
MEMO

APPROVED
9/25/2023



DATE: September 20, 2023
FROM: Lisa L. Moore
Assistang Procurement Director
TO: Board of County Commissioners
SUBJECT: Agreement – HSI

A handwritten signature in black ink, appearing to read "Lisa L. Moore".

Submitted for your approval and execution is the attached Software License Agreement between the Board of County Commissioners of Tulsa County on behalf of Tulsa County Information Technology Department and HSI for first aid training software and titling for a one-year period beginning September 25, 2023, through September 24, 2024, at a cost of \$6,450.00 as further described in the attached.

Respectfully submitted for your approval and execution

LLM / dcc

SUBMITTED FOR: The September 25, 2023 BOCC meeting agenda.

CMF# 20231642



THIS IS NOT AN INVOICE

ORDER FORM

May 31, 2023

Licensee

Board of County Commissioners of the County of Tulsa
Tulsa County Bldg Operations
Administration Bldg
500 S Denver Ave RM B-1
Tulsa, Oklahoma 74103

Company Contact

Shari Gibson
sgibson@tulsacounty.org
(918) 596-5252

Order Details

Period of Agreement - Start: 9/25/2023
Period of Agreement - End: 9/24/2024

Payment Term: Net 30

HSI Representative

Chevis Fain
cramirez@hsi.com

ANNUAL PRODUCTS			
Product	Quantity	Unit Price	Total Price
00100 - 00499 Learners Per Title Number of users that will view each course title.	280	\$15.00	\$4,200.00
ANNUAL TOTAL:			\$4,200.00

CMF# 20231642

YEAR 1 TOTAL: \$4,200.00

Terms and Conditions

Initial license is valid for the time as noted by the Period of Agreement. By signing below the Licensee acknowledges acceptance of this agreement subject to the terms and conditions of HSI Workplace Compliance Solutions, Inc's Software License Agreement found at: hsi.com/terms-conditions.

Billing Information

Unless otherwise specified in this Agreement, actual users in excess of quantity purchased will be invoiced at effective per user rate of package purchased.

Prices shown are in USD and do not include any state and local taxes that may apply. Any such taxes are the responsibility of the Licensee and will appear on the Invoice. If the contracting entity is exempt from sales tax, please send the applicable tax exemption certificate to billing@hsi.com.

Invoices for this order and/or payment receipts may be emailed from arinvoices@hsi.com or billing@hsi.com. Please make sure these email addresses are on an approved setting or safe senders list so notifications do not go to a junk folder or are caught in a spam filter.

Purchase Order Information

Is a Purchase Order (PO) required for Licensee’s payment processing of this Order Form? If yes please check this box and provide the PO number below.

PO Number:

Signature

By signing this Order Form, I certify that I am authorized to sign on behalf of the Licensee and agree to the Terms and Conditions of this Order Form and any documents incorporated herein.

HSI Workplace Compliance Solutions, Inc.

Board of County Commissioners of the County of Tulsa

Authorized Signature 

Authorized Signature 

Printed Name Duane Tumlinson

Printed Name Kelly Dunkerley

Title VP - Sales Operations

Title 
Attest: Michael Willis, County Clerk



Date 6/12/2023

Date 9/25/2023

APPROVED AS TO FORM/ LEGALITY



ASSISTANT DISTRICT ATTORNEY

Andrew C. Mihelich

APPROVED
By Andrew Mihelich at 10:32 am, Sep 20, 2023



September 19, 2023

Licensee

Board of County Commissioners of the County of Tulsa
Tulsa County Bldg Operations
Administration Bldg
500 S Denver Ave RM B-1
Tulsa, Oklahoma 74103

Order Details

Period of Agreement - Start: 9/25/2023
Period of Agreement - End: 9/24/2024

Payment Term: Net 30

Company Contact

Shari Gibson
sgibson@tulsacounty.org
(918) 596-5252

HSI Representative

Chevis Fain
cramirez@hsi.com

ANNUAL PRODUCTS			
Product	Quantity	Unit Price	Total Price
Titles for Users between 01000-02499	1	\$2,250.00	\$2,250.00
ANNUAL TOTAL:			\$2,250.00

YEAR 1 TOTAL: **\$2,250.00**

Terms and Conditions

Initial license is valid for the time as noted by the Period of Agreement. By signing below the Licensee acknowledges acceptance of this agreement subject to the terms and conditions of HSI Workplace Compliance Solutions, Inc's Software License Agreement found at: hsi.com/terms-conditions.

