

## Master License Agreement

Please read this Master License Agreement (the “Agreement”) carefully before signing the Online Training Agreement (“OTA”). The following terms and conditions of the Agreement will be legally binding on the Licensee upon execution of the OTA. The definitions of certain capitalized terms used in this Agreement are located in Section 1 below.

This Agreement governs Your use of Vivid Learning Systems, Inc.’s (“Vivid”) 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.

This Agreement was last updated on March 21, 2016. It is effective between You and Us on the date You enter into an Online Training Agreement, which is subject to this Agreement.

### 1. Definitions.

The following definitions and/or terms shall have the meanings set forth below.

“Agreement” means this Master License Agreement and the Licensee’s OTA.

“Documentation” means Our online guides, help, and documentation relating to the LMS licensed by Vivid to Licensee (if applicable).

“LMS” means the Learning Management System owned or licensed by Vivid and used to deliver the Training (if applicable).

“OTA” means the Online Training Agreement. By entering into an OTA 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 OTA defining the initial period of time that the Licensee shall have the right to use the Training and/or LMS and any renewal periods arising from Section 5 of this Agreement.

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

“We,” “Us,” “Our,” or “Vivid” means Vivid Learning Systems, Inc., a Washington corporation.

“You,” “Your,” or “Licensee” means the user of the Training and/or LMS if purchased on an individual basis or the company (or other legal entity) for which you are accepting this Agreement.

## **2. Licensor**

Vivid is the owner and Licensor of or has rights to license the Training, LMS, and any Documentation of the LMS.

## **3. Grant of Limited License; Restrictions**

Vivid hereby grants to Licensee a nonexclusive, non-transferable, limited, royalty-free, and fully paid-up license to use the Training, LMS, and Documentation along with other products and services summarized in the OTA during the Period of Agreement. The Training, LMS, and Documentation shall be used solely for Your internal training 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 OTA. Licensee is required to maintain records of all uses of the Training including allocation of login credentials used to access the Training. Vivid shall have the right to audit Licensee’s records including Licensee’s access to the Training to verify compliance with this Agreement. If such audit reveals that any users above the number licensed in the OTA have enrolled in or accessed the Training or LMS during the Period of Agreement, then Vivid will invoice Licensee for such additional users at the per-user price listed in the OTA. Users may be added during the term of the license at the same pricing as the underlying price in the OTA and any added users will terminate on the same date as the underlying Period of Agreement as specified in the OTA.

You hereby represent and covenant during the Period of Agreement that neither You nor any of your immediate family members are or will be a competitor of Vivid’s, where “competitor” shall mean any individual or company developing or offering a product or service substantially similar in its general application to the Training or LMS. Without limiting the foregoing, this means that You shall not, so long as you use the Training or LMS, either directly or indirectly, collectively or individually, as principal, agent, manager, employee, partner, shareholder, director, officer, consultant or otherwise become associated or affiliated with, employed by, or financially interested in any business operation that engages in the development or distribution of online compliance training products and services similar to those of Vivid within the USA. In addition, You may not access the Training or LMS for purposes of monitoring their availability, performance or functionality, or for any other benchmarking or competitive purpose.

## **4. Ownership**

Except as specifically set forth in this Agreement, nothing contained in this Agreement shall by express grant, implication, estoppel, or otherwise, create in Licensee any right, title, interest, or license in or to the inventions, patents, trade secrets, technical data, logos, graphics, icons and images, videos, other content, computer software, or software documentation of Vivid or its partners. Vivid or its partners retain exclusive title, copyright, and all intellectual property rights in and to the Training, LMS, and Documentation. Licensee may not create derivative works, decompile, reverse engineer, disassemble, or modify the Training or LMS. If You provide any suggestions, feedback, or improvements for

the Training, LMS or Documentation, then You grant Vivid a worldwide, perpetual, irrevocable, royalty-free license to use and have others use such suggestions, feedback, and improvements for any purpose.

#### **4.1. Federal Government End Use Provisions**

Where applicable, Vivid provides the Training, LMS, and Documentation (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 Training and LMS 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 Vivid to determine if there are acceptable terms for transferring such rights, and a mutually acceptable written addendum specifically conveying such rights must be included in any applicable contract or agreement.

### **5. Term of License**

The initial term of this license shall begin on the beginning date of the Period of Agreement and will continue through the last date of the Period of Agreement except as separately noted for any particular products or services in the OTA. After the initial term of this license, this Agreement shall automatically renew for successive one (1) year periods, unless either party notifies the other party in writing of its intent to terminate this Agreement delivered at least thirty (30) days prior to the expiration of the then existing term. The per-unit pricing during any automatic renewal term will be the same as the pricing during the immediately prior term unless We have given You written notice of a pricing increase at least sixty (60) days prior to the expiration of the then existing term, in which case the pricing increase will be effective upon renewal and thereafter.

