

e-Learning Software License Agreement G306

1. **Agreement.**

- 1.1. **Agreement.** Buyer has entered into an agreement with Seller (the “Agreement”) under which Seller is to provide one or more online/e-Learning training courses (“Courses”). This e-Learning Software License Agreement G306 (“License Agreement”) is entered into by and between Seller (hereinafter referred to as “Licensor”) and Buyer (hereinafter referred to as “Licensee”) and governs Licensee’s access to and use of such Courses and the software platform on which such Courses run (including all features, modules, options, updates, and versions of the Courses and the platform that Licensor may make available to Licensee). For purposes of this License Agreement, the term “Software” shall mean, collectively, the Courses, the software platform, and all features, modules, options, updates, and versions to the Courses and the platform that Licensor may make available to Licensee.
- 1.2. **Precedence.** In the event of any conflict between the terms of the Agreement and the terms of this License Agreement (including without limitation the warranty provisions), the terms of this License Agreement shall take precedence.
- 1.3. **Entire Agreement.** This License Agreement (together with the Agreement) constitutes the entire agreement between Licensor and Licensee with respect to the subject matter of this License Agreement and may not be modified except in a writing signed by a duly authorized employee of Licensor and Licensee.

2. **Software License.** Subject to the terms of this License Agreement, Licensor grants to Licensee a restricted, limited, non-exclusive, non-transferrable, non-sublicensable license to access and use the Software, but only when such Software is accessed by Licensee within a web-based environment hosted by Licensor (or one of Licensor’s affiliates or vendors) during the license period/term specified in the Agreement, and subject at all times to the following, additional limitations:

- 2.1. **Courses.** Licensee shall only access and use the specific Courses that it has selected under the Agreement and covenants that it shall utilize such Courses only for the training purposes for which such Courses have been designed and marketed by Licensor.
- 2.2. **Authorized Users Only.** Licensee’s access to and use of the Software are limited to, and shall not exceed, the number of users per Course specified in the Agreement. Only named, natural persons shall constitute authorized users. Assignment of and changes to any user account shall only be permissible with the consent of Licensor.
- 2.3. **Terms of Use.** Licensor may require each user, as a condition of access to and use of any Course or the Software generally, to accept (and re-confirm from time-to-time) a “Terms of Use” or similar agreement under which such user must covenant to abide by the terms of this License Agreement and not take any action that would cause Licensee to breach any term or condition of this License Agreement. Notwithstanding the foregoing, Licensee shall remain solely responsible for ensuring compliance with the terms of this License Agreement by each of its users. Any action or inaction by any user that violates any term or condition of the Agreement, this License Agreement (or the Terms of Use) shall constitute a breach of this License Agreement by Licensee.
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- 2.6. **Notices.** Licensee shall not remove or alter any copyright, trademark, trade name, watermark, restrictive legend or other proprietary notices, symbols, or labels appearing in the Software, and Licensee shall not permit or authorize anyone else to do so.
- 2.7. **Software Updates.** Should Licensor publish or otherwise provide Licensee with access to any new Software versions or updates, such new versions or updates shall thereafter be the only version that Licensee is entitled to access or use (unless otherwise agreed by Licensor).

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- 4.2. **Error Reporting.** Should Licensee or its users encounter any inaccuracies, defects, deficiencies, mistakes, shortcomings, content gaps, faults, bugs or other errors in the Software, including in any Courses or particular Content ("Errors"), Licensee covenants that it shall promptly communicate such Errors to Licensor's Training department. Upon receipt of such communication, Licensor shall endeavor to investigate and rectify the Error within a commercially reasonable time by prioritizing and addressing the Error based on the severity of its impact on performance.
- 4.3. **No Warranty or Liability for Errors.** Except as expressly provided in Section 4.2 (Error Reporting), Licensor provides no representations or warranties of any kind, express or implied, regarding Errors or the correction of Errors. Licensor does not represent or warrant that use of any Software (including any Courses or Content) shall be Error-free or that the Software shall operate as required, without interruption or delay. Licensor does not provide and does not warrant any minimum up-times, maximum down-times, overall availability, Error response-times, or other Error correction or performance metrics regarding any Software. In the event of an Error, Licensor's sole and exclusive obligation, and Licensee's sole and exclusive remedy, shall be for Licensor to use commercially reasonable efforts to correct the Error. Licensee further acknowledges that Licensor shall not be liable for any damages of any kind arising out of or related to Errors, including for any resulting damages, loss(es), or business interruptions.
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- 4.5. **Disclaimer of Warranties.** EXCEPT AS SET FORTH IN THIS SECTION 4, TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, LICENSOR DISCLAIMS ALL WARRANTIES, EXPRESS, IMPLIED OR STATUTORY, INCLUDING THE IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE AND NONINFRINGEMENT, AND WARRANTIES THAT MAY ARISE FROM COURSE OF DEALING OR PERFORMANCE OR USAGE OF DEMONSTRATIONS OR SAMPLES SUPPLIED.

