

## Usage Agreement for Volume Licensing: IT and Web Use

This Usage Agreement for Volume Licensing (this “License Agreement” or “Agreement”) for Material is a binding Legal Agreement between you and PowerSplash Project, Inc., (“Licensor”). This Agreement supersedes any previous License Agreement you may have had for the Material. PowerSplash Project, Inc., is willing to License the Material to you only upon the condition that you accept all of the terms contained in this License Agreement. By downloading, installing, or otherwise gaining access to and/or using the Material in any way indicate that you agree to be bound by the terms of this License Agreement.

### RECITALS

Whereas, Licensor owns Material identified herein,

Whereas, Licensor desires to convey, and Licensee desires to receive, certain limited rights in said Material pursuant to the terms and conditions contained in this Agreement.

Now Therefore, Licensor and Licensee agree as follows:

### 1. Definitions

- A. “Material” means an audio visual project on compact disc or DVD (or “download” product from website) and documentation listed and described in Exhibit A (Licensed Material) attached to this Agreement, as well as any archival copies of such computer programs and documentation permitted by this Agreement.
- B. “Install” means placing the Material on a computer’s hard disk, CD-ROM or other secondary storage device.
- C. “Use” means (i) executing or loading the Material into computer RAM or other primary memory, or (ii) copying the Material for archival or emergency restart purposes.

### 2. Grant of License

Licensor grants to Licensee, a volume license Agreement to install and use the Material on specified company computers in Licensee’s possession (the “License”) as well as broadcast on their private Intranet or Internet site as specified on Order Form and/or Invoice. Licensee may make one (1) archival copy of the Material per computer on which it is authorized, in non-printed, machine readable form, in whole or in part, provided that such a copy is for Licensee’s own use and that no more than that one single copy is in use at any time. Licensee will make no other copies of the Material except as authorized herein. Title to the Material will remain vested in Licensor except as a licensee under the terms of this Agreement.

### 3. Term and Termination

- A. The License commences as of the Effective Date of this Agreement, and remains in force until Licensee stops using the Material or until the Licensor terminates this License pursuant to the terms herein. Upon termination of this agreement, Licensee will (i) return all copies of the Material to Licensor without demand or notice, or (ii) permanently delete or destroy all copies of the Material in its possession and submit to Licensor a sworn affidavit signed by Licensee attesting to such destruction.

- B. Except as set forth in the provisions of this Agreement that provide for automatic termination in the event of breach of confidentiality or unauthorized transfer, if Licensee breaches any other provision of this Agreement, Licensor may terminate this Agreement, provided, however, that Licensor has given Licensee at least fourteen (14) days written notice of and the opportunity to cure the breach. Termination for breach shall not alter or affect Licensor's right to exercise any other remedies for breach.

#### **4. License Fee**

Licensee agrees to pay a one-time fee of \_\_\_\_\_ based on title in Exhibit A where the Material is installed or has access to use, including the Intranet or Internet, for the grant of the License herein.

#### **5. Limitations on Use**

- A. Licensee agrees that it will use the Material only in its own business, and not directly or indirectly for the use or benefit of anyone other than the Licensee, and only pursuant to the scope of the grant of the License set forth herein.
- B. Licensee will not edit, decode, alter, decompile, reverse engineer, perform reverse analysis on or disassemble the Material.

#### **6. Limitations on Transfer**

This License is personal to Licensee and may not be conveyed in any way without prior written consent of the Licensor. Any purported sale, assignment, transfer or sublicense without such consent will be null and void ab initio, and will automatically terminate this Agreement.

#### **7. Confidentiality**

Licensee agrees to observe complete confidentiality with respect to the Material, and will not copy, reproduce, publicize or otherwise disseminate it to third parties. Any breach of confidentiality by Licensee will automatically terminate this Agreement. Licensee agrees that Licensor's remedies at law for breach of confidentiality are inadequate and that Licensor will be entitled to equitable relief, including without limitation, injunctive relief, specific performance and/or other remedies in addition to remedies provided by law.

#### **8. Licensee's Obligation to Notify of Infringement**

Licensee will immediately notify Licensor of any infringement or attempted infringement of Licensor's rights in the Material of which it becomes aware. Licensee will affirmatively cooperate with Licensor in any legal or equitable action that Licensor may undertake to protect any of its rights in connection with the Material.

