



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 Content and Platform, and/or action or inaction in connection with this Agreement, as the case may be.

This Agreement was last updated on July 13, 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 Platform. CAT is not included in all Platform access packages.

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

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

“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 Platform by Licensee which is not specific to an individual Licensee account and is not HSI content.

“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 Content and/or Platform and any renewal periods arising from Section 5 of this Agreement.

“Platform” means the software platform owned or licensed by HSI and used to deliver the Content and or other services (such as Chemical Management, Incident Management, etc.) along with all software documentation (if applicable).

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

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

“You,” “Your,” or “Licensee” means the user of the Content and/or Platform if purchased on an individual basis or the company (or other legal entity) for which you are accepting this Agreement, and all Platform 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 Content and Platform, 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 Content and Platform along with other products and services summarized in the Order Form, during the Period of Agreement.

The Content and Platform shall be used solely for Your internal 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 Content. 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 Content 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 Content or Platform 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 Content or Platform 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 Content and Platform. Any violation by you of Laws in Your use of the Content or Platform shall be deemed, immediately and retroactive to the first such use, an event of Default.

You may not access or use the Content or Platform for any directly competitive purposes, except with Our prior written consent, but in any case, you agree not to use the Content or Platform in any way that is directly competitive with HSI, namely, using it to competitively position other content or platforms, 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 Content offered in the Platform; and (c) modify existing HSI content contained within such Content, both for the sole purpose of customizing Content to fit more specifically the needs of Licensee’s organization, provided that any Licensee Materials added and any modifications to Content 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 Content; (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 Content offered in the Platform may be customized as described above. Licensee Materials shall remain the property of Licensee. All rights, title and interest in and to the Content, 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 CONTENT. CONTENT 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 CONTENT UNDER ANY CIRCUMSTANCES. LICENSEE MAY MAKE NO CLAIMS REGARDING THE APPROVAL, CERTIFICATION OR ACCREDITATION OF ANY HSI CONTENT MODIFIED OR SUPPLEMENTED AS DESCRIBED ABOVE.

### **3.2 Restrictions**

Content 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 Content. Any editing, customization, or other modification of the Content 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. 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. 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 Content and Platform. Licensee may not create derivative works, decompile, reverse engineer, disassemble, or modify the Content or Platform. If You provide any suggestions, feedback, or improvements for the Content and Platform, 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 Content and Platform (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 Content and Platform 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.

#### **6. Default; Termination**

The following shall be considered events of "Default" by You:

- 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;
- 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
- 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 Content or Platform 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 Platform and Content 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 Content, and (b) promptly, but in no case more than five (5) business days, delete any copies of the Content 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 Content records reside on HSI's Platform 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 Content and Platform 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 Content and Platform 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 Content and the Platform.

### **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. Content Updates**

At no additional cost to Licensee, HSI shall make reasonable efforts to modify the Content 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 Content 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 Content and Platform via telephone and email support. HSI shall provide to Licensee telephone and email support and troubleshooting of the Content and Platform 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. Platform 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 Platform with commonly-used software platforms and web browsers. Upgrades to the then current version of the Platform product, as well as some additional Platform features, may be offered from time to time by HSI at an additional cost.

## **11. Onsite Safety Inventory Services (if applicable)**

HSI and Licensee must work closely together during the planning stage, the site visit, and afterward to ensure successful completion of the Onsite Safety Inventory Services (OSI).

### **11.1. Site Visit Requirements**

- HSI will supply its standard protective gear, including steel-toed shoes, hearing and eye protection, gloves, and Hi-Visibility vest ("Standard PPE"). If Licensee's facility requires the use of protective gear other than the Standard PPE, Licensee shall supply such gear for the HSI technician(s) at its expense.
- HSI will contact Licensee a minimum of 7 days prior to inventory to arrange meeting places, times, and review any last-minute information.

- Licensee is solely responsible for ensuring that all areas of the facility which HSI will visit are reasonably safe for the purposes described herein, and otherwise compliant with applicable health, safety and environmental laws, rules and regulations, including but not limited to latent risks, whether known or unknown.
- Licensee shall maintain “all-risk” insurance coverages for its facility which adequately cover the activities of Licensee and HSI with respect to the Order Form, and Licensee will, prior to the visit, provide HSI with proof of such insurance, including a certificate of additional insured endorsement.
- Licensee must assign an escort for all OSI site visits and provide HSI with the escort’s contact information in advance. The escort must be knowledgeable about the location of chemicals at the facility. Licensee must confirm the escort for any scheduled date of service a minimum of 24 hours prior to the date scheduled for such service. Timely arrival of the escort is important to successful completion of the OSI. Wait time will be charged against the day count and may affect completion of inventory within the estimated time.
- Licensee must ensure that all cabinets, cages, rooms, etc., at the facility are accessible for the HSI technician. Licensee must ensure all areas to be inventoried are free of debris, and that it is safe in all areas to shift or move objects as needed to reach all containers. HSI reserves the right to stop inventory related activities until any situation identified by HSI as unsafe is remedied.
- Licensee must supply to HSI the following information at least 14 days in advance of the scheduled date of service: any Licensee policies applicable to the OSI site visit, including without limitation, any required badging, safety training, or certificates.
- Licensee must supply to HSI the following information on the scheduled date of service: (a) list of all large storage tanks, either aboveground or in-ground to include product name, manufacturer, plus location of tank (if performing a quantitative inventory, the maximum capacity of each tank will also be required); and (b) detailed maps of the facility identifying the areas to be inventoried.
- Any change in scope of the areas to be inventoried may result in an increase in the cost for the site visit. Any change in scope will be documented and submitted to Licensee for approval.

