

**AGREEMENT TO DISTRIBUTE AND MARKET
OSHA 510 AND 511 ONLINE COURSES FOR CONSTRUCTION AND GENERAL
INDUSTRY**

THIS AGREEMENT is made this _____ day of _____, 2010, by and between:

(a) American Safety Council, Inc. ("**ASC**"), a Florida corporation whose principal place of business is at 5125 Adanson Street, Suite 500, Florida 32804; and

(b) Chabot-Las Positas Community College District, ("**CLPCCD**"), whose principal place of business is located at 5020 Franklin Drive, Pleasanton, CA 94588

P R E A M B L E

WHEREAS, **CLPCCD** as a U.S. Department of Labor OSHA Training Institute Education Center is an educational institution that possesses significant experience and expertise in the delivery of OSHA and other safety education training materials via the traditional classroom setting and through other media; and

WHEREAS, **ASC** has developed a proprietary Internet-based Learning Management System that incorporates course presentation capabilities, student registration, identification, payment, and course validation processes; and

WHEREAS, **ASC** has developed an online version of Course 510, OSHA Occupational Safety and Health Standards for Construction Industry ("the **Online 510 Course**"), which is the first non-classroom, Internet presentation of this OSHA standards course to be formally approved by OSHA; and

WHEREAS, **ASC** has developed an online version of Course 511, OSHA Occupational Safety and Health Standards for General Industry ("the **Online 511 Course**"), which is the first non-classroom, Internet presentation of this OSHA standards course to be formally approved by OSHA; and

WHEREAS, **ASC** in cooperation with the University of South Florida OSHA Training Institute Education Center ("**USF**"), whose principal place of business is located at 13201 Bruce B. Downs Boulevard, MDC 56, Tampa, Florida 33612, has implemented the Online 510 Course and Online 511 Course in accordance with approvals issued by the OSHA Training Institute on January 25, 2008; and

WHEREAS, **ASC** desires to license the **Online 510 Course** and **Online 511 Course** for distribution by other OSHA Training Institute Education Centers; and

WHEREAS, ASC will provide, at the option of CLPCCD, a no-cost private label online retail website portal and hyperlink(s) to a CLPCCD private-label presentation of the **Online 510 Course** and the **Online 511 Course**, as applicable to enable distribution of the **Online 510 Course** and the **Online 511 Course**; and

WHEREAS, ASC, at its exclusive discretion, defers to USF the maintenance of **Online 510 Course** and **Online 511 Course** student records and, when applicable, the issuance of a 510 or 511 course completion certificate to students who successfully complete the **Online 510 Course** and **Online 511 Course** under the auspices of this Agreement; and

NOW THEREFORE, the parties having exchanged valuable consideration the receipt and sufficiency of which is acknowledged enter into this Agreement under the following terms and conditions:

1. **Definitions**

1.1 **Student course completion count.** The credit that is given by OSHA for instruction of students taking and completing the **Online 510 Course** or **Online 511 Course**.

1.2 Tier 1. The election by CLPCCD of receiving additional revenue in lieu of receiving credit for the **Student course completion count.**

1.3 Tier 2. The election by CLPCCD of receiving credit for the **Student course completion count** in lieu of receiving additional revenue.

2. **Ownership and Content of Online 510 Course and Online 511 Course**

2.1 All rights to the **Online 510 Course** and **Online 511 Course** are owned by ASC including the copyrights thereto.

3. **CLPCCD's Rights and Obligations**

3.1 In the event that CLPCCD elects Tier 2 status, **Student course completion count** shall inure to the benefit of CLPCCD and CLPCCD will be responsible for issuing course completion certificates to students who successfully complete the **Online 510 Course** and the **Online 511 Course**. CLPCCD may periodically make Tier 1 or Tier 2 elections by giving a 30-day written notice to ASC.

4. **ASC's Rights and Obligations**

4.1 ASC shall have the exclusive right to host any website utilized for distribution of the **Online 510 Course** and the **Online 511 Course**.

4.2 All student payments for the **Online 510 Course** and **Online 511 Course** will be in the form of a debit or credit card processed exclusively through ASC's merchant account.