5. **Ownership.**

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- 6.1. **Confidential Information.** The Software contains proprietary and confidential information of Licensor, its licensors and other vendors and is considered by Licensor to constitute valuable trade secrets. Licensee agrees that it will keep confidential the contents of the Software (including all Content) and will not sell, publish, display, disclose or otherwise make the Software available to any third party except to Licensee's employees who use it on Licensee's behalf and who have agreed to maintain the confidentiality of such information on terms at least as restrictive as those contained in this License Agreement. Licensee agrees to notify Licensor of the circumstances surrounding any unauthorized access to, possession, or use of any part of the Software. If any unauthorized access, possession, or use occurs, Licensee covenants that it shall take, at Licensee's expense, all steps necessary to recover the Software (including all Content) and to prevent its subsequent unauthorized access, possession, or use, including availing itself of actions for injunctive relief. If Licensee fails to take these steps in a timely and adequate manner, Licensor may take them in its own or Licensee's name and at Licensee's expense.
- 6.2. **Other Confidentiality Agreements.** Notwithstanding Section 6.1 (Confidential Information) immediately above, if Licensor and Licensee have entered into a separate confidentiality or non-disclosure agreement designed to protect proprietary or confidential information of either party that is expected to be transmitted under or in connection with the performance of this License Agreement, then the terms of Section 6.1 immediately above shall be deemed to supplement and enhance such agreement and shall not be deemed to supersede or replace any of the terms and conditions of such separate agreement, which agreement shall remain in full force and effect.

7. **Price and Payment.**

- 7.1. **Price.** The price(s) for the Courses covered by this License Agreement are those prices set forth in the Agreement or, if there no prices are set forth therein, then the prices shall be as set forth on Licensor's then-current applicable standard price list applicable to Licensee under Licensor's pricing policies.
- 7.2. **Charges.** All amounts charged by Licensor under this License Agreement shall be due on the earlier of (i) the date(s) specified in the Agreement and (ii) 30 days after the date of Licensor's invoice therefor. Licensee shall deliver payments to the address or bank account specified in Licensor's invoice.
- 7.3. **Currency.** Licensee shall pay all amounts due in U.S. dollars, unless otherwise provided in the Agreement.
- 7.4. **Taxes.** Licensee shall, in addition to any other amounts payable under this License Agreement, pay all sales, use, VAT, duties, excise or other taxes (and all interest and penalties) applicable to the license or use of the Software (other than amounts due on Licensor's net income from such license or use).
- 7.5. **Late Payment.** All amounts past due shall incur a late payment charge that shall accrue at a rate of 1.5% per month or the highest rate permitted by applicable law, whichever is less, calculated from the date due until such amount is paid.
- 7.6. **Notice of Payment Dispute.** Subject to applicable law, if Licensee intends to dispute any amount due under or related to this License Agreement, Licensee must notify Licensor in writing within 30 days of the date such payment is originally due. Licensee waives its right to dispute such amounts or to bring or participate in any legal action involving a dispute of such amounts if not reported within such period.

8. **Cancellation/Delay.**

8.1. **Cancellation.** Licensor may suspend access to the Software (in whole or in part), including to any Courses, or terminate this License Agreement immediately upon written notice to Licensee if Licensee is in breach of any term or condition of the Agreement or this License Agreement, including any delay or failure to pay all amounts due hereunder. Licensor may also suspend access to the Software (in whole or in part), including to any Courses, or terminate this License Agreement at any time should Licensor determine, in its sole opinion, that such action is necessary to comply with applicable law, regulation or government order or restriction and where it is not (or no longer) possible to provide Licensee with ongoing access to the Software (or a portion thereof) without modifying the Software.

