

## ASP TERMS OF USE AGREEMENT v1.3

BY USING THE CLICKSAFETY SERVICES, AS DEFINED BELOW, YOU ARE AGREEING ON BEHALF OF THE ENTITY USING THE SERVICE ("CUSTOMER") THAT CUSTOMER WILL BE BOUND BY AND IS BECOMING A PARTY TO THIS ASP TERMS OF USE AGREEMENT ("AGREEMENT") AND THAT YOU HAVE THE AUTHORITY TO BIND CUSTOMER. IF CUSTOMER DOES NOT AGREE TO ALL OF THE TERMS OF THIS AGREEMENT, DO NOT USE THE SERVICES. CUSTOMER HAS NOT BECOME A LICENSEE OF, AND IS NOT AUTHORIZED TO USE THE SERVICES UNLESS AND UNTIL IT HAS AGREED TO BE BOUND BY THESE TERMS. YOUR SIGNATURE OF A CLICK SAFETY SERVICE AGREEMENT ORDER FORM ("ORDER FORM") INDICATES YOUR AGREEMENT TO THESE TERMS, AS SET FORTH IN SUCH ORDER FORM.

**1. SERVICES.** Subject to the terms and conditions of this Agreement, ClickSafety.com agrees to provide to Customer access to the current ClickSafety.com online training solutions, as defined in Section 2, as set forth in Customer's signed Order Form or as selected in Customer's e-commerce shopping cart, as applicable, and available online at the Customer designated URL as of the Effective Date, and bug fixes or other minor enhancements or improvements thereto made by ClickSafety.com as well as all data, content, logos, information or material that is available through the solution ("ClickSafety.com Content") (collectively, all of the foregoing are the "Services"). If any Customer contact information above is false or fraudulent, ClickSafety.com may terminate Customer's access to the Services in addition to pursuing any other legal remedies.

**2. SERVICES DESCRIPTIONS.** Customer may purchase Services either on a subscription basis or based on units purchased as described below.

**2.1 (APPLICABLE ONLY IF SUBSCRIPTION SERVICES PURCHASED ON ORDER FORM) Subscription Services.** Customer may purchase an unlimited quantity of subscriptions and each subscription may only be used by a unique user for the term of the subscription. A subscription provides the unique user with access to the ClickSafety.com online training courses included in the purchased subscription package and as described in the Customer's signed Order Form or as selected in Customer's e-commerce shopping cart. Subscription Services are purchased with the explicit understanding that no refunds or credits are provided in the event Customer does not fully utilize or assign the full quantity of subscriptions within the term of the subscription. Subscription package course offerings and pricing are subject to change without notice; provided that no price change will be effective for a then-current pre-paid subscription and will only be effective for future subscriptions purchases. Purchased subscription packages may be eligible for complimentary new course offerings as available. Access to the subscription package shall provide the unique user with unlimited access to the courses within the subscription package over the term of the subscription. Courses provided under the OSHA Outreach Training program must be completed within six months from a user's start of the course and, if not so completed, the course must be restarted in its entirety.

**2.2 (APPLICABLE ONLY IF UNIT SERVICES PURCHASED ON ORDER FORM) Unit Services.** Customer may purchase units that may be redeemed for training courses. Customer's quantity of units purchased and price per unit shall be as defined in the Customer's signed Order Form or as selected in Customer's e-commerce shopping cart. Each online training course has an assigned unit value where Customer may redeem the applicable unit value of units for access to the course. Customer's account of units will be debited or redeemed upon Customer's first assignment of the applicable course to a unique user by the Company's course administrator or upon the Effective Date if the units were purchased without an LMS account. In the event that a course is not started within twelve (12) months of assignment, the corresponding unit value will expire without refund. ClickSafety reserves the right to deactivate any Customer account and terminate any units outstanding therein in the event that no course assignment has been made in the prior twelve (12) month period. Courses and their corresponding unit values may be re-assigned to alternate unique users however assigned unit values are nonrefundable and permanently debited from the Customer's account. Notwithstanding anything to the contrary herein, courses provided under the OSHA Outreach Training program must be completed within six months from a user's start of the course and, if not so completed, the corresponding units will expire and the course must be restarted in its entirety. Any unit that expires can be repurchased at a specified rate, as periodically adjusted, by ClickSafety.com. ClickSafety.com reserves the right to alter, change, or re-value online courses at any time and to add or delete products and services available for purchase with units.

