

License Agreement For Corporate Intranet Display of APICS Courseware

THIS LICENSE AGREEMENT (the "Agreement") dated effective the ___ day of _____, 201__ (the "Effective Date") between _____, a company incorporated in _____ and having its principal place of business at _____ ("Company") and APICS, INC., located at 8430 West Bryn Mawr Avenue, Suite 1000, Chicago, Illinois 60631-3439, ("APICS").

WHEREAS,

- A. COMPANY and APICS are each a "Party" and collectively the "Parties" and
- B. COMPANY desires a license to access and use the Courseware (as defined below) for its internal business purposes and APICS desires to grant COMPANY such license.

NOW THEREFORE, in consideration of the mutual promises and covenants herein contained, the Parties agree as follows:

1. License Grant. APICS hereby grants to COMPANY a nontransferable, nonexclusive right and license to access, use and display _____ through display of the Instructor Slides via COMPANY's corporate Intranet, WebEx or similar facility to COMPANY employees ("Users") and to use the related written courseware materials provided by APICS to COMPANY (collectively, the "Courseware") under the following conditions:
 - a) Instruction using the Courseware will be provided exclusively by COMPANY;
 - b) COMPANY shall control access to the Courseware by assigning a password and unique ID to Users, both of which must be utilized to access the Courseware.
 - c) COMPANY shall ensure that the Courseware cannot be downloaded by Users.
 - d) COMPANY shall prominently display to all Users that the Courseware is the sole property of APICS; that the Courseware is for the User's education use only; and that the Courseware may not be copied, reproduced, downloaded, distributed or displayed (electronically or otherwise) by such Users for any purpose other than as expressly permitted hereunder.
2. Without exception, COMPANY will ensure that all employees participating in the APICS cases have purchased the participants guide from APICS.
3. The instructor teaching the course via COMPANY's corporate Intranet, WebEx or similar facility has purchased the complete instructor guide or upgrade kit for the course being taught.
4. The Courseware is provided to COMPANY "as is" and without any express or implied warranties, including without limitation, warranties of merchantability or fitness for a particular purpose. In no event shall APICS be liable for damage to any software, hardware, or equipment which may result from COMPANY's use of the Courseware. Each Party agrees to comply with all applicable laws and regulations in connection with this Agreement.
5. APICS shall at all times retain sole ownership, title and interest in and to the Courseware (including ownership of all trade secrets, copyrights, trademarks, patents, and other intellectual property rights pertaining thereto), subject only to the non-exclusive rights and privileges expressly granted to COMPANY herein by APICS. This non-exclusive license does not provide COMPANY with title or

ownership of the Courseware, but only a right of limited use. Except as expressly provided hereunder in connection with the display and distribution of the Courseware, APICS does not convey any intellectual property rights to COMPANY hereunder. COMPANY may not make use of any APICS trademark or logo not embedded into Courseware without APICS' prior written consent.

6. Except as expressly set forth herein, COMPANY shall not copy, reproduce, modify, edit, revise, alter, reverse engineer, disassemble, decompile, translate, transmit, transfer, transport, upload, download, distribute, display, (electronically or otherwise), sublicense, rent, or lease the Courseware, or any copy, adaptation, transcription, portion or merged portion thereof, nor shall COMPANY create "derivative works" of any portion of the Courseware, as that term is used in the Copyright Act, 17 U.S.C. 101 et seq., without the prior written consent of APICS. APICS reserves the right to update, revise, discontinue, reorganize and supplement the Courseware in its discretion at any time, provided that APICS shall give COMPANY written notice of any such modification within a reasonable period of time. APICS assumes no responsibility for COMPANY's use of superseded, discontinued or out of date versions of the Courseware.