4.3 ASC shall pay CLPCCD, in accordance with Section 5.3 below on or about the 15th of each month for all student **Online 510 Course** and **Online 511 Course** registration payments attributable to the prior month's sales, less CLPCCD'S share of refunds and chargebacks.

4.4 ASC shall remit a detailed statement in an electronic format to CLPCCD for all payments outlined in Section 5.3 below.

4.5 ASC shall defer to USF, the recording and maintenance of all student data pertaining to students completing the **Online 510 Course** and **Online 511 Course**.

5. Fees for Online 510 Course and Online 511 Course

5.1 ASC shall be responsible for the setting of fees to be paid by students taking the **Online 510 Course** and **Online 511 Course**.

5.2 The fee schedule for the **Online 510 Course** and **Online 511 Course** will be implemented, as amended, in with notice to CLPCCD occurring in accordance with per Section 7.1 below.

5.3 The revenues distributed to CLPCCD by ASC pursuant to this Agreement for **Online 510 Course** and **Online 511 Course** student registrations as elected below by CLPCCD shall be distributed as follows with such election being modifiable at the discretion of CLPCCD with 30 days notice to ASC:

- (a) Tier I – 50% of the gross student registration fees are to be paid to CLPCCD;
 - a. USF records Student course completion count
 - b. USF issues OSHA Training Institute Education Center certificates on behalf of CLPCCD.

- (b) Tier II – 35.75% of the gross student registration fees are to be paid to CLPCCD;
 - a. CLPCCD records Student course completion count
 - b. CLPCCD issues OSHA Training Institute Education Center certificates.

5.4 CLPCCD shall be permitted to offer Promotion Codes to facilitate the sale of the **Online 510 Course** and **Online 511 Course** at group rates subject to the following:

- (a) CLPCCD shall request Promotion Codes and request the specific

- discount to be applied thereto, on a per-request basis, directly from ASC by remitting an e-mail to codes@amersc.com; and
- (b) Promotion Code discounts applied to **Online 510 Course** and **Online 511 Course** sales shall be deducted from revenues due to **CLPCCD** under Section 5.3; and
 - (c) Promotion Code discounts requested by **CLPCCD** for **Online 510 Course** and **Online 511 Course** sales shall not exceed the percentage of gross student registration fees to be paid to **CLPCCD CC** under Section 5.3, in accordance with the Tier selected by **CLPCCD** at the time of the Promotion Code request by **CLPCCD**; and
 - (d) **CLPCCD** shall be responsible for all Promotion Code sales that originate via **CLPCCD** referring links to the Online 510 Course and Online 511 Course during the period of activation for the applicable Promotion Code; and
 - (e) **CLPCCD** shall notify **ASC**, via e-mail to PromotionCode@amersc.com, of any request to deactivate a previously requested and authorized Promotion Code.

6. Term and Termination

6.1 Subject to the provisions for termination set forth below, this Agreement shall commence and remain in effect as of the Effective Date.

6.2 Notwithstanding the foregoing, either party may terminate this Agreement without cause upon thirty (30) days prior written notice mailed to the other parties, but in no event shall this Agreement remain in force beyond April 30, 2015.

6.3 Termination shall not extinguish any financial obligations owed to the parties prior to the date of termination and **ASC** shall continue to fulfill any course training session for which students have registered prior to the date of termination.

7. Other Terms and Conditions

7.1 Any notice required or permitted to be given by one party to the other under this Agreement will be deemed sufficient delivery, if sent by certified mail with return receipt requested, air express courier or facsimile to the parties at the addresses listed above or to such address as designated by the receiving party in writing.

7.2 This Agreement shall be interpreted, construed and governed according to the laws of the State of California, exclusive of its choice of law rules, and where applicable, the laws of the United States of America. Any and all actions, claims or lawsuits arising from the relationship of the parties hereunder are to be brought exclusively in the county, district, state and federal courts located in the County of San

Francisco, County of San Mateo, or County of Santa Clara in the State of California, and each party hereby consents to personal jurisdiction over it by such courts.