**2.3 Learning Management System ("LMS").** A LMS subscription is required to access Subscription Services' and Unit Services' online reporting and user management features for multiple unique users. Customer's quantity of LMS accounts purchased and price per account shall be as defined in the Customer's signed Order Form or as selected in Customer's e-commerce shopping cart. LMS features and pricing are subject to change without notice provided that no price change will be effective for previously purchased items and will only be effective for future purchases. LMS subscriptions may be eligible for complimentary upgrades as available.

**2.4 Contractor Training Portal ("CTP").** If Customer purchases the CTP, the terms and conditions of Customer's CTP implementation are as defined in Customer's Order Form. The Order Form is the governing agreement between Customer and ClickSafety.com for the CTP implementation. Where the CTP Order Form does not otherwise state the CTP terms, then this Agreement shall control.

**2.5 Professional Services.** Customer may request custom online training solutions, custom support for existing online training



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solutions, or other related products and services in addition to the Services described hereunder. The terms and conditions for Professional Services shall be as set forth in the Customer's signed Order Form. Professional services are billed on an hourly rate or as otherwise mutually agreed within the Order Form.

**3. LICENSE GRANT.** Subject to the terms and conditions of this Agreement, ClickSafety.com hereby grants to Customer, (and to each Customer employee or authorized contractor who accesses the Services by means of Customer's account and an authorized password), subject to all of the terms and conditions of this Agreement, a non-exclusive, non-transferable, non-sub licensable license to access and use the Services via the Internet, solely for internal business purposes in accordance with any applicable end user documentation. Customer agrees to be solely responsible for the acts and omissions of Customer contractor in connection with the Services and this Agreement.

**4. LICENSE RESTRICTIONS.** Customer shall not, and shall not permit any party to, directly or indirectly, (i) reverse engineer, decompile, disassemble or otherwise attempt to discover the source code or underlying ideas or algorithms of the Services; (ii) modify, translate, or create derivative works based on the Services; (iii) rent, lease, distribute, sell, resell, assign, or otherwise transfer rights to the Services; (iv) use the Services for timesharing or service bureau purposes or otherwise for the benefit of a third party; (v) remove any proprietary notices from the Services; (vi) publish or disclose to third parties any written evaluation of the Services without ClickSafety.com's prior written consent.

**5. PASSWORDS/SECURITY.**

**5.1 Passwords.** If applicable, ClickSafety.com shall issue to Customer, or shall authorize a Customer administrator to issue, a password for each user of the Services authorized to use Customer's account for whom Customer has paid the applicable fee. Customer and its users are responsible for maintaining the confidentiality of all passwords and for ensuring that each password is used only by the authorized user. Customer is entirely responsible for any and all activities that occur under the Customer's account and all charges incurred from use of the Services accessed with the Customer's passwords. Customer agrees to immediately notify ClickSafety.com of any unauthorized use of the Customer's account (including each password of each user accessing the Services by means of Customer's account) or any other breach of security known to Customer. ClickSafety.com shall have no liability for any loss or damage arising from Customer's failure to comply with these requirements.

**5.2 Security.** Customer acknowledges that, notwithstanding any security precautions that ClickSafety.com implements with respect to the Services, the use of or connection to the Internet provides the opportunity for unauthorized third parties to circumvent such precautions and illegally gain access to the Services. Accordingly, ClickSafety.com cannot and does not guaranty the privacy, security or authenticity of any information so transmitted over or stored in any system connected to the Internet.

**6. CUSTOMER SUPPORT.** Except as expressly stated on Customer's Order Form or in the e-commerce shopping cart process, as applicable, the Fees set therein include the provision to Customer of ClickSafety.com's standard telephone, email and web support as described at [www.clicksafety.com](http://www.clicksafety.com)

**7. CLICKSAFETY.COM CONTENT.** As between ClickSafety.com and Customer, ClickSafety.com shall own all right, title and interest in and to the ClickSafety.com Content.

