

TRAINING MATERIALS AGREEMENT

BEFORE CONTINUING, READ THE FOLLOWING TRAINING MATERIALS AGREEMENT (“AGREEMENT”) AND TERMS AND CONDITIONS CAREFULLY.

THIS AGREEMENT IS ENTERED INTO BETWEEN MCNEES WALLACE & NURICK LLC WITH A PLACE OF BUSINESS AT 100 PINE STREET, HARRISBURG, PENNSYLVANIA 17101 (“MCNEES”), AND YOU AND THE ORGANIZATION YOU REPRESENT THAT WILL USE THE MATERIALS (“YOU” OR “ORGANIZATION”). THIS AGREEMENT INCLUDES AND INCORPORATES THE ABOVE ORDER FORM, AS WELL AS THE ATTACHED TERMS AND CONDITIONS AND CONTAINS, AMONG OTHER THINGS, WARRANTY DISCLAIMERS, LIABILITY LIMITATIONS AND USE LIMITATIONS. THERE SHALL BE NO FORCE OR EFFECT TO ANY DIFFERENT TERMS OF ANY RELATED PURCHASE ORDER OR SIMILAR FORM EVEN IF SIGNED BY THE PARTIES AFTER THE DATE YOU AGREE TO THESE TERMS. IF YOU WISH TO USE THE MATERIALS, YOU MUST AGREE TO ALL OF THE TERMS OF THIS AGREEMENT. IF ANY OF THE FOLLOWING TERMS OR ANY UPDATES OR CHANGES TO THE FOLLOWING TERMS ARE NOT ACCEPTABLE TO YOU, DO NOT USE THE MATERIALS.

BY CLICKING “I AGREE,” YOU AGREE TO THESE TERMS. IF YOU DO NOT HAVE AUTHORITY TO BIND THE ORGANIZATION THAT WILL USE THE MATERIALS, YOU MAY NOT ASSENT TO THESE TERMS OR USE THE MATERIALS. THIS AGREEMENT WILL BECOME EFFECTIVE AND BINDING ON THE DATE YOU COMPLETE THIS AGREEMENT (THE “EFFECTIVE DATE”).

TERMS AND CONDITIONS

These terms and condition form part of the Agreement between Organization and McNees which governs Organization’s acquisition and use of McNees’s Materials as well as McNees’s provision of the Materials. Organization acknowledges that it may not access the Materials if Organization is a direct competitor of McNees.

1. Definitions.

- 1.2. “**Materials**” means the generally available web-based, on-line, hosted content consisting of video-based training materials and any ancillary materials provided by McNees to Organization in connection thereto pursuant to an Order Form. Materials includes, without limitation, all corrections, updates, modifications, releases, versions, and enhancements to such content that may hereafter be generally released by McNees.
- 1.3. “**Order Form**” means the ordering documents for Organization’s purchases from McNees that are executed hereunder by the parties from time to time. All Order Forms shall be deemed incorporated herein.
- 1.4. “**Start Date**” means the date on which the Materials specified in an Order Form are first made available to Organization.
- 1.5. “**Subscription Term**” means the period of time that Organization may use and access the Materials beginning on the Start Date and as set forth in the applicable Order Form. Organization’s access to the Materials may automatically deactivate and become non-operational at the end of the Subscription Term, and Organization shall not be entitled to access the Materials unless the Subscription Term is renewed, or a new Agreement is formed.
- 1.6. “**Users**” means individuals who are authorized by Organization to access and view the Materials. Users must be employed by Organization, and may not be employed by Organization’s

affiliates or any other third party even if that party is related to Organization.

2. Grant of License.

- 2.1. **Grant.** Subject to the terms and conditions of this Agreement, McNees hereby grants to Organization a non-exclusive and nontransferable license to, during any Subscription Term, access and view the Materials via the internet. Such access is specific to the Organization and does not include providing access by McNees or the Organization to any of Organization’s affiliates, subsidiaries, parents, or other third-party organizations whether or not related to the Organization.
- 2.2. **Restrictions.** The license granted in Section 2.1 above is conditioned upon Organization’s compliance with the terms and conditions of this Agreement. Organization may access and view the Materials solely for its own internal business purposes, in compliance with applicable law, and shall not: (a) permit any third party to access and/or view the Materials, (b) license, sublicense, sell, resell, rent, lease, transfer, distribute, use the Materials for commercial time sharing, outsourcing or otherwise commercially exploit the Materials; (c) create derivative works based on the Materials or modify the Materials or cause or permit others to do so; (d) copy, frame or mirror any content forming part of the Materials; (e) access the Materials in order to (i) build a competitive product or service, or (ii) copy any ideas, features, functions or graphics of the Materials; and (g) remove any title, trademark, copyright and/or restricted rights notices or labels from the Materials.
- 2.3. **Reserved Rights.** McNees hereby reserves all rights in and to the Materials not expressly granted in this Agreement. Nothing in this Agreement shall limit in any way McNees’s right to develop, use, license, create derivative works of, or otherwise exploit the Materials or to permit third parties to do so.