#### **9. Warranty of Title**

Licensor warrants that it is the lawful owner of the Material and/or that it has the authority to grant the License specified herein.

## **10. Software Warranty and Disclaimer**

Licensor warrants that the Material has been developed in a workmanlike manner, and in conformity with generally prevailing industry standards. Licensee must report any material deficiencies in the Material to Licensor in writing within thirty (30) days of the Effective Date of this Agreement. Licensee's exclusive remedy for the breach of the above warranties will be the correction of the Material deficiency within a commercially reasonable time. This warranty is exclusive and is in lieu of all other warranties, whether express or implied, including any warranties of merchantability or fitness for a particular purpose and any oral or written representations, proposals or statements made on or prior to the effective date of this Agreement. Licensor expressly disclaims all other warranties.

## **11. Limitation of Liability, Indemnification**

- A. Neither party will be liable to the other for special, indirect or consequential damages incurred or suffered by the other arising as a result of or related to the use of the Material, whether in contract, tort or otherwise, even if the other has been advised of the possibility of such loss or damages. Licensor's total liability under this Agreement with respect to the Material, regardless of cause or theory of recovery, will not exceed the total amount of fees paid by Licensee under this Agreement.
- B. Licensee will indemnify and hold Licensor harmless against any claims incurred by Licensor arising out of or in conjunction with Licensee's use of the Material, as well as all reasonable costs, expenses and attorneys' fees incurred therein.

## **12. Maintenance**

No Material maintenance is included under the terms of this Agreement. Licensor's obligations with respect to maintenance and support, including upgrades, if any, will be set forth in a separate written statement between the parties.

## **13. Relation of Parties**

Nothing in this Agreement will create or imply an agency relationship between Licensor and Licensee, nor will this Agreement be deemed to constitute a joint venture or partnership between the parties.

## **14. Arbitration**

Any dispute arising under this Agreement will be subject to binding arbitration by a single Arbitrator with the American Arbitration Association (AAA), in accordance with its relevant industry rules, if any. The parties agree that this Agreement will be governed by and construed and interpreted in accordance with the laws of the State of California. The arbitration will be held in San Francisco. The Arbitrator will have the authority to grant injunctive relief and specific performance to enforce the terms of this Agreement. Judgment on any award rendered by the Arbitrator may be entered in any Court of competent jurisdiction.

## **15. Attorneys' Fees**

If any litigation or arbitration is necessary to enforce the terms of this Agreement, the prevailing party will be entitled to reasonable attorneys' fees and costs.

## **16. Severability**

If any term of this Agreement is found to be unenforceable or contrary to law, it will be modified to the least extent necessary to make it enforceable, and the remaining portions of this Agreement will remain in full force and effect.

## **17. Force Majeure**

Neither party will be held responsible for any delay or failure in performance of any part of this Agreement to the extent that such delay is caused by events or circumstances beyond the delayed party's reasonable control.

## **18. No Waiver**

The waiver by any party of any breach of covenant will not be construed to be a waiver of any succeeding breach or any other covenant. All waivers must be in writing, and signed by the party waiving its rights. This Agreement may be modified only by a written instrument executed by authorized representatives of the parties hereto.

## **19. Entire Agreement**

This Agreement, together with any attachments referred to herein, constitutes the entire agreement between the parties with respect to its subject matter, and supersedes all prior agreements, proposals, negotiations, representations or communications relating to the subject matter. Both parties acknowledge that they have not been induced to enter into this Agreement by any representations or promises not specifically stated herein.

## **EXHIBIT A: LICENSED MATERIAL**

### **1.0 Licensed Material**

Invoice will itemize which titles from (or entire library of) "The Employee Awareness Series" are approved for licensing. Possible Titles:

"Awareness is a Choice"  
"Creating a Healthy Outlook"  
"Essential to the Team"  
"Excellence in Customer Service"  
"Habits and the Considerate Coworker"  
"The Key to Good Ergonomics"  
"Managing Ourselves in a Timely Manner"  
"Meeting the Criteria for a Meeting"  
"Open to Change"  
"Relax, Refocus, Rejoin"  
"Sexual Harassment"  
"Shades of Gossip"  
"Violence in the Workplace"  
"What is in a Written or Spoken Word"  
"The Worker and the Bully"