIED OR SUPPLEMENTED AS DESCRIBED ABOVE.

### **3.2 Restrictions**

Training provided on a DVD may not be uploaded to or stored on a computer or other storage medium by or at the direction of Licensee. Licensee shall not remove, alter, or cover (or otherwise cause or allow) any copyright notices or other proprietary rights notices placed or embedded in Training. Any editing, customization, or other modification of the Training is strictly prohibited except if through the CAT.

### **3.3 OSHA 10/30 Training**

Students enrolled by Licensee have 180 days to complete OSHA 10 Hour and OSHA 30 Hour Training once the course has been started.

### **3.3.1 Continuing Education Hours**

Continuing education hours (CEUs) for OSHA 10 and OSHA 30 courses may only be applied for after verification by HSI of successful completion and payment by students of applicable fees.

### **3.3.2 Completion Cards**

For OSHA 10 and OSHA 30 courses, HSI provides OSHA course completion cards to students who successfully complete the required courses for each program after HSI's receipt of the cards from OSHA.

## **4. Ownership**

Except as specifically set forth in this Agreement, nothing contained in this Agreement shall by express grant, implication, estoppel, or otherwise, create in Licensee any right, title, interest, or license in or to the inventions, patents, trade secrets, technical data, logos, graphics, icons and images, videos, other content, computer software, or software documentation of HSI, its Affiliated Companies, or its third party licensors (together, the "Related Parties"), as the case may be. HSI or its Related Parties, as the case may be, retain exclusive title, copyright, and all intellectual property rights in and to the Training and LMS. Licensee may not create derivative works, decompile, reverse engineer, disassemble, or modify the Training or LMS. If You provide any suggestions, feedback, or improvements for the Training and LMS, then You grant HSI a worldwide, perpetual, irrevocable, royalty-free license to use and have others use such suggestions, feedback, and improvements for any purpose.

### **4.1. Federal Government End Use Provisions**

Where applicable, HSI provides the Training and LMS (including related software and technology) for federal government end use solely in accordance with the following: Government technical data and software rights related to the Training and LMS include only those rights customarily provided to the public under the terms set forth in this Agreement. This customary commercial license is provided in accordance with FAR 12.211 (Technical Data) and FAR 12.212 (Software) and, for Department of Defense transactions, DFAR 252.227-7015 (Technical Data – Commercial Items) and DFAR 227.7202-3 (Rights in Commercial Computer Software or Computer Software Documentation). If a government agency has a need for rights not conveyed under these terms, it must negotiate with HSI to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

## **5. Term of License**

The initial term of this license shall begin on the beginning date of the Period of Agreement and will continue through the last date of the Period of Agreement except as separately noted for any particular products or services in the Order Form. After the initial term of this license, this Agreement shall automatically renew for successive one (1) year periods, unless either party notifies the other party in writing of its intent to terminate this Agreement at least thirty (30) days prior to the expiration of the then Period of Agreement. The per-unit pricing during any automatic renewal term will be the same as the pricing during the immediately prior term unless We have given You written notice of a pricing increase at least sixty (60) days prior to the expiration of the then Period of Agreement, in which case the pricing increase will be effective upon renewal and thereafter.

### **5.1. Training Resets**

If the Licensee desires a training reset prior to the end of a Period of Agreement, then an additional license fee will be due. A training reset is defined as closing the existing training period and reenrolling students in a new training period. For example, if Licensee desires after the end of six months to close the current training and reenroll their

students in the courses, then a new annual license fee will be due in the same amount as specified in the Order Form.

## **6. Default; Termination**

The following shall be considered events of “Default” by You:

- 6.1.** Failure to make timely payment of any amounts owing under Section 7 of this Agreement and/or the Order Form, if not cured within ten (10) days of written notice;
- 6.2.** Failure to comply with any of the use restrictions set forth in Section 3, if not cured within ten (10) days of written notice; provided however, that there shall be no cure period for any “directly competitive purpose” activity; and
- 6.3.** Failure to comply with any of the restrictions or obligations set forth in Section 4, if not cured within ten (10) days of written notice; provided however, that there shall be no cure period for any attempt to decompile or reverse engineer the Training or LMS or components thereof.

In the event of an uncured Default or one which is deemed not curable, HSI may, at its option, suspend your access to the LMS and Training or terminate the Agreement and Order Form, immediately upon written notice to you.