7.3 This Agreement may be executed in one or more counterparts, and as executed will constitute one agreement, binding on all parties hereto, notwithstanding that all parties are not signatories to the original or the same counterpart.

7.4 If any action, claim, litigation or proceeding is brought by any party to enforce or interpret this Agreement, the prevailing party shall be entitled to its reasonable costs and attorneys fees incurred at all levels in such action, claim or proceeding, in addition to any other remedy to which the prevailing party is entitled.

7.5 The parties hereby acknowledge that they are independent contractors. Neither **ASC** nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of **CLPCCD**. Similarly, neither **CLPCCD** nor any of its agents, representatives, students or employees shall be considered agents, representatives, or employees of **ASC**. In no event shall this Agreement be construed as establishing the relationship of agent, servant, employee, partnership, joint venture, or association between the parties hereto. As independent contractors, each party will be solely responsible for determining the means and methods for performing the services described herein. Each party understands and agrees that other party is engaged in an independent business and the party shall have no right to direct or control in any way or to any degree the manner of other party's performance hereunder. Each party further understands that it is not authorized and shall not make any agreement, contract or representation on behalf of the other party or create any obligation, express or implied, on the part of the other party.

Each party shall be liable for its own debts, obligations, acts and omissions, including the deduction of all federal, state and local income taxes, social security, FICA and other charges, if any, to be deducted from the compensation of its own employees. Nothing in this Agreement shall be interpreted as creating or establishing a relationship of employer and employee between the **ASC** and **CLPCCD** or their respective employees or agents.

Each and every person providing services to the **ASC** under this Agreement shall, at all times, remain an employee of **CLPCCD**. **CLPCCD'S** employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from **ASC**, nor shall they be entitled to overtime pay from **CLPCCD**. **CLPCCD** is solely responsible for paying all necessary State or Federal tax for itself and its employees. **ASC** will make no State or Federal unemployment insurance or disability insurance contributions on behalf of **CLPCCD** and/or its agents or employees. Neither **CLPCCD** nor its employees shall be included in the classified or faculty service, have any property rights to any position, or have any of the rights an employee of **ASC** may otherwise have in the event of termination of this Agreement.

Each and every person providing services to **CLPCCD** under this Agreement shall, at all times, remain an employee of **ASC**. **ASC'S** employees shall not, at any time, or in any way, be entitled to sick leave, vacations, retirement, or other fringe benefits from the **CLPCCD**, nor shall they be entitled to overtime pay from **CLPCCD**. **ASC** is solely responsible for paying all necessary State or Federal tax for itself and its employees. **CLPCCD** will make no State or Federal unemployment insurance or disability insurance contributions on behalf of **ASC** and/or its agents or employees. Neither **ASC** nor its employees shall have any property rights to any position, or have any of the rights an employee of **CLPCCD** may otherwise have in the event of termination of this Agreement.

7.6 The invalidity or enforceability, in whole or in part, of any covenant, promise, or undertaking, or any part thereof, or any provision of this Agreement shall not affect the validity or enforceability of the remaining portions thereof. Further, if the conditions or limitations contained in any section or part thereof, are invalid or unenforceable in part by reason of being too broad in scope, too long in duration or too wide a geographic area, such conditions and limitations shall not totally fail, but shall be deemed and construed in all respects to be limited to the maximum scope, duration and area permitted by law, and in such manner to be specifically enforceable so as to carry out the intent of the parties.

7.7 The waiver by either party of a breach of any provision of this Agreement by the other party shall not be construed as a waiver of any subsequent breach by the other party. No delay or omission on the part of a party in exercising any right or remedy shall operate as a waiver thereon, and no single or partial exercise by a party of any right or remedy shall preclude any other or further exercise thereof or the exercise of any other right or remedy.

7.8 No amendment or variation of the terms and conditions of this Agreement shall be valid unless in writing and signed by the parties. However, **ASC** and **CLPCCD** agree to amend this Agreement to the extent the amendment (1) is required by an applicable regulatory authority and (2) does not materially affect the provisions of this Agreement.