**8. CUSTOMER OBLIGATIONS.**

**8.1 Hardware.** Customer is responsible for obtaining and maintaining all computer hardware, software and communications equipment needed to access and use the Services, and for paying all third-party access charges (e.g., ISP, telecommunications) incurred while using the Services.

**8.2 Customer Responsibilities.** Customer shall be solely responsible for its actions and the actions of its users while using the Services. Customer acknowledges and agrees: (1) that Customer is responsible for Customer and Customer's workforce abiding by all local, state, national, and international laws and regulations applicable to Customer's use of the Services; (2) not to use the Services for illegal purposes; (3) not to interfere or disrupt networks connected to the Services; (4) that Customer assumes the risk for Customer's workforce's use of the Services; (5) that Customer is responsible for selecting appropriate training courses for its workforce and for requiring its workforce to take such training courses through the Services; and (6) that Customer is responsible for ensuring that its workforce is adequately and appropriately trained for the work that they provide.

**8.3 Administrator Responsibility.** The Customer administrator is responsible for inputting user data for each authorized user and distributing user credentials. ClickSafety is not responsible for any administrative task, including but not limited to, reporting, uploading user data, and distributing user credentials. Any services provided by ClickSafety related to such administrative duties or setup procedures will be performed at an additional fee at ClickSafety's then current rates.

**9. FEES AND TAXES.**

**9.1 Fees.** Customer agrees to pay the applicable fee(s) set forth in the Order Form or Customer's e-commerce shopping cart, as applicable, for the Services based on the training courses or units purchased that may be redeemed for training courses in accordance with the fees, charges, and billing terms set forth in this Agreement ("Fees"). Except as otherwise provided in the Order Form or Customer's e-commerce shopping cart, as applicable, all Fees are quoted in the United States currency. Except as otherwise provided in this Agreement, Fees are non-refundable. In addition to such Fees, Customer shall pay all applicable sales, use and other taxes or duties (excluding taxes based on ClickSafety.com's income). If ClickSafety agrees to provide any Customer requested changes to



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ClickSafety content, courses, or material, such changes shall be performed under the terms of a separate agreement with ClickSafety at ClickSafety's then current fee for such custom work.

**9.2 Payments.** If Customer signs an Order Form, fees for the Services will be invoiced in accordance with payment frequency and other terms set forth in the relevant Order Form or will be invoiced in advance for units purchased that may be redeemed for training sessions. Unless otherwise stated in the Order Form, Fees are due upon receipt of the invoice. If Customer purchases the Services through the e-commerce shopping cart, fees are due and payable at the time of purchase. Any payment not received from the Customer by the due date shall accrue (except with respect to charges then under reasonable and good faith dispute), at the lower of 1.5% of the outstanding balance per month (being 18% per annum), or the maximum rate permitted by law, from the date such payment is due until the date paid. Where payment is due upon receipt of invoice interest shall accrue from twenty-five calendar days after receipt of invoice until the date paid. Customer shall also pay all sums expended (including reasonable legal fees) in collecting overdue payments. If Customer believes that the bill is incorrect, Customer must contact ClickSafety.com in writing within thirty (30) days of the receipt of invoice date of the invoice containing the amount in question to be eligible to receive an adjustment or credit.

#### **10. TERM.**

**10.1 (APPLICABLE ONLY IF SUBSCRIPTION SERVICES PURCHASED ON ORDER FORM) Subscription Services.** The Subscription Services shall commence on the Effective Date and shall continue for a period of twelve (12) months. Unless otherwise set forth on the Order Form, the Subscription Services will automatically renew at ClickSafety.com's then current list prices, for additional one (1) year periods, unless either party gives the other party notice of its intent not to renew at least ninety (90) days prior to the end of the initial term or any renewal term. Termination will be effective at the end of the applicable term in which such notice is received. Customer shall be responsible for all Fees for the applicable term in which termination occurs, and ClickSafety.com shall not issue any refunds for such term.

**10.2 (APPLICABLE ONLY IF UNIT SERVICES PURCHASED ON ORDER FORM) Unit Services.** The Unit Services shall commence on the Effective Date and shall continue for a period of twelve (12) months. Termination will be effective at the end of the applicable term in which such notice is received. Customer shall be responsible for all Fees for the applicable term in which termination occurs, and ClickSafety.com shall not issue any refunds for such term.