In the event of a Default by the Licensee, HSI retains all of its rights and remedies at law, including the collection of all license fees whether due and payable now or in the future. Upon termination or expiration of the Agreement for any reason, Licensee will (a) immediately cease use of the Training, and (b) promptly, but in no case more than five (5) business days, delete any copies of the Training from its computers, servers, or other storage media. If requested by HSI, Licensee will provide HSI with a written certification of its compliance with this provision. Licensee further acknowledges and agrees that if it violates or threatens to violate any of the provisions of this Agreement, HSI or its Related Parties may suffer irreparable injury and, accordingly, HSI shall therefore be entitled to seek injunctive or other equitable relief, without posting of bond, to prevent or curtail any violation or threatened violation of this Agreement.

Licensee may terminate this Agreement by providing notice, as set forth in Section 5, in advance of the renewal of the Period of Agreement. Otherwise, Licensee may only terminate this Agreement by giving written notice to HSI of a material breach of a material term of this Agreement or Order Form by HSI which remains uncured thirty (30) days after HSI receives written notice specifying the nature of the breach.

If the Training records reside on HSI’s LMS then, within ninety (90) days of termination or expiration of the Agreement, the Licensee may print, or request that HSI print, one final report of the training records for record-keeping and course content auditing purposes. After that ninety (90) day period, HSI will have no obligation to maintain any, and will have the right to delete all, training records related to the expired or terminated Agreement and HSI will have no further obligation to make such data available to You.

## **7. Payment**

License and other fees associated with the Training and LMS shall be set forth in the Order Form and are in United States dollars (USD). Except as otherwise specified herein or in the Order Form, (i) fees are based on the Training and LMS purchased and/or products and services requested and not actual usage, (ii) payment obligations are non-cancelable and, unless otherwise stated herein, fees paid are non-refundable, and (iii) quantities purchased cannot be decreased during the relevant Period of Agreement. If You provide credit card information to Us, You authorize Us to charge such credit card

for all products and services listed in the Order Form for the initial Period of Agreement and any renewal Period of Agreement as set forth in Section 5 (Term of License). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable Order Form. If the Order Form specifies that payment will be by a method other than a credit card, We will invoice You in advance and otherwise in accordance with the Order Form. Invoiced charges are due and payable net thirty (30) days from the invoice date.

**7.1. Fees Less Than \$1,000**

Initial license fees of less than \$1,000 must be paid by credit card prior to receiving access to the Training and the LMS.

**7.2. Late Fees**

If any invoiced amount is not received by Us by the due date, or such charge is rejected by Your credit card issuer, then without limiting Our remedies, (a) those charges may accrue late interest of 1.5% per month or the maximum allowable by law, whichever is lower, and/or (b) We may condition future renewals on payment terms shorter than those specified in this section. In addition to any unpaid fees, Licensee shall be responsible for HSI's reasonable costs of collection, including but not limited to attorney fees. We may, at our election, choose to forgo the exercise of Our rights under this section to resolve reasonable disputes, without waiving those rights.

**7.3. Taxes**

Our fees do not include taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively "Taxes"). You are responsible for promptly paying all Taxes associated with Your purchases hereunder. If We have the legal obligation to pay or collect Taxes for which You are responsible, We will invoice You and You will pay that amount unless You provide Us with a valid tax exemption certificate authorized by the appropriate taxing authority. We are solely responsible for taxes assessable against Us based on Our income, property, and employees.

**8. Training Updates**

At no additional cost to Licensee, HSI shall make reasonable efforts to modify the Training from time to time to reflect material changes in regulatory standards by providing updates to standard content as regulatory requirements change and by making operating improvements, in each case the timing and necessity of which shall be determined by HSI in its sole reasonable discretion ("Updates"). Updates may contain, for example, updates in response to regulatory changes, additional questions added to the "question bank", and "lessons learned" information gathered during previous years. Updates are made for the benefit of our platform and its licensed users, and not for any particular licensee; Licensee requested changes to customize Training will be available for an additional fee to be negotiated and documented in a separate written agreement between HSI and Licensee. HSI reserves the right to charge for additional functionality and modules released for Licensee's benefit, in HSI's sole but reasonable discretion.

**9. Setup and Support**

During the term or extended term of this Agreement, HSI shall assist Licensee with the initial setup of the Training and LMS via telephone and email support. HSI shall provide to Licensee telephone and email support and troubleshooting of the Training and LMS for the term or extended term of this Agreement. HSI will make reasonable efforts to accommodate Licensee's scheduling requests, subject to HSI's available resources. Any additional trouble-shooting or support, including but not limited to on-site support, is subject to additional fees.