8.2. **Excusable Delay.** Licensor shall not be responsible for any delay or non-performance of its obligations hereunder to the extent and for such periods of time as such delay or non-performance is due to causes beyond its control. Excusable delays include, but are not limited to, acts of God, war, acts of any government in either its sovereign or contractual capacity (including delays or failures by any government to grant export licenses), fire, explosions, sabotage, the elements, epidemics, quarantine restrictions, strikes, lockout, embargoes, severe weather, Errors in Software code, Internet, server or other network failures, power interruptions, unavailability of third-party services, or delays of vendors or subcontractors.

8.3. **Survival.** Upon the expiration or termination of this License Agreement for any reason, Licensee's license to the Software shall immediately terminate, but the following Sections of this License Agreement shall continue to survive: 4, 5, 6, 7, 8, 9, 10, 11, 12 and 13.

9. **Limitation of Liability.** LICENSOR'S TOTAL LIABILITY ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT SHALL BE LIMITED TO THE PRICE ACTUALLY PAID BY LICENSEE FOR THE COURSE MOST DIRECTLY RELATED TO LICENSEE'S CLAIMS. THE PARTIES ACKNOWLEDGE THAT THE LIMITATIONS OF LIABILITY IN THIS SECTION AND IN THE OTHER PROVISIONS OF THIS LICENSE AGREEMENT AND THE ALLOCATION OF RISK HEREIN ARE AN ESSENTIAL ELEMENT OF THE BARGAIN BETWEEN THE PARTIES, WITHOUT WHICH LICENSOR WOULD NOT HAVE ENTERED INTO THE LICENSE AGREEMENT. LICENSOR'S PRICING REFLECTS THIS ALLOCATION OF RISK AND THE LIMITATION OF LIABILITY SPECIFIED HEREIN.

10. **No Indirect or Consequential Damages.** LICENSOR SHALL NOT BE LIABLE FOR ANY INDIRECT, INCIDENTAL, SPECIAL, CONSEQUENTIAL OR PUNITIVE DAMAGES OF ANY KIND ARISING OUT OF OR IN CONNECTION WITH THIS LICENSE AGREEMENT, OR DAMAGES FOR LOSS OF PROFITS, REVENUE, BUSINESS, SAVINGS, DATA, USE OR COST OF SUBSTITUTE PROCUREMENT, INCURRED BY LICENSEE OR ANY THIRD-PARTY, WHETHER IN AN ACTION IN CONTRACT OR TORT, EVEN IF LICENSOR HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES OR IF SUCH DAMAGES ARE FORESEEABLE.

11. **Reciprocal Waiver of Claims.** As the Software may be deployed in defense against or to assist in the detection of an Act of Terrorism (as such term is defined under the Support Anti-terrorism by Fostering Effective Technologies Act of 2002) before it occurs, Licensor and Licensee each agree to waive all claims against the other (including those of or against their officers, directors, employees, subsidiaries, affiliates, agents, subcontractors or other representatives) for losses, including business operation losses, resulting from or related to such Act of Terrorism.

12. **Indemnification by Licensee.** Licensee shall indemnify and hold harmless, and at Licensor's request defend, Licensor and its subsidiaries and affiliates (and its and their officers, directors, employees and agents) from and against any and all claims, losses, liabilities, damages, settlements, expenses and costs (including, without limitation, attorneys' fees and court costs) which arise out of or relate to (i) any breach (or claim or threat thereof that, if true, would be a breach) of this License Agreement by Licensee, including, without limitation, any breach or alleged breach of any representation or warranty of Licensee, (ii) any negligence or intentional misconduct of Licensee or any officer, director, employee or agent of Licensee or (iii) the negligence or intentional misconduct of any operators (or supervisor(s) of any operator) of any security inspection system that participated in any Course.

13. **Miscellaneous Provisions.**

13.1. **No Third-Party Beneficiaries.** It is not the intention of the parties to confer a third-party beneficiary right of action upon any third party or entity whatsoever, and nothing in this License Agreement will be construed to confer upon any third party a right of action under this License Agreement or in any manner whatsoever.