7.9 The rights and obligations under this Agreement are personal to each party and are not assignable to any other entity or person.

7.10 The headings and other captions in this Agreement are for convenience or reference only and shall not be used in interpreting, construing or enforcing any of the provisions of this Agreement.

7.11 Nothing in this Agreement will be construed as giving any person, firm, corporation or other entity, other than the parties hereto, their respective heirs, executors, administrators, successors and assigns any right, remedy or claim under or in respect of this Agreement or any provision hereof.

7.12 This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all previous communications, representations, agreements, arrangements, negotiations, or understandings, whether verbal or written, between the parties hereto. It shall bind and enure to the benefit of both parties, their respective successors, and legal representatives.

7.13 Each individual signing this Agreement warrants that he or she is duly authorized to sign this Agreement on behalf of the entity he or she represents.

(Signature Page Follows)

IN WITNESS WHEREOF, ASC and CLPCCD have duly executed and delivered this Agreement as of the date first above written.

AMERICAN SAFETY COUNCIL. INC.,
a Florida corporation

By: _____
Jeffrey R. Pairan
Executive Vice President

**CHABOT- LAS POSITAS COMMUNITY
COLLEGE DISTRICT**

By: _____
Signature

Name and Title

MARKETING FEE ADDENDUM TO
NON-EXCLUSIVE LICENSE AGREEMENT

This Marketing Fee Addendum is a part of and incorporated into the License Agreement by and between American Safety Council, Inc., (hereinafter referred to as "ASC") and Chabot-Las Positas Community College District, (hereinafter referred to as "Licensee"), and shall modify that certain License Agreement between the parties with an effective date of: _____, 2010.

INTERNET PRODUCTS TO BE OFFERED

Internet Courses ("PRODUCTS"):

- OSHA Online 30-Hour Construction Outreach
- OSHA Online 30-Hour General Industry Outreach
- OSHA Online 10-Hour Construction Outreach
- OSHA Online 10-Hour General Industry Outreach

Also Referred to As:

- 30-Hour Construction
- 30-Hour General Industry
- 10-Hour Construction
- 10-Hour General Industry

MARKETING FEE SCHEDULE*

Internet Courses:

- OSHA Online 30-Hour Construction: Marketing fee paid to Licensee per registered student:
 - 50% of the course fee paid by student to ASC
- OSHA Online 30-Hour General Industry: Marketing fee paid to Licensee per registered student:
 - 50% of the course fee paid by student to ASC
- OSHA Online 10-Hour Construction: Marketing fee paid to Licensee per registered student:
 - 50% of the course fee paid by student to ASC
- OSHA Online 10-Hour General Industry: Marketing fee paid to Licensee per registered student:
 - 50% of the course fee paid by student to ASC

*Notes:

- (1) ASC shall determine the standard retail pricing for the PRODUCTS.
- (2) Licensee shall be able to reduce standard retail pricing for the PRODUCTS by requesting promotion codes via e-mail to codes@amersc.com.
- (3) In the event offerings or services other than those specifically listed above are purchased by customers, ASC shall have no obligation to pay a marketing fee to Licensee for such other offerings or services.
- (4) Any additional charges, fees or shipping costs, if applicable, shall be billed directly to each customer and shall not be the responsibility of Licensee.

ADDITIONAL PROVISIONS APPLICABLE TO THIS PRODUCT

Licensee may refer customers to the PRODUCTS through links provided by ASC that Licensee may place on its website, course catalogs or as it deems otherwise necessary; however, any such placement of links shall be subject to approval by ASC.

Licensee may request a complimentary Internet website, to be provided and maintained by ASC, for the exclusive purpose of providing Licensee with a website for the referral of students in addition to, or in lieu of, the course registration process via the aforementioned links.

Licensee, as an OSHA Training Institute Education Center, may communicate with customers concerning the PRODUCTS as they relate to course content. All other customer inquiries, phone calls, questions and other communications from customers shall be referred to ASC for processing.