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Prices shown are in USD and do not include any state and local taxes that may apply. Any such taxes are the responsibility of the Licensee and will appear on the Invoice. If the contracting entity is exempt from sales tax, please send the applicable tax exemption certificate to billing@hsi.com.

Invoices for this order and/or payment receipts may be emailed from arinvoices@hsi.com or billing@hsi.com. Please make sure these email addresses are on an approved setting or safe senders list so notifications do not go to a junk folder or are caught in a spam filter.

Purchase Order Information

Is a Purchase Order (PO) required for Licensee’s payment processing of this Order Form? If yes please check this box and provide the PO number below.

PO Number:

Signature

By signing this Order Form, I certify that I am authorized to sign on behalf of the Licensee and agree to the Terms and Conditions of this Order Form and any documents incorporated herein.

HSI Workplace Compliance Solutions, Inc.

Board of County Commissioners of the County of Tulsa

Authorized Signature 

Authorized Signature _____

Printed Name Duane Tumlinson

Printed Name _____

Title VP - Sales Operations

Title _____

Date 9/19/2023

Date _____

APPROVED AS TO FORM/ LEGALITY



ASSISTANT DISTRICT ATTORNEY

Andrew C. Mihelich

APPROVED
By Andrew Mihelich at 10:32 am, Sep 20, 2023

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 HSI USA Holding, Inc. (dba HSI Workplace Compliance Solutions, Inc. and HSI Emergency Care Solutions, Inc.) and Affiliated Companies of HSI Holding Company, (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 February 15, 2023. 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 current or future entity under common ownership of HSI Holding Company Inc, currently including HSI APAC Pty. Ltd., HSI Canada Workplace Solutions Ltd., HSI USA Holding, 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 5.

“End User Agreement” means the general terms of use for the Content, Platform or Services, which HSI may update freely from time to time. At any time, the then current version of the

End User Agreement applicable to the Content, Platform or Service will be accessible within Licensee's administrative user account or otherwise available on HSI's website.

"Laws" has the meaning set forth in Section 2.

"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.

"PEPY" means per person per year pricing as referenced on applicable order form.

"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).

"Professional Services" means configuration, training and such other services as may be described in an Order Form.

"Related Parties" has the meaning set forth in Section 3.

"Services" means, collectively, the provision of the Platform, the Content, and the Professional Services specified in one or more Order Form(s).

"User" means employees, agents, independent contractors and volunteers within Licensee's organization accessing the Content, Platform or Services.

"We," "Us," "Our," or "HSI" means HSI Holding Company.

"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 which may include directors, managers, officers, employees, affiliates, independent contractors, subcontractors, and agents (for which You are responsible for ensuring their compliance with this Agreement).

The following definitions and/or terms shall have the meanings set forth below in relation to Unlimited Use Plans:

“Abuse” refers to any attempt to subvert the terms and conditions of this Agreement on behalf of Licensee, including but not limited to, affiliates, employees, independent contractors, subcontractors or agents.

“Excessive Use” means the number of users in the Platform is above and beyond a reasonable expectation, or use constituting an undue burden as determined by HSI, including use with detrimental or disruptive impact to information technology infrastructure, and use which may result in interruption to software services, product delivery, general customer service obligations to other HSI customers, or additional fees for continued usage over the established limit.

“Multi-Party Operating Entity” means an operating entity of any kind that shares a state or federal tax employer identification number across one or more independently operating affiliates.