- 13.2. **Marketing Rights.** Licensor shall have an unfettered right to publish marketing materials, including issuing press releases, regarding the license of the Software covered by this License Agreement, including disclosing the license price, the Software and Courses covered, Licensee's name and location, and any other information deemed appropriate in Licensor's sole discretion. Licensee also consents to the use of its name, the location and use of the Software and Courses, the dates on which Software license commenced, images of the Software in use by Licensee and any other information that Licensor deems desirable for the purposes of marketing the Software to other customers and potential customers (collectively, "Information"). Licensee acknowledges and agrees that Licensor's use of such Information (including images) is unrestricted and therefore may be published for any purpose whatsoever and in any media and in any manner throughout the world, including, without limitation, reproduction, distribution, modification and public performance and display of any works that incorporate such Information, including on Internet websites, on television, on radio, and in data sheets, pamphlets, and brochures.
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- 13.5. **No Assignment.** Licensee shall not be permitted to assign this License Agreement, by operation of law or otherwise, without the express written consent of Licensor.
- 13.6. **No Amendment.** This License Agreement may not be modified or amended except pursuant to a writing, signed by a duly authorized employee of each of Licensor and Licensee.
- 13.7. **Remedies.** The remedies described in various sections of this License Agreement shall not be deemed the exclusive remedies available to Licensor, and Licensor shall, in addition to all such remedies, be entitled to all other remedies available to it under law.
- 13.8. **Governing Law.** This License Agreement shall be construed in accordance with and governed by the internal laws of the State of California, U.S.A. without giving effect to any choice of law rule that would cause the application of the laws of any jurisdiction other than the internal laws of the State of California to the rights and duties of the parties. This License Agreement shall not be governed by the U.N. Convention on Contracts for the International Sale of Goods, the application of which is expressly excluded.
- 13.9. **Venue.** Except for matters of injunctive relief, for which either party may initiate proceedings in any court of competent jurisdiction, any controversy or claim arising out of or relating to this License Agreement, or the breach thereof, shall be finally and exclusively determined by binding arbitration. The number of arbitrators shall be one. The place of the arbitration shall be Los Angeles County, California. If Licensee is headquartered in the United States, the arbitration shall be administered by the American Arbitration Association in accordance with its Commercial Arbitration Rules. If Licensee is headquartered outside of the United States, the arbitration shall be administered by the International Centre for Dispute Resolution in accordance with its International Rules. Judgment on the award rendered by the arbitration proceeding may be entered in any court of competent jurisdiction.
- 13.10. **Disputes with U.S. Government.** If Licensee is an executive agency of the United States Government, Section 13.9 (Venue) shall not apply and this License Agreement shall instead be subject to the Contract Disputes Act of 1978, as amended (41 U.S.C. 7101-7109). Failure of the parties to this License Agreement to reach agreement on any request for equitable adjustment, claim, appeal, or action arising under or relating to this License Agreement shall be a dispute to be resolved in accordance with FAR 52.233-1 (Disputes) which is incorporated herein by reference.
- 13.11. **Costs of Collection and Other Legal Fees.** Licensee shall reimburse Licensor, upon demand, for all expenses incurred by Licensor in collecting any amounts past due under this License

Agreement, including, without limitation, collection agency fees, attorneys' fees, and arbitration or court costs. If any legal action, including, without limitation, an action for arbitration or injunctive relief, is brought relating to this License Agreement or the breach hereof, the prevailing party in any final judgment or arbitration award, or the non-dismissing party in the event of a voluntary dismissal by the party instituting the action, shall be entitled to the full amount of all expenses, including all court costs, arbitration fees, and attorneys' fees paid or incurred.

- 13.12. **Licensee's Credit.** Licensor's performance under this License Agreement shall at all times be subject to Licensor's approval of Licensee's credit. Without limiting its other rights and remedies available under this License Agreement or pursuant to law, Licensor shall be permitted to suspend the performance of services (including warranty services or otherwise, and whether required by the terms of this License Agreement or under any other agreement between Licensor and Licensee) and shall be permitted to impose such other terms and conditions or security arrangements as Licensor, in its sole discretion, deems appropriate to ensure full payment by Licensee for its license of the Software and any other amounts due.
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- 13.16. **No Waiver**. The waiver by either party of a breach of or a default under any provision of this License Agreement shall not be effective unless in writing and shall not be construed as a waiver of any subsequent breach of or default under the same or any other provision of this License Agreement, nor shall any delay or omission on the part of either party to exercise any right or remedy that it has or may have hereunder operate as a waiver of any right or remedy.
- 13.17. **Severability**. If for any reason a court or arbiter of competent jurisdiction finds any provision of this License Agreement, or portion thereof, to be unenforceable, that provision shall be enforced to the maximum extent permissible so as to effectuate the intent of the parties, and the remainder of this License Agreement shall continue in full force and effect.
- 13.18. **Construction**. This License Agreement shall be interpreted fairly in accordance with its terms and without any construction in favor of or against either party.

End of e-Software License Agreement