#### **5.1. Training Resets**

If the Licensee desires a training reset prior to the end of an annual term then an additional license fee will be due. A training reset is defined as closing the existing training period and reenrolling students in a new training period. For example, if Licensee desires after the end of six months to close the current training and reenroll their students in the courses, then a new annual license fee will be due in the same amount as specified in the OTA.

### **6. Termination**

Either party may terminate this Agreement by giving written notice if a material breach remains uncured thirty (30) days after the breaching party receives written notice of the breach. In the event of a material breach by the Licensee, Vivid 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, Licensee will promptly, but in no case more than five (5) business days, delete any copies of the Training from its computers, servers, or other storage media and will provide Vivid with a written certification

of its compliance with this provision. If the Training records reside on Vivid's LMS then, within ninety (90) days of termination or expiration of the Agreement, the Licensee may print, or request that Vivid print, one final report of the training records for record-keeping and course content auditing purposes. After that ninety (90) day period, Vivid 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 Vivid will have no further obligation to make such data available to You.

## **7. Payment**

License and other fees associated with the Training and LMS shall be set forth in the OTA and are in United States dollars (USD). Except as otherwise specified herein or in the OTA, (i) fees are based on the Training and LMS purchased and not actual usage, (ii) payment obligations are non-cancelable and 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 OTA for the initial Period of Agreement and any renewal Period of Agreement as set forth in Section 5 (Term of License). Such charges shall be made in advance, either annually or in accordance with any different billing frequency stated in the applicable OTA. If the OTA 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 OTA. Invoiced charges are due and payable net thirty (30) days from the invoice date.

### **7.1. Fees Less Than \$1,000**

Initial license fees of less than \$1,000 must be paid by credit card prior to receiving access to the Training and the LMS.

### **7.2. Late Fees**

If any invoiced amount is not received by Us by the due date, or such charge is rejected by Your credit card issuer, then without limiting Our remedies, (a) those charges may accrue late interest of 1.5% per month or the maximum allowable by law, whichever is lower, and/or (b) We may condition future renewals on payment terms shorter than those specified in this section. Vivid reserves the right to suspend Licensee's access to the Training and the LMS for any accounts for which any payment is due but unpaid but only after Vivid has provided Licensee two (2) late notices and at least thirty (30) days have passed since the transmission of the first notice. In addition to any unpaid fees, Licensee shall be responsible for Vivid's reasonable costs of collection, including but not limited to attorney fees. We may, at our election, choose to forgo the exercise of Our rights under this section to resolve reasonable disputes, without waiving those rights.

### **7.3. Taxes**

Our fees do not include taxes, levies, duties or similar governmental assessments of any nature, including, for example, value-added, sales, use or withholding taxes, assessable by any jurisdiction whatsoever (collectively "Taxes"). You are responsible for 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. Updates**

At no additional cost to Licensee, Vivid shall make reasonable efforts to modify the Training 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 Vivid in its sole reasonable discretion (“Updates”). Updates may contain, for example, regulatory changes, additional questions added to the “question bank”, and “lessons learned” information gathered during previous years. Licensee requested changes to customize Training will be available for an additional fee to be negotiated and documented in a separate written agreement between Vivid and Licensee.

**9. Training and Support**

During the term or extended term of this Agreement, Vivid shall assist Licensee with the initial setup of the Training and LMS via telephone and email support. Vivid shall provide to Licensee telephone and email support and trouble shooting of the Training and LMS for the term or extended term of this Agreement.

**10. LMS Upgrades (if applicable)**

At no additional cost to Licensee, Vivid shall provide updates to maintain the functionality of the LMS with commonly-used software platforms and web browsers. Upgrades to the then current version of the LMS product, as well as some additional LMS features, may be offered from time to time by Vivid at an additional cost.

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

Vivid warrants that if the LMS, Training, or Documentation fails to substantially conform to the specifications in the Documentation and the non-conformity is reported in writing by Licensee with reasonable specificity so as to allow Vivid to attempt to cure the non-conformity, then Vivid 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 to Licensee. In the event of a refund, the license granted under this Agreement shall immediately terminate. This constitutes Vivid’s sole obligation and Licensee’s sole remedy with respect to the LMS. Except as set forth herein and in Section 12 (Indemnity), the Vivid products and services are provided “As-Is”. This is Vivid’s sole warranty, and Licensee’s sole remedy with respect to the LMS, Training, or Documentation.