“Single Liable Operating Entity” means an entity that is formed in one of the following ways: corporation, limited liability company, general partnership, sole proprietorship, association, limited liability partnership, limited partnership, nonprofit corporation, professional limited liability partnership, state and federal government, or municipality.

“Unlimited Use” means use by the Licensee per Section 2 below and may not be extended beyond any Single Liable Operating Entity to any other single operating entity, regardless of ownership, without written consent of HSI.

2. 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. HSI shall have the right to audit Licensee’s usage records which shall be provided to HSI electronically upon reasonable request within 10 business days and 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.

Under an Unlimited Use plan (if applicable), said audits may be used to identify Abuse or Excessive Use as defined in this Agreement. Without written notice, HSI reserves the right as

licensor to remedy instances of Excessive Use or Abuse through termination, suspension of service, or other means. Unlimited Use plans may not apply to a Multi-Party Operating Entity.

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.

2.1 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.

2.2 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.

2.3 End User Agreement. Some Content, Platform and Services require each User to agree to and accept the End User Agreement prior to accessing such Content, Platform or Services.

3. 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.

3.1. 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.

4. 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 the parties may renew for an additional one-year period upon express written agreement of both parties.”

5. Default; Termination

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

- Failure to make timely payment of any amounts owing under Section 6 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 2, 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 3, 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 4, 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.

6. Confidentiality

During the term of this Agreement, HSI and Licensee may have access to confidential information relating to such matters as either party's business, trade secrets, systems, procedures, manuals, products, contracts, personnel, and clients. As used in this Agreement, "Confidential Information" means information belonging to HSI or Licensee which is of value to such party and the disclosure of which could result in a competitive or other disadvantage to either party, including, without limitation, financial information, business practices and policies, know-how, trade secrets, market or sales information or plans, customer lists, business plans, and all provisions of this Agreement. Confidential Information does not include: (i) information that was known to the receiving Party before receipt thereof from or on behalf of the Disclosing Party; (ii) information that is disclosed to the Receiving Party by a third person who has a right to make such disclosure without any obligation of confidentiality to the Party seeking to enforce its rights under this Section; (iii) information that is or becomes generally known in the trade without violation of this Agreement by the Receiving Party; or (iv) information that is independently developed by the Receiving Party or its employees or affiliates without reference to the Disclosing Party's information. Each party will protect the other's Confidential Information with at least the same degree of care it uses with respect to its own Confidential Information and will not use the other party's Confidential Information other than in connection with its obligations hereunder. Notwithstanding the foregoing, a party may disclose the other's Confidential Information if (i) required by law, regulation or legal process or if requested by any Agency; (ii) it is advised by counsel that it may incur liability for failure to make such disclosure; (iii) requested to by the other party; provided that in the event of (i) or (ii) the disclosing party shall give the other party reasonable prior notice

of such disclosure to the extent reasonably practicable and cooperate with the other party (at such other party's expense) in any efforts to prevent such disclosure. Expiration or termination of the Agreement does not relieve any party from its obligations to protect confidential information received during the term of the Agreement.

7. Payment

License and other fees associated with the Content and Platform shall be set forth in the Order Form and payable in currency noted. 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 4 (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. Purchase Orders

If a purchase order is required by Licensee, Licensee shall provide a valid purchase order within five (5) days from the execution of the applicable Order Form. Any terms and conditions on any purchase order shall not be a part of this Agreement or otherwise binding on HSI. In the event that Licensee indicates that a purchase order is required, Licensee must provide the required purchase order prior to the provisioning of any Services by HSI.

7.2. EFT or Credit Card Payments

If paying by recurring Electronic Funds Transfer (EFT) or credit card, authorization given in Order Form will remain in effect until canceled in writing. Licensee agrees to notify HSI Workplace Compliance Solutions in writing of any changes to account/credit card information or termination of authorization at least 15 days prior to the next billing date. Licensee accepts responsibility for any fees incurred by HSI to remedy unpaid amounts. If the payment dates fall on a weekend or holiday, payments may be executed on the next business day. Licensee acknowledges that the origination of EFT/Credit Card transactions must comply with the provisions of U.S. law.