#### **11. TERMINATION.**

**11.1 Breach.** Except as provided in Section 11.3 below, either party may terminate this Agreement upon written notice if the other party has breached a material term of this Agreement and has not cured such breach within thirty (30) days of receipt of notice from the non-breaching party specifying the breach.

**11.2 Insolvency.** Either party may terminate this Agreement if (i) the other party has a receiver appointed for it or its property; (ii) the other party makes an assignment for the benefit of creditors; (iii) any proceedings are commenced by, for or against the other party under any bankruptcy, insolvency or debtor's relief law; or (iv) the other party is liquidated or dissolved.

**11.3 Failure to Pay/Customer Conduct.** ClickSafety.com may suspend or terminate the Services, at its sole option, with or without notice to Customer if: (i) any payment is delinquent by more than sixty (60) days, or (ii) Customer breaches any provision of Section 8.2 or any of the license terms or restrictions in this Agreement.

**11.4 Effect of Termination.** ClickSafety.com shall not be liable to Customer or any third party for suspension or termination of the Services in accordance with this Agreement. If Customer or ClickSafety.com terminates this Agreement, Customer will be obligated to pay the balance due for all Services provided prior to termination. Upon the effective date of expiration or termination of this Agreement for any reason, whether by Customer or ClickSafety.com, Customer's right to use the Services shall immediately cease. Sections 7, 8.2, 11, 12, 13, 14, 16 and 18 of this Agreement shall survive its expiration or termination for any reason.

**12. PROPRIETARY RIGHTS.** Customer acknowledges that the Services and all content contained therein, including but not limited to text, software, music, sound, photographs, video, graphics, and third party materials and advertisements (collectively, "Content") is proprietary to ClickSafety.com or such third parties, and ClickSafety.com or such third parties retain exclusive ownership of the same throughout the world, including all related copyrights, trademarks, service marks, patents, trade secrets or other proprietary rights thereto. Except as expressly stated herein, this Agreement does not transfer any right, title or interest in the Services or the Content to the Customer.

#### **13. CONFIDENTIALITY.**

**13.1 Obligations.** Each of the parties agrees to maintain in confidence any non-public information of the other party, whether written or otherwise, disclosed by the other party in the course of performance of this Agreement that a party knows or reasonably should know is considered confidential by the disclosing party ("Confidential Information"). The parties hereby agree that Confidential Information includes the terms and conditions of this Agreement, and any discussions related thereto. The receiving party shall not disclose, use, transmit, inform or make available to any entity, person or body any of the Confidential Information, except as a necessary part of performing its obligations hereunder, and shall take all such actions as are reasonably necessary and appropriate to preserve and protect the Confidential Information and the parties' respective rights therein, at all times exercising at least a reasonable level of care. Each party agrees to restrict access to the Confidential Information of the other



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party to those employees or agents who require access in order to perform hereunder, and, except as otherwise provided, neither party shall make Confidential Information available to any other person or entity without the prior written consent of the other party.

**13.2 Exclusions.** Confidential Information shall not include any information that is (i) already known to the receiving party at the time of the disclosure; (ii) publicly known at the time of the disclosure or becomes publicly known through no wrongful act or failure of the receiving party; (iii) subsequently disclosed to the receiving party on a non-confidential basis by a third party not having a confidential relationship with the other party hereto that rightfully acquired such information; or (iv) communicated to a third party by the receiving party with the express written consent of the other party hereto. A disclosure of Confidential Information that is legally compelled to be disclosed pursuant to a subpoena, summons, order or other judicial or governmental process shall not be considered a breach of this Agreement; provided the receiving party provides prompt notice of any such subpoena, order, or the like to the other party so that such party will have the opportunity to obtain a protective order or otherwise oppose the disclosure.

**13.3 Destruction or Return of Confidential Information.** Upon expiration or termination of this Agreement for any reason, each party shall promptly return to the other party, or destroy, as the parties agree, all copies of the other party's Confidential Information. All copies, notes or other derivative material relating to the Confidential Information shall be promptly retrieved or destroyed, as agreed, and no such material shall be retained or used by the receiving party in any form or for any reason.