## **10. LMS Upgrades (if applicable)**

At no additional cost to Licensee, HSI shall provide updates necessary, in HSI's reasonable judgment, to maintain the functionality of the LMS with commonly-used software platforms and web browsers. Upgrades to the then current version of the LMS product, as well as some additional LMS features, may be offered from time to time by HSI at an additional cost.

## **11. Limited Warranty; Limitations of Liability**

HSI warrants that if the LMS and Training fails to substantially conform to the specifications in our online guides or online help, and the non-conformity is promptly reported in writing by Licensee with reasonable specificity so as to allow HSI to attempt to cure the non-conformity, then HSI shall, in its sole discretion, either substantially remedy the nonconformity within thirty (30) days after written notice from Licensee, procure a substantially similar substitute product at no additional charge to Licensee, or refund the purchase price for the affected product to Licensee. In the event of a refund, the license granted under this Agreement shall immediately terminate. Except as set forth herein and in Section 12 (Indemnity), the HSI products and services are provided "As-Is". This is HSI's sole warranty, and Licensee's sole remedy with respect to the LMS and Training.

HSI and any Related Parties shall not in any case be liable for any type of loss or damage arising from the content or use of the Training or LMS, including but not limited to links to or from Our Training, and errors or omissions in the content, and Licensee hereby agrees to hold HSI and the Related Parties harmless from and against any costs, claims, losses and other liabilities incurred by Licensee based on its use or inability to use the Training and/or LMS, whether or not advised of the possibility of such damages. We have made reasonable efforts to present the material accurately, given the current information available when the course was created, however, it is not possible or even reasonably practical for all variables posed by on-the-job application of this information to be covered in the Training and/or LMS. Therefore, Licensee acknowledges that it has sole responsibility for ensuring the appropriateness and completeness of the Training as applied to its operational requirements, and to provide adequate training, including but not limited to safety training, to its staff and others to whom Licensee provides training. HSI does not warrant that the Training will be uninterrupted, timely, or error free in all instances. You are solely responsible for evaluating the fitness of the Training for Your particular purpose. The content in Our Training is provided as-is without any warranties of any kind including warranties of merchantability or fitness for a particular purpose.

The liability of HSI arising out of any kind of legal claim (including, but not limited to, claims sounding in contract, tort, strict liability, breach of warranty, or otherwise) will not in any case exceed the amount You paid for the most current annual license fee noted on Your Order Form.

### **11.1 Incident Management (if applicable)**

Licensee is solely responsible for data verification and submission of reports to state and federal regulatory agencies, including without limitation federal and state OSHA offices. Licensee shall comply with applicable Laws in connection with its use of Incident Management. The Incident Management system is provided to Licensee as a general tool and is not a substitute for Licensee's own assessment of requirements of law or Licensee's internal processes and procedures. Licensee is solely responsible for report submission, data verification, and regulatory compliance.

### **11.2 SafeTec (if applicable)**

Licensee shall obtain and maintain all necessary licenses and consents and comply with all Laws in relation to the services provided, in all cases before the date on which the services are to start.

## **12. Indemnity**

### **12.1. Indemnity by HSI**

Not subject to the liability limitation noted above, HSI agrees to indemnify and hold harmless Licensee from and against any and all liabilities, claims, and expenses including reasonable attorneys' fees, arising from any third party claims that the Training (excluding any Licensee assignments) and LMS infringes or misappropriates any presently existing United States patent held by such third party, provided that You promptly notify HSI in writing of any such claim, suit, or proceeding and permit HSI to control the defense or settlement thereof and cooperate in the defense or settlement thereof. This indemnity shall not apply to the extent that You or any of your employees or representatives alter the Training or LMS and such alteration is a contributing factor in the alleged infringement or misappropriation.

HSI will have the option, at its expense, to employ counsel of its choosing to defend against such claim and to compromise, settle, or otherwise dispose of the claim; provided, however, that no compromise or settlement of any claim admitting liability of or imposing any obligations upon You may be affected without Your prior written consent. You shall have the option to be represented by counsel at Your own expense.