7.3. 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.

7.4. 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.

7.5 Suspension of Services

Except with respect to any Fees disputed in good faith by Licensee, if any Fees are thirty (30) or more days overdue, HSI may, without limiting HSI's other rights and remedies, suspend Your access to the Platform and Content until such amounts are paid in full.

7.5 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 troubleshooting 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. No Dependence on Future Functionality. Licensee agrees that it is not entering into this Agreement or any Order Form contingent on the provision of any future functionality relating in any way to the Services unless expressly provided in an Order Form and no statement or other information made or provided orally or otherwise shall be binding unless specifically set forth in an Order Form.

12. 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).

12.1. 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.
- Unless self-insured, 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.

12.2. 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.

12.3. 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.

12.4. 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.

12.5. 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.

12.6. Travel Arrangements

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

12.7. 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.

13. SDS Authoring Services (if applicable)

13.1. SDS Definitions

"Authoring Process Document" means a document generated by HSI that captures Licensee specific information learned by HSI during the process of developing SDS for Licensee.

"Authoring Services" means technical, consulting and other services identified in Exhibit A of the Order Form.

"Pre-Existing Materials" means any data, formulas, know-how, calculations, compositions, programs, technology, and any other knowledge or information developed or otherwise created by or for HSI prior to the Authoring Services, outside the scope of the Authoring Services, or that have general applicability to HSI's business, including all modifications, improvements, or enhancements thereto and derivative works thereof.

“Safety Data Sheet” or “SDS” means a document, required under the Global Harmonized System, or GHS, that is intended to provide comprehensive information about the ingredients included in a substance or mixture used in the workplace.

13.2. Scope of Services

13.2.1. Services and Deliverables. HSI may provide Authoring Services to Licensee. As applicable, Licensee shall provide information, data, and other materials necessary for HSI to perform the Authoring Services, including, without limitation, Licensee Details, Product Details and any other information necessary for SDS document completion (“Licensee Materials”). Authoring Services may include development of documents for Licensee, including SDS, labels, and the Authoring Process Document, all using Licensee Materials (collectively “Deliverables”). HSI shall use commercially reasonable efforts to observe the delivery schedule for draft Deliverables identified in Exhibit A of the Order Form, delivery time is approximate and dependent upon HSI’s timely receipt of Licensee Materials. Unless otherwise agreed to in writing, Revisions and Deliverables arising out of Add-On Authoring Services shall be delivered within a commercially reasonable time.

13.2.2. Acceptance and Rejection. If a Deliverable does not materially comply with the specifications for such Deliverable set forth in Exhibit A of the Order Form, Licensee may reject such Deliverable by written notice of rejection. Such notice shall specify the nature of the deficiencies in the Deliverable. Notice of rejection must be received by HSI during the Acceptance Period. HSI shall, on receipt of a notice of rejection, act diligently to correct any deficiencies. Licensee’s failure to provide a timely notice of rejection shall constitute Licensee’s acceptance of the Deliverable.

13.2.3. Revisions. HSI, in its sole determination, shall classify each set of proposed changes requested by Licensee as a “Major Revision” or a “Minor Revision” as set forth in Exhibit A of the Order Form.

13.3. Rights in Materials

All Licensee Materials are, and shall remain, the sole and exclusive property of Licensee. All Deliverables shall be the sole and exclusive property of Licensee. To this end, creation of the Deliverables pursuant to Exhibit A of the Order Form shall be on a “work-made-for-hire” basis (as defined in the United States Copyright Act (17 U.S.C. 101, et. seq.) to the maximum extent permitted by law. Any portion of or rights related to the Deliverables that cannot be considered work-made-for-hire are hereby assigned to Licensee. Licensee grants HSI a perpetual, irrevocable right to use the knowledge, methodologies, processes, data, documents, software, know-how, and other material gained or created in connection with the Authoring Services in furtherance of its business. In the event a Deliverable includes any Pre-Existing Materials, HSI grants to Licensee a non-exclusive, non-transferable license to use such Pre-Existing Materials solely as part of and in connection with such Deliverable. Licensee acknowledges and agrees that such Pre-Existing Materials shall remain the sole and exclusive property of

HSI.