3. Use of Services.

- 3.1. **McNees Responsibilities.** McNees shall make commercially reasonable efforts to provide Organization with access to the Materials but makes no guarantee or warranty as to the availability of the Materials at any specific time or over time.
- 3.2. **Organization Responsibilities.** Organization shall be responsible for Users’ compliance with this Agreement. Organization shall not (i) interfere with or disrupt the integrity or performance of the Materials or the service that makes them available, or (ii) attempt to gain unauthorized access to the Materials, or McNees’s related systems or networks used to deliver access to the Materials. Any conduct by Organization that in McNees’s discretion restricts or inhibits any other McNees customer from using or enjoying the Materials is expressly prohibited. Organization will use commercially reasonable efforts to prevent unauthorized access to, or use of, the Materials, and notify McNees promptly of any such unauthorized access or use. Organization shall be responsible for obtaining and maintaining all internet, computer hardware and other equipment needed for access to and use of the Materials and all charges related thereto.

4. Fees.

- 4.1. **Payment.** Organization agrees to pay McNees fees in accordance with the amounts and dates specified on the applicable Order Form. Except as otherwise provided: (i) the subscription fees set forth in each Order Form hereunder shall be fixed during the Subscription Term of such Order Form, including for purchases of additional Users; (ii) the Subscription Term and services fees set forth in each Order Form hereunder will be invoiced upon completion of such Order Form and payment in full is required before access to the Materials will be provided to Organization. Except as otherwise specified herein, fees are based on services purchased and not actual usage, payment obligations are non-cancelable, payment

terms are quoted from the date of invoice and fees paid are non-refundable.

5. Intellectual Property Rights.

- 5.1. **General.** All right, title, and interest in and to the Materials including, without limitation, all modifications, enhancements and intellectual property rights thereto shall belong solely to McNees. This Agreement provides only the right of Organization to access and view the Materials, no ownership of anything is granted to Organization.

6. Disclaimer of Warranties and Liabilities.

- 6.1. **Disclaimer of McNees Warranty.** The Materials are provided as-is and where-is without warranty of any kind. McNees makes no warranty that the Materials will meet Organization's requirements, that the delivery of the Materials will be uninterrupted or error free, or that all defects in the Materials will be corrected. To the extent permitted by applicable law, MCNEES HEREBY DISCLAIMS WARRANTIES OR CONDITIONS, EXPRESS OR IMPLIED, AND MCNEES DISCLAIMS ANY AND ALL OTHER WARRANTIES OR CONDITIONS, WHETHER EXPRESS, IMPLIED, ORAL OR WRITTEN, INCLUDING, WITHOUT LIMITATION, ANY AND ALL IMPLIED WARRANTIES OF MERCHANTABILITY, REASONABLE CARE, AND/OR FITNESS FOR A PARTICULAR PURPOSE (WHETHER OR NOT MCNEES KNOWS, HAS REASON TO KNOW, HAS BEEN ADVISED, OR IS OTHERWISE IN FACT AWARE OF ANY SUCH PURPOSE). TO THE EXTENT PERMITTED BY APPLICABLE LAW, MCNEES FURTHER DISCLAIMS ANY AND ALL WARRANTIES, CONDITIONS, AND/OR REPRESENTATIONS OF TITLE AND NON-INFRINGEMENT.

7. Damages and Limitation of Liability.

- 7.1. **Consequential Damages.** IN NO EVENT SHALL MCNEES BE LIABLE FOR ANY LOST PROFITS OR FOR DIRECT, INDIRECT, SPECIAL, INCIDENTAL, PUNITIVE OR CONSEQUENTIAL DAMAGES, HOWEVER CAUSED AND WHETHER IN CONTRACT, TORT OR UNDER ANY OTHER THEORY OF LIABILITY, ARISING OUT OF OR IN ANY WAY CONNECTED WITH THIS AGREEMENT OR THE MATERIALS, EVEN IF EITHER PARTY IS ADVISED OF THE POSSIBILITY OF SUCH DAMAGES.
- 7.2. **Limitation of Liability.** IN ALL EVENTS, MCNEES'S AGGREGATE LIABILITY TO ORGANIZATION FOR CLAIMS RELATING TO THIS AGREEMENT OR THE MATERIALS, WHETHER FOR BREACH OF CONTRACT OR IN TORT OR UNDER ANY OTHER THEORY OF LIABILITY, SHALL BE LIMITED TO THE AMOUNTS ACTUALLY PAID BY ORGANIZATION TO MCNEES HEREUNDER FOR THE SUBSCRIPTION TO THE MATERIALS (AND NOT INCLUDING FEES PAID FOR LEGAL OR OTHER SERVICES OR MATERIALS) DURING THE SIX (6) MONTH PERIOD IMMEDIATELY BEFORE THE CLAIM WHICH GAVE RISE TO THE LIABILITY.