**14. WARRANTY DISCLAIMER.**

THERE ARE NO WARRANTIES OR CONDITIONS (WHETHER IMPLIED OR ARISING BY STATUTE OR OTHERWISE IN LAW OR FROM A COURSE OF DEALING OR USAGE OF TRADE) FOR THE SERVICES OR SUPPORT. CLICKSAFETY.COM DISCLAIMS ALL STATUTORY OR IMPLIED WARRANTIES AND CONDITIONS INCLUDING WITHOUT LIMITATION THE CONDITIONS AND/OR WARRANTIES OF MERCHANTABILITY, MERCHANTABILITY OR FITNESS FOR ANY PURPOSE, PARTICULAR, SPECIFIC OR OTHERWISE. CLICKSAFETY.COM DOES NOT WARRANT THAT THE FUNCTIONS CONTAINED IN THE SERVICES WILL MEET THE CUSTOMER'S REQUIREMENTS OR THAT THE OPERATION OF THE SERVICES WILL BE UNINTERRUPTED OR ERROR-FREE. CLICKSAFETY.COM USES COMMERCIALY REASONABLE EFFORTS TO MONITOR GOVERNMENTAL AND INDUSTRY SAFETY LAWS AND REGULATIONS WITHIN A REASONABLE PERIOD OF TIME FROM WHEN SUCH CHANGES TO SUCH LAWS OR REGULATIONS ARE PUBLISHED BUT CLICKSAFETY.COM DOES NOT WARRANT THAT THE INFORMATION AVAILABLE THROUGH THE SERVICES WILL MEET CURRENT GOVERNMENTAL OR INDUSTRY SAFETY REGULATIONS, INCLUDING, WITHOUT LIMITATION, FEDERAL AND STATE OSHA REGULATIONS OR THAT ALL ERRORS IN THE SERVICES CAN OR WILL BE CORRECTED. CUSTOMER UNDERSTANDS AND AGREES THAT ANY MATERIAL OR DATA DOWNLOADED OR OTHERWISE OBTAINED THROUGH THE SERVICES IS DONE AT CUSTOMER'S OWN DISCRETION AND RISK, AND THAT CUSTOMER WILL BE SOLELY RESPONSIBLE FOR ANY DAMAGE TO CUSTOMER'S COMPUTER SYSTEM OR LOSS OF DATA THAT RESULTS FROM THE DOWNLOAD OR USE OF SUCH MATERIAL OR DATA. SOME JURISDICTIONS DO NOT ALLOW THE EXCLUSION OF CERTAIN WARRANTIES, SO SOME OF THE ABOVE EXCLUSIONS MAY NOT APPLY TO CUSTOMER.

**15. INDEMNIFICATION.**

Customer shall indemnify, defend, or at its option settle, any third party claim or suit against ClickSafety.com based on a claim: (i) of any breach of this Agreement by Customer, its affiliates, employees agents, successors and assigns; and (ii) relating to or based upon the acts, omissions or activities conducted by Customer, its employees, contractors and agents, using or that used the Services; and Customer shall pay any final judgment entered against ClickSafety.com in any such proceeding or agreed to in settlement. ClickSafety will promptly notify Customer in writing of such claim or suit and give all information and assistance reasonably requested by Customer or such designee.

**16. LIMITATION OF LIABILITY.**

**16.1 Limitation on Direct Damages.** IN NO EVENT SHALL CLICKSAFETY.COM'S AGGREGATE LIABILITY, IF ANY, ARISING OUT OF OR IN ANY WAY RELATED TO THIS AGREEMENT EXCEED THE FEES PAID BY CUSTOMER FOR THE SERVICES THAT DIRECTLY GAVE RISE TO THE DAMAGES CLAIMED, WITHOUT REGARD TO WHETHER SUCH CLAIM IS BASED IN CONTRACT OR TORT, INCLUDING NEGLIGENCE.

**16.2 Disclaimer of Consequential Damages.** IN NO EVENT SHALL CLICKSAFETY.COM OR ITS SUPPLIERS BE LIABLE (A) FOR ANY INDIRECT, SPECIAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, OR (B) TO THIRD PARTIES CLAIMING THROUGH CUSTOMER; EVEN IF CLICKSAFETY.COM HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.