13.4. LICENSEE OBLIGATIONS

- 13.4.1.** Licensee Information. Licensee acknowledges and agrees that HSI's performance of the Authoring Services is: (a) dependent upon the accuracy of the information provided by Licensee; and (b) contingent upon Licensee's timely and effective performance of its responsibilities, decisions, and approvals and that HSI may rely upon all decisions and approvals of the Licensee, including, without limitation, the Licensee Representative as designated in Exhibit A of the Order Form.
- 13.4.2.** Review of Deliverables. Licensee acknowledges that: (a) it is the sole responsibility of the Licensee to assess the suitability of the Deliverables during the Acceptance Period; and (b) acceptance of a Deliverable shall constitute Licensee's certification as to the accuracy, completeness, and usefulness of such Deliverable for Licensee's intended purposes.
- 13.4.3.** Compliance with Law. Licensee is at all times solely responsible for compliance with any relevant statute, law, ordinance, regulation, or other requirement or rule of law which may relate to the Authoring Services or Deliverables.

13.5. HSI OBLIGATIONS

- 13.5.1.** Compliance with Licensee Policies. HSI will comply with policies of Licensee applicable to the provision of the Authoring Services to Licensee that are communicated to HSI in writing, including security procedures concerning systems and data and remote access thereto.
- 13.5.2.** HSI Personnel. HSI is responsible for all HSI personnel and for the payment of their compensation, including, if applicable, withholding of income taxes, and the payment and withholding of social security and other payroll taxes, unemployment insurance, workers' compensation insurance payments and disability benefits.

14. 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.

15. Chemical Management (if applicable)

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

16. Safety Management System (SMS) Products (if applicable)

16.1 Definitions.

- “API” means application programming interface.
- “Customer Data” means all electronic data or information submitted by a Licensee to the Platform.
- “Disabling Code” means viruses, worms, time bombs, Trojan horses and other harmful or malicious code, files, scripts, agents or programs.
- “Documentation” means any proprietary information or documentation made available to a Licensee by HSI for use with the Platform, including any documentation available online through the Platform dashboard or otherwise.
- “Usage Limits” means usage of the system may be limited by Apps/Modules, Worker, User or Contractor or as specified in the relevant Order form.
 - (a) “Workers Included” refers to the total number of paid user accounts on Per Worker subscriptions. All Users added to the SMS application with the exception of User Types Contact, Medical Practitioner and Visitor will count towards the total Workers Included for the subscription.
 - (b) “Users Included” refers to the total number of paid user accounts on Per User subscriptions. All Users that login and use the Platform will count towards the total Users Included for the subscription.
 - (c) “Contractors Included” refers to the total number of paid contractor user accounts on Per Contractor subscriptions. All Users added to the SMS application of User Type Contractor will count towards the Total Contractors Included for the subscription.
 - (d) “Apps Included” refers to the number and type of paid SMS Applications and/or modules included in your Subscription.
- “Third Party Applications”. HSI may offer Licensee the ability to use third-party applications in combination with the Platform. Any third-party applications will be subject to acceptance by the Licensee. In connection with any such third-party application agreed to by the Licensee, the Licensee acknowledges and agrees that HSI may allow the third-party providers access to Customer Data as required for the interoperation of such third-party application with the Platform. The use of a third-party application with the Platform may also require the Licensee to agree to a separate agreement or terms and conditions with the provider of the third-party application, which will govern the Licensee’s use of such third-party application.

16.2 Responsibilities; Restrictions

16.2.1. HSI Responsibilities.

HSI will provide the Platform to the Licensee during the Term in accordance with this Agreement.