8. Term and Termination.

- 8.1. **Term of Agreement.** The term of this Agreement commences on the Effective Date and continues until all Subscription Terms expire or are otherwise terminated.
- 8.2. **Termination.** McNees may terminate this Agreement immediately, without notice, should Organization breach its obligations under this Agreement or McNees determines, in its sole discretion, that the content of the Materials requires revision or rescission.
- 8.3. **Effects of Termination.** Upon any expiration or termination of this Agreement, and upon expiration of the Subscription Term,

the rights and licenses granted hereunder will automatically terminate, and Organization may not continue to use the Materials. Termination of this Agreement shall not limit the parties from pursuing any other remedies available to them, including injunctive relief.

9. Miscellaneous.

- 9.1. **General.** This Agreement is intended for the sole and exclusive benefit of the parties and is not intended to benefit any third party. Only the parties to this Agreement may enforce it. The parties are independent contractors, and no branch or agency, partnership, association, joint venture, employee-employer, or franchiser-franchisee relationship is intended or created by this Agreement. Headings in this Agreement are for the convenience of the parties only. Accordingly, they shall not constitute a part of this Agreement when interpreting or enforcing this Agreement.
- 9.2. **Severability.** If any portion hereof is found to be void or unenforceable, the remaining provisions of this Agreement shall remain in full force and effect.
- 9.3. **Assignment.** Neither party may assign any of its rights or obligations hereunder, whether by operation of law or otherwise, without the prior written consent of the other party (not to be unreasonably withheld). Notwithstanding the foregoing, either party may assign this Agreement in its entirety (including all Order Forms), without consent of the other party, to its affiliates or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets not involving a direct competitor of the other party. Subject to the foregoing, this Agreement shall bind and inure to the benefit of the parties, their respective successors and permitted assigns.
- 9.4. **Entire Agreement; Breach and Waiver; Amendment.** This Agreement, including all exhibits and addenda hereto and Order Forms constitute the complete and exclusive understanding and agreement between the parties regarding their subject matter and supersede all prior or contemporaneous agreements or understandings, written or oral, relating to their subject matter. Any waiver, modification or amendment of any provision of this Agreement will be effective only if in writing and signed by duly authorized representatives of the party against whom the waiver, modification or amendment is to be asserted. To the extent of any conflict or inconsistency between the provisions in the body of this Agreement and any exhibit or addendum hereto or any Order Form, the terms of such exhibit, addendum or Order Form shall prevail. Notwithstanding any language to the contrary therein, no terms or conditions stated in an Organization purchase order or in any other Organization order documentation (excluding Order Forms) shall be incorporated into or form any part of this Agreement, and all such terms shall be null and void. No waiver of any breach of this Agreement shall constitute a waiver of a subsequent breach, whether or not of the same nature. All waivers shall be strictly construed. No delay in enforcing any right or remedy as a result of a breach of this Agreement shall constitute a waiver thereof. Accordingly, no course of conduct shall constitute an amendment or modification of this Agreement.
- 9.5. **Force Majeure.** Subject to the further provisions of this Section, any delays or failures by either party hereto in the performance of the obligations hereunder, except obligations of payment, shall be excused if and to the extent such delays or failures are caused by occurrences beyond such party's reasonable control, including, without limitation, acts of God, strikes or other labor disturbances, war, whether declared or not, sabotage, and/or any other cause or causes, whether similar or dissimilar to those herein specified, which cannot reasonably be controlled by such party. The period of excused performance pursuant to the foregoing shall be (and only shall be) the actual period during which such an occurrence continues. Accordingly, neither party hereto shall have the right to terminate this Agreement for cause on account of a failure of the other party timely to perform its

obligations hereunder during the period of such excused performance pursuant to the foregoing.

- 9.6. **Governing Law.** This Agreement shall be governed by and construed in accordance with the laws of the Commonwealth of Pennsylvania, as if performed wholly within the state and without giving effect to the principles of conflict of law. Any legal actions or proceeding arising under this Agreement will be brought exclusively in the federal or state courts located in Dauphin County, Pennsylvania and the parties hereby consent to personal jurisdiction and venue therein.
- 9.7. **Survival.** The parties' rights and obligations which by their nature should survive the expiration or termination of this

Agreement in order to give their intended effect, shall survive the termination of this Agreement for any reason.

- 9.8. **Notices.** All notices required or contemplated by this Agreement shall be in writing. Notices shall be delivered or mailed to the address or emailed to the addresses identified on the Order Form. Any notice to be given or served hereunder by either party shall be deemed given and received hereunder when delivered personally, emailed, sent by nationally recognized overnight delivery service, or three (3) days after being mailed certified mail, postage prepaid, to Organization or McNees in accordance with this Section.