### **12.2. Indemnity by Licensee**

You agree to indemnify and hold harmless HSI and its Related Parties from and against any and all liabilities, claims, and expenses, including reasonable attorneys' fees, arising from Your breach of any part of this Agreement, or Your use or access of the Training and LMS or any Internet site linked to or from the Training. You also agree to indemnify and hold harmless HSI from and against any and all liabilities, claims, and expenses, including reasonable attorneys' fees, arising from any third party claim that results from HSI's use of materials which You voluntarily submit to HSI for inclusion in the Training (i.e. customizing the Training for your intended use), provided that HSI promptly notifies You in writing of any such claim, suit, or proceeding and permit You to control the defense or settlement thereof and cooperate in the defense or settlement thereof.

You will have the option, at Your expense, to employ counsel of Your choosing to defend against such claim and to compromise, settle, or otherwise dispose of the claim; provided, however, that no compromise or settlement of any claim admitting liability of or imposing any obligations upon HSI may be affected without Our prior written consent. HSI shall have the option to be represented by counsel at Our own expense.

## **13. Assignment**

This Agreement may not be assigned or otherwise transferred by either party in whole or in part, by operation of law or otherwise, without the express prior written consent of the other party, which consent will not be unreasonably withheld; provided, however, that either party may assign this Agreement in its entirety (including all Order Forms), without the other party's consent to its affiliate or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets, provided that such party (a) is not a direct competitor of the non-assigning party, and (b) the



assignee agrees in writing, prior to the consummation of the change in control event, to the assignment and assumption of this agreement, including the obligations set forth herein. Notwithstanding the foregoing, if a party is acquired by, sells substantially all of its assets to, or undergoes a change of control in favor of, a direct competitor of the other party, then such other party may terminate this Agreement immediately upon written notice. Subject to the foregoing, this Agreement shall benefit and be binding upon the respective successors and permitted assigns of the parties hereto.

#### **14. Other Services**

HSI may also provide other services such as custom development services to Licensee. Any such services or requirements not expressly stated in this Agreement are outside the scope of this Agreement and only will be provided by HSI subject to the terms of a separate written agreement executed by both parties.

#### **15. Publicity**

If You enter into this Agreement, You agree that HSI may disclose to the public that You are a paying user of the Training and/or LMS. You further agree that HSI may reference You on the customer section of HSI's website and in other marketing materials and presentations until such time as Your use of the Training and/or LMS is discontinued.

#### **16. Severability**

If any part, term, or provision of the Agreement shall be held void, illegal, unenforceable, or in conflict with any law of a federal, state, or local government having jurisdiction over this Agreement, the validity of the remaining provisions shall not be affected thereby.

#### **17. Choice of Law; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Oregon without regard to its conflicts of laws principles and any action brought to enforce any provision or obligation hereunder shall be brought in a court of competent jurisdiction in or serving Multnomah County, Oregon, and You hereby submit to such personal jurisdiction. The substantially prevailing party in any such proceeding shall be entitled to receive from the other party all reasonable attorneys' fees incurred by such prevailing party and all costs reasonably incurred in connection therewith.

#### **18. Notification of Changes**

This Agreement is the entire agreement between You and Us regarding your use of the Training and/or LMS and supersedes all prior and contemporaneous agreements, proposals or representations, written or oral, concerning its subject matter. Except as otherwise provided herein, no modification, amendment, or waiver of any provision of this Agreement will be effective unless in writing and signed by the party against whom the modification, amendment or waiver is to be asserted. The parties agree that any term or condition stated in Your purchase order or in any other of Your order documentation (excluding Order Forms) which is inconsistent with this Agreement is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable Order Form and (2) this Software License Agreement.

#### **19. Force Majeure**

Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, third-party computer or telecommunications equipment or

software failures, default by subcontractors or suppliers, acts of God or of the public enemy, domestic or foreign governmental acts, labor, fire, flood, epidemic, and/or strikes.

**20. Independent Contractors**

The parties are and will remain independent contractors. Neither party has any authority to act on behalf of the other party or to bind it and in no event will the parties be construed to be partners, employer-employee, or agents of each other.

**21. Entire Agreement**

This Agreement, with any associated Order Form, constitutes the entire agreement between HSI and Licensee with respect to Your use of the Training and LMS and the parties acknowledge that they have not relied on any representations outside of this Agreement in deciding to enter into this Agreement. The failure or delay of either party to strictly enforce any of the terms and conditions in this Agreement shall not be construed as a waiver of any right to enforce any prior, concurrent, or subsequent defaults.