16.2.2. Licensee Responsibilities.

Licensee is responsible for all activity that occurs under its accounts by or on its behalf. Licensee agrees to:

- (a) be solely responsible for all User activity, which must be in accordance with this Agreement and the documentation

(b) be solely responsible for Customer Data (other than with respect to the HSI obligations set forth in the Agreement)

(c) obtain and maintain during the Term all necessary consents, agreements and approvals from individuals or any other third parties for all actual or intended uses of information, data or other content Licensee will use in connection with the Services

(d) use commercially reasonable efforts to prevent unauthorized access to, or use of, the Services and notify HSI promptly of any known unauthorized access or use, and

(e) use the Services only in accordance with applicable laws and regulations.

16.2.3. Restrictions.

The Licensee will not:

(a) use, or permit the use of, the Services except as expressly authorized under this Agreement or the Documentation,

(b) interfere with or disrupt the integrity or performance of the Platform or any third-party application or third-party data or content contained therein, or

(c) disrupt, disable, translate, decompile, or reverse engineer the Services, or

(d) take any other action with respect to the Services not expressly permitted under this Agreement or the Documentation.

16.3 Proprietary Rights

16.3.1 HSI Ownership.

Subject to any rights expressly granted to the Licensee in the Agreement, HSI and its licensors, as applicable, reserve all right, title and interest in and to the Services, including information related to the provision of HSI's Services presented in any form and intellectual property rights (HSI Intellectual Property).

16.3.2. Licensee Ownership and Licenses.

As between HSI and the Licensee, the Licensee owns all rights, title and interest in and to:

(a) all Customer Data; and

(b) any information supplied by the Licensee to HSI as may be specified in any Order Form (collectively, Licensee Materials). The License grants HSI a non-exclusive, non-transferable, royalty free, non-sub-licensable (except as

needed for the provision of Services or as set forth herein) worldwide right to access and use Licensee Materials solely to provide the Services to the Licensee at Licensee's request. No other rights or implied licenses in Licensee Materials are granted to HSI other than as expressly set forth herein.

16.3.3 Feedback and Derivative Works.

Licensee is not required to provide:

(a) any suggestions, enhancement requests, recommendations or other feedback (Feedback); or

(b) any ideas, technology, developments, derivative works or other intellectual property (Derivative Works) related to the Services or any test features, services or products to which it is given access. If it does so, the Licensee grants HSI a royalty-free, worldwide, transferable, sublicensable, irrevocable, perpetual license to use, or incorporate into any of its services, any Feedback or Derivative Works. The Licensee may only create Derivative Works relating to the Services or any test features, services or products to which it is given access, with the prior written consent from HSI.

17. Professional Services

17.1 Availability of Licensee Resources.

The Licensee will make available to HSI certain of Licensee personnel, business information and other relevant information as reasonably required by HSI in the performance of any Professional Services hereunder or as specified in any applicable Order Form. Licensee will ensure that competent personnel are available during normal working hours to provide information and other support to HSI while providing Professional Services. The Licensee acknowledges that the timeliness or provision of Professional Services may be dependent on its personnel availability and cooperation.

17.2 Personnel.

HSI may choose to change any personnel assigned to your account or the Professional Services at any time for any or no reason in its sole discretion. Unless otherwise agreed by HSI, all Professional Services are performed remotely. For Professional Services performed at Licensee premises, the Licensee will reimburse HSI all reasonable costs for expenses incurred in connection with the Professional Services. Professional Services are non-cancellable, and all fees for Professional Services are non-refundable.

17.3 Hours and Deliverables.

If there are a specific number of hours included in the Professional Services purchased, those hours will expire at the end of the contracted delivery period. If there are deliverables included in the Professional Services purchased, it is estimated that those deliverables will be completed within the contracted delivery period. If the Professional Services provided are not complete at the end of the contracted delivery period due to the Licensee's failure to make the necessary resources available to HSI or to perform the Licensee's obligations, such Professional Services will be deemed to be complete at

the end of the contracted delivery period. If the Professional Services provided are not complete at the end of the contracted delivery period due to HSI's failure to make the necessary resources available to the Licensee or to perform HSI's obligations, the contracted delivery period will be extended to allow HSI to complete such Professional Services.