Additional PRODUCT requirements, terms and conditions, and restrictions may be located on ASC's website. Licensee will display links precisely as provided by ASC to order pages that are hosted by ASC in a form, manner and presentation as instructed and approved by ASC.

IN WITNESS WHEREOF, this Marketing Fee Addendum is made and entered into this _____ day of _____ 2010.

American Safety Council, Inc.
("ASC")

Chabot-Las Positas Community College District
("Licensee")

Jeffrey R. Pairan
Executive Vice President

Signature

Printed Name and Title

MARKETING FEE ADDENDUM TO
NON-EXCLUSIVE LICENSE AGREEMENT

This Marketing Fee Addendum is a part of and incorporated into the License Agreement by and between American Safety Council, Inc., (hereinafter referred to as "ASC") and Chabot-Las Positas Community College District (hereinafter referred to alternatively as "CLPCCD" or "LICENSEE") and shall modify that certain License Agreement between the parties with an effective date of _____, 2010.

INTERNET PRODUCTS TO BE OFFERED

Internet Courses ("PRODUCTS"):

- OSHA Online Certificate Courses
 - Course Titles and Availability Listing:
www.amersc.com/OSHAcertcourses
- OSHA Online HAZWOPER Online Courses
 - Course Titles and Availability Listing:
www.amersc.com/OSHAHAZWOPERcourses
- OSHA 2000 and 3000 Series Online Courses
 - Course Titles and Availability Listing:
www.amersc.com/OSHA2000&3000courses

Also Referred to As:

- OSHA Certificate Courses
- OSHA HAZWOPER Courses
- OSHA 2000 and 3000 Courses

MARKETING FEE SCHEDULE*

Internet Courses:

- **OSHA Online Certificate Courses:** Marketing fee paid to LICENSEE per registered student:
 - 40% of the course fee paid by student to ASC
- **OSHA HAZWOPER Courses:** Marketing fee paid to LICENSEE per registered student:
 - 50% of the course fee paid by student to ASC
- **OSHA 2000 and 3000 Series Online Courses**
 - 50% of the course fee paid by student to ASC

*Notes:

- (1) ASC shall determine the standard retail pricing for the PRODUCTS.
- (2) LICENSEE shall be able to reduce standard retail pricing for the PRODUCTS by requesting promotion codes via e-mail to codes@amersc.com.
- (3) In the event offerings or services other than those specifically listed above are purchased by customers, ASC shall have no obligation to pay a marketing fee to LICENSEE for such other offerings or services.
- (4) Any additional charges, fees or shipping costs, if applicable, shall be billed directly to each customer and shall not be the responsibility of LICENSEE.
- (5) PRODUCTS subject to the terms and conditions of this Marketing Fee Addendum shall be those online courses listed at www.amersc.com/OSHAcertcourses, www.amersc.com/OSHAHAZWOPERcourses and www.amersc.com/OSHA2000&3000courses, which shall be subject to change, from time to time, at the exclusive discretion of ASC.

ADDITIONAL PROVISIONS APPLICABLE TO THIS PRODUCT

LICENSEE may refer customers to the PRODUCTS through links provided by ASC that LICENSEE may place on its website, course catalogs or as it deems otherwise necessary; however, any such placement of links shall be subject to approval by ASC.

LICENSEE may request a complimentary Internet website, to be provided and maintained by ASC, for the exclusive purpose of providing LICENSEE with a website for the referral of students in addition to, or in lieu of, the course registration process via the aforementioned links.

LICENSEE, as an OSHA Training Institute Education Center, may communicate with customers concerning the PRODUCTS as they relate to course content. All other customer inquiries, phone calls, questions and other communications from customers shall be referred to ASC for processing.

LICENSEE will display links precisely as provided by ASC to order pages that are hosted by ASC in a form, manner and presentation as instructed and approved by ASC.

IN WITNESS WHEREOF, this Marketing Fee Addendum is made and entered into this _____ day of _____, 2010.

American Safety Council, Inc.

Chabot-Las Positas Community College District
("LICENSEE")

Jeffrey R. Pairan
Executive Vice President

Signature

Printed Name and Title