**16.3 Essential Purpose.** The essential purpose of this Section 16 is to limit the potential liability of the parties arising under this Agreement. The parties acknowledge that the limitations set forth in this Section 16 are intricate to the amount of consideration levied in connection with the license of the Services and that, were ClickSafety.com to assume any further liability, such consideration would out of necessity, been set much higher.

**17. OSHA Outreach Completion Card Policy**

**17.1 OSHA Cards Delivery.** A Department of Labor course completion card may be offered upon completion of certain ClickSafety courseware. OSHA completion cards are sent within 6 weeks of completion date. ClickSafety is excused from delays in card delivery, or failure to perform any of its obligations hereunder due to and for the duration of any event beyond its control and



without its fault, including without limitation, any actions or impositions of local, state or federal government authorities, acts of nature, acts of terrorism, any strike or labor unrest or interruption in services vital to the conduct of normal operating activities of either

17.2 Outreach Training Limited to OSHA Jurisdiction. The Outreach Training Program is intended for workers covered under the OSH Act. For this reason, OSHA Outreach Training Program classes must be limited to training conducted within OSHA's jurisdiction. Classes delivered outside of OSHA's jurisdiction will not be recognized as Outreach Training Program classes, and trainers will not receive student course completion cards for those students.

17.3 Replacing a Student Card. Replacement course completion cards will not be issued if the training took place more than three years ago. Students must supply their name, the training date, and the type of class to receive a replacement card. Only one replacement may be issued per student. Students will not be charged a replacement fee within six (6) months from course completion, after the initial six (6) month period a fee of \$40.00 will be charged per card.

17.4 Misprinted Course Completion Cards. Return all misprinted student course completion cards to the Authorizing Training Organization to obtain replacement student course completion cards. Do not attempt to correct and use these cards.

## **18. GENERAL.**

**18.1** All notices to a party shall be in writing and sent to the addresses specified in the Order Form or the e-commerce shopping cart, as applicable, and shall be deemed to have been duly given when received, if personally delivered; when receipt is electronically confirmed, if transmitted by facsimile or email; the day after it is sent, if sent for next day delivery by recognized overnight delivery service; and upon receipt, if sent by certified or registered mail, return receipt requested.

**18.2** This Agreement may not be assigned or transferred by Customer, by merger, operation of law or otherwise, without ClickSafety.com's prior written consent.

**18.3** This Agreement, together with all addenda, schedules, and exhibits, and the Order Form, if applicable, constitutes the entire agreement between the parties and supersedes all prior and contemporaneous agreements and understandings between the parties relating to the subject matter hereof.

**18.4** This Agreement may be amended or superseded only by a written instrument signed by both parties.

**18.5** This Agreement shall be governed by the laws of the state of California, excluding its conflict of laws rules. The parties agree that the Uniform Computer Information Transactions Act (UCITA) is hereby excluded from application to this Agreement and the parties agree that the United Nations Convention for the International Sale of Goods is excluded in its entirety from this Agreement.

**18.6** Any provision of this Agreement held to be unenforceable shall not affect the enforceability of any other provisions of this Agreement. In the event of any conflict between the terms of this Agreement and the terms of any agreement, the terms of this Agreement shall control.

**18.7** Neither party shall be in default if its failure to perform any obligation under this Agreement is caused solely by supervening conditions beyond that party's reasonable control, including acts of God, civil commotion, war, strikes, labor disputes, third party Internet service interruptions or slowdowns, vandalism or "hacker" attacks, acts of terrorism or governmental demands or requirements.

**18.8** ClickSafety.com may use Customer's name as part of a general list of customers and may refer to Customer as a user of the Services in its general advertising and marketing materials. Each party shall obtain the other party's permission prior to using the other party's name for any other marketing or promotional purposes.

**18.9** The parties agree that any press release or other public comments issued by either party relating to this Agreement, any dispute under this Agreement or Customer's use of the Services, will be prepared jointly between ClickSafety.com and Customer and will be issued upon mutual agreement of the parties.

**18.10** Pre-printed terms and conditions on or attached to any Customer purchase order shall be of no force or effect.