17.4 Time and Materials.

For time and materials-based services the Licensee will be billed for Services provided on an hourly basis at the agreed upon hourly rate. The Licensee will provide HSI an advance payment as set forth in the Order Form. Once received, this advance will be held to pay for the incurred costs on the project. When the incurred costs are greater than the advance, HSI may either request an additional advance or issue an invoice for the additional hours incurred. HSI is not obligated to continue the work and may stop work if the monthly invoices are not paid on a timely basis. The Licensee must pay all past due invoices in full prior to reinstatement of work.

17.5 Compliance with Licensee or HSI Rules.

If applicable, while on the premises of the other Party for training or other services, each Party will take reasonable measures to have its personnel comply with the other Party's reasonable rules and policies regarding safety, security, and conduct made known to such Party, and will at Licensee's request promptly remove from the project any of its personnel not following such rules and regulations.

18. Insurance

HSI shall maintain the following insurance:

- (a) Commercial General Liability Insurance with a minimum limit of \$1,000,000 per occurrence and \$2,000,000 in the aggregate
- (b) Automobile Liability Insurance with a minimum limit of \$1,000,000 combined single limit per accident;
- (c) Workers' Compensation and Employers' Liability Insurance with a minimum limit of \$1,000,000 per statute;
- (d) Cyber and Professional Liability Insurance with a minimum limit of \$1,000,000 per claim and \$5,000,000 aggregate;
- (e) Umbrella Liability with a minimum limit of \$5,000,000 per occurrence and \$5,000,000 in aggregate. This umbrella coverage only applies to sections 18(a), 18(b) and 18(c).

Certificates of insurance evidencing the required coverage and limits shall be furnished to the Licensee upon written request. HSI shall provide thirty (30) days' written notice to Licensee in the event of cancellation, non-renewal or material change.

19. Limited Warranty; Disclaimers; 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 FOR THE LIMITED WARRANTY SET FORTH ABOVE, THE CONTENT AND PLATFORM ARE PROVIDED “AS-IS” AND WITHOUT ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, INCLUDING WITHOUT LIMITATION WARRANTIES OF MERCHANTABILITY, TITLE, NON-INFRINGEMENT OR FITNESS FOR A PARTICULAR PURPOSE. HSI DOES NOT WARRANT THAT THE CONTENT AND/OR PLATFORM WILL BE UNINTERRUPTED, TIMELY, OR ERROR FREE IN ALL INSTANCES.

The software is provided to You as a general tool and is not a substitute for Your own professional assessment of requirements of law or Your internal processes and procedures. You are solely responsible for report submission, data verification and regulatory compliance.

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 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, whether or not advised of the possibility of such damages. As allowed by law, 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.

20. Indemnity

20.1. Indemnity by HSI

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 own 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.

Should the Content or Platform become, or in HSI's opinion be likely to become, the subject of an infringement claim covered by the indemnity set forth above, HSI may, at its sole option and expense, do one of the following: (a) procure for You the right to continue using the affected Content or Platform; (b) replace with non-infringing alternatives or modify the relevant affected material so that it becomes non-infringing; or (c) terminate this Agreement, or remove the affected Content or Platform from the Agreement, and refund to You any pre-paid fees where the affected Content or Platform was not started, delivered or completed, as applicable, prior to the effective date of such termination.

The provisions of this section constitute your sole and exclusive remedy under this Agreement with respect to any claim of misappropriation or infringement of any intellectual property right of any third party.

21. 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.

22. 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.

23. 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.

24. 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.

25. Choice of Law; Venue

This Agreement shall be governed by and construed in accordance with the laws of the State of Oklahoma 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 Tulsa County, Oklahoma, and You hereby submit to such personal jurisdiction.

26. 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.

27. 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, pandemic and/or strikes.

28. 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.

29. 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.