Vivid and any party involved in creating, producing, servicing, updating, or delivering the Training and/or LMS (collectively the Vivid “Related Parties”) shall not in any case be liable for any type of loss or damage arising from the content of the Training, including links to or from Our Training and errors and omissions in the content, and Licensee hereby agrees to hold Vivid and the Related Parties harmless from and against any costs, claims, losses and other liabilities incurred by Licensee based on its use or inability to use the Training and/or LMS whether or not advised of the possibility of such damages. We have made reasonable

efforts to present the material accurately given the current information available when the course 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 Training and/or LMS. Therefore, Licensee acknowledges that it has sole responsibility for ensuring the appropriateness and completeness of the Training as applied to its operational requirements, and to provide adequate training, including safety training, to its staff and others to whom Licensee provides training. Vivid does not warrant that the Training will be uninterrupted, timely, or error free. You are solely responsible for evaluating the fitness of the Training for Your particular purpose. The content in Our Training is provided as is without any warranties of any kind including warranties of merchantability, fitness for a particular purpose, or non-infringement of intellectual property.

The liability of Vivid 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 exceed the amount You paid for the most current annual license fee noted on Your OTA.

## **12. Indemnity**

### **12.1. Indemnity by Vivid**

Notwithstanding the liability limitation noted above, Vivid agrees to indemnify and hold harmless Licensee from any and all liabilities, claims, and expenses including reasonable attorneys' fees, arising from any third party claims that the Training (excluding any Licensee assignments) and LMS infringes or misappropriates any presently existing United States patent held by such third party, provided You promptly notify Vivid in writing of any such claim, suit, or proceeding and permit Vivid to control the defense or settlement thereof and cooperate in the defense or settlement thereof. This indemnity shall not apply in the event that You or any of your employees or representatives alter the Training or LMS and such alteration is a contributing factor in the alleged infringement or misappropriation.

Vivid will have the option, at its expense, to employ counsel of its choosing to defend against such claim and to compromise, settle, or otherwise dispose of the claim; provided, however, that no compromise or settlement of any claim admitting liability of or imposing any obligations upon You may be affected without Your prior written consent. You shall have the option to be represented by counsel at Your own expense.

### **12.2. Indemnity by Licensee**

You agree to indemnify and hold harmless Vivid from any and all liabilities, claims, and expenses, including reasonable attorneys' fees, arising from Your breach of any part of this Agreement, Your use or access of the Training and LMS or any Internet site linked to or from the Training. You also agree to indemnify and hold harmless Vivid from any and all liabilities, claims, and expenses, including reasonable attorneys' fees, arising from any third party claims that results from Vivid's use of materials which You voluntarily submit to Vivid for inclusion in the Training (i.e. customizing the Training for your

intended use), provided Vivid promptly notifies You in writing of any such claim, suit, or proceeding and permit You to control the defense or settlement thereof and cooperate in the defense or settlement thereof.

You will have the option, at Your expense, to employ counsel of Your choosing to defend against such claim and to compromise, settle, or otherwise dispose of the claim; provided, however, that no compromise or settlement of any claim admitting liability of or imposing any obligations upon Vivid may be affected without Our prior written consent. Vivid shall have the option to be represented by counsel at Our own expense.

### **13. 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, either party may assign this Agreement in its entirety (including all OTAs), 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 "competitor" as defined in Section 3, and (b) agrees in writing 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 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.

### **14. Other Services**

Vivid 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 Vivid subject to the terms of a separate written agreement executed by both parties.

### **15. Publicity**

If You enter into this Agreement, You agree that Vivid may disclose to the public that You are a paying user of the Training and/or LMS. You further agree that Vivid may reference You, along with Your logo and trademarks, on the customer section of Vivid's website and in other marketing materials and presentations until such time as Your use of the Training and/or LMS is discontinued.

### **16. 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.

**17. Choice of Law; Venue**

This Agreement shall be governed by and construed in accordance with the laws of the State of Washington 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 Benton or Franklin County, Washington, and You hereby submit to such personal jurisdiction. The substantially prevailing party in any such proceeding shall be entitled to receive from the other party all reasonable attorneys' fees incurred by such prevailing party and all costs reasonably incurred in connection therewith.

**18. Notification of Changes**

This Agreement is the entire agreement between You and Us regarding your use of the Training and/or LMS 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 OTAs) is void. In the event of any conflict or inconsistency among the following documents, the order of precedence shall be: (1) the applicable OTA, (2) this Agreement, and (3) the Documentation.

**19. Force Majeure**

Neither party shall be in default by reason of any failure in the performance of this Agreement if such failure arises, directly or indirectly, out of causes reasonably beyond the direct control or foreseeability of such party, including but not limited to, third-party computer or telecommunications equipment or software failures, default by subcontractors or suppliers, acts of God or of the public enemy, domestic or foreign governmental acts, labor, fire, flood, epidemic, and/or strikes.

**20. 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.

**21. Entire Agreement**

This Agreement, with any associated OTA, constitutes the entire agreement between Vivid and Licensee with respect to Your use of the Training and LMS 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.