#### **11.2. Post-Site Visit Chemical Inventory Review**

- HSI will provide Licensee with an inventory report within 14 days of completion of the project (“Inventory Report”). The Inventory Report will include: (a) number and list of new products found (i.e. products not in Licensee or HSI database); (b) number and list of products found in Licensee database; (c) number and list of products found in HSI database; (d) location of products found; and (e) records associated to Licensee’s location or facility for which HSI does not find a corresponding product during the onsite inventory process.
- Licensee administrators will have the ability to view the status of new Safety Data Sheet (SDS) acquisitions via the SDS Refresh tool, available on Licensee’s website or portal, as applicable.
- Records not found during the inventory process must either be archived or flagged to remain in active status shortly after Licensee’s receipt of the Inventory Report. Accordingly, within 30 days of Licensee’s receipt of the Inventory Report, Licensee is required to: (a) review the records that do not have a corresponding product identified in the Inventory Report; (b) for each record that does not have a corresponding product, decide to either archive such record or keep such record in active status; (c) make a determination as to whether Licensee will handle any required follow up action itself or

have HSI take such action (in which case Licensee must specify in a written document the specific follow up actions it is requesting HSI to take (“Follow Up Request”)); and (d) provide HSI with written notice of any Follow-Up Request. If no Follow-Up Request is provided, Licensee shall be responsible for acquisition and submission of new or updated SDS at the cost outlined in the Order Form for SDS Management.

**11.3. Invoicing**

Payment for services identified in this proposal will be 50% of the estimated total fees upon receipt of signature of the Order Form and the remaining 50% along with the adjustment for the actual travel costs will be billed upon completion.

**11.4. Service Cancellation; Termination Charges**

Licensee may cancel a scheduled OSI visit any time prior to the scheduled date of service by providing HSI with a written notice of the intent to cancel (email is acceptable). Termination charges apply as follows: Licensee will not incur any cancellation charges if written notification is provided at least 14 days prior to the scheduled date of service; if cancelled with less than 14 days’ prior notice, Licensee will incur scheduled travel expenses for HSI technician(s), plus 20% of scheduled day fees; if cancelled with less than seven (7) days’ prior notice, Licensee will incur scheduled travel expenses for HSI technician(s), plus 50% of scheduled day fees; or if Licensee fails to confirm the escort for any scheduled date of service at least 24 hours in advance of the date of service, HSI cannot perform the service on the scheduled date, and Licensee will incur 100% of the scheduled day fees.

**11.5. Licensee Delay**

If HSI’s performance of its obligations under the Order Form is prevented or delayed by any act or omission of Licensee, HSI shall not be deemed in breach of its obligations under the Order Form or otherwise liable for any costs, charges or losses sustained or incurred by Licensee as a result of such prevention or delay.

**11.6. Travel Arrangements**

HSI will make travel arrangements for HSI employees visiting Licensee’s facility.

**11.7. Representations and Warranties**

HSI represents and warrants to Licensee that: (a) it shall perform the OSI using personnel of required skill, experience and qualifications and in a professional and workmanlike manner in accordance with commercially reasonable industry standards for similar services; (b) shall perform the OSI in compliance with, all applicable laws; and (c) the OSI provided under the Order Form will conform in all material respects with the requirements or specifications stated on the Order Form. Licensee represents and warrants to HSI that (a) all Licensee information, data, or materials provided by Licensee and used directly or indirectly in the provision of OSI is accurate and suitable for the purposes for which it is used in relation to the OSI and conforms to all relevant legal or industry standards or requirements, and that it will promptly notify HSI of any error therein; and (b) it shall devote adequate resources to meet its obligations under the Order Form. All other warranties, express or implied, are disclaimed.

**12. Limited Warranty; Limitations of Liability**

HSI warrants that if the Platform and Content 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 13 (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 Platform and Content.

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 Content or Platform, including but not limited to links to or from Our Content, 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 Content and/or Platform, 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 Content and Platform 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 Content and/or Platform. Therefore, Licensee acknowledges that it has sole responsibility for ensuring the appropriateness and completeness of the Content and/or Platform 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 Content and/or Platform will be uninterrupted, timely, or error free in all instances. You are solely responsible for evaluating the fitness of the Content and/or Platform for Your particular purpose. The Content and Platform 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.

#### **12.1. 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.

#### **12.2. Chemical Management (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.

### **13. Indemnity**

#### **13.1. 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 Content and Platform (excluding any Licensee additions, deletions, or other customizations) 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, or that You request HSI to alter, the Content or Platform 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.

### **13.2. 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 Content and Platform or any Internet site linked to or from the Content. 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 Content or Platform (e.g. customizing the Platform and/or Content 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.

## **14. 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.

## **15. 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.

**16. Publicity**

If You enter into this Agreement, You agree that HSI may disclose to the public that You are a paying user of the Content and/or Platform. 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 Content and/or Platform is discontinued.

**17. 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.

**18. 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.

**19. Notification of Changes**

This Agreement is the entire agreement between You and Us regarding your use of the Content and/or Platform 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.

**20. 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.

**21. 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.

**22. Entire Agreement**

This Agreement, with any associated Order Form, constitutes the entire agreement between HSI and Licensee with respect to Your use of the Content and Platform 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.