7. This Agreement shall commence on the Effective Date and shall remain in full force and effect until December 31, 2016. The Parties may renew this Agreement for successive one (1) year periods by written instruments signed by both Parties. COMPANY may terminate this Agreement at anytime upon notification to APICS. Either Party shall have the right to terminate this Agreement if the other Party fails to comply with any material term of this Agreement and fails to cure such breach within thirty (30) days of receiving written notice of such breach from the non-breaching Party; or the other Party becomes insolvent or a receiver or receiver manager is appointed for any part of the property of that Party, or the other Party makes an assignment, proposal or arrangement for the benefit of creditors or proceedings are commenced by or for the other Party under any bankruptcy, insolvency or debtor's relief law. Any provision of this Agreement which expressly states it is to continue in effect after termination of this Agreement, or which by its nature would survive the termination of this Agreement shall do so. Upon termination or expiry of this Agreement, COMPANY shall cease use of all copies of the Courseware licensed hereunder, shall delete or destroy all copies of the Courseware or upon written request from APICS, return the Courseware to APICS, and all rights and obligations under this Agreement shall terminate.

8. Limitation of Liability.

A. IN NO EVENT SHALL EITHER PARTY BE LIABLE FOR: (A) ANY INDIRECT, SPECIAL, PUNITIVE, INCIDENTAL, EXEMPLARY OR CONSEQUENTIAL DAMAGES OF ANY KIND INCLUDING ANY LOSS OF BUSINESS REVENUE OR EARNINGS, LOST PROFITS, LOSS CAUSED BY DELAY AND FAILURE TO REALIZE EXPECTED SAVINGS (EVEN IF SUCH PARTY HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES); OR (B) ANY AMOUNTS IN EXCESS OF THE FEES PAID OR PAYABLE BY CUSTOMER HEREUNDER.

B. THE LIMITATIONS AND EXCLUSIONS SET OUT HEREIN SHALL: (A) APPLY WHETHER AN ACTION, CLAIM OR DEMAND ARISES FROM A BREACH OF WARRANTY OR CONDITION, BREACH OF CONTRACT, NEGLIGENCE, STRICT LIABILITY OR ANY OTHER KIND OF CIVIL LIABILITY CONNECTED WITH THIS AGREEMENT; (B) APPLY TO EACH PARTY AND ITS RESPECTIVE AFFILIATES AND TO THE DIRECTORS, OFFICERS AND PERSONNEL OF EACH OF THE FOREGOING; (C) NOT APPLY TO MISAPPROPRIATION OR INFRINGEMENT BY EITHER PARTY OF THE OTHER PARTY'S INTELLECTUAL PROPERTY; (D) NOT APPLY TO BREACH OF A PARTY'S CONFIDENTIALITY OBLIGATIONS HEREUNDER; (E) NOT APPLY TO A CLAIM FOR BODILY INJURY (INCLUDING DEATH) OR DAMAGE TO REAL PROPERTY OR TANGIBLE PERSONAL PROPERTY; AND (F) NOT APPLY

TO LICENSOR'S INDEMNITY OBLIGATIONS UNDER THE AGREEMENT (OR A BREACH THEREOF).

9. Assignment. No right or obligation under this Agreement shall be assigned by either Party without the consent of the other Party and any attempt to assign or transfer any of the rights, duties or obligations hereunder other than in accordance with the terms of this Agreement shall be void and of no force or effect. Notwithstanding the foregoing, COMPANY may assign this Agreement without consent upon thirty (30) days written notice to APICS to any Affiliate or to any purchaser of a majority of COMPANY's outstanding shares or to any purchaser of substantially all of the assets of COMPANY that relate to this Agreement, provided that such assignment does not materially affect the rights or obligations of APICS. For the purposes of this section, the term "Affiliate" means any entity controlling, controlled by, or under common control with COMPANY and the term "control" (including, with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any entity, means the possession, directly or indirectly, of the power to direct or exercise a controlling influence over the management or policies of such entity, whether through the ownership of voting securities, by contract or otherwise.

10. Force Majeure. Neither Party shall be deemed to have breached any provision of this Agreement as a result of any delay, failure in performance, or interruption of service resulting directly or indirectly from acts of civil or military authorities, civil disturbances, wars, terrorism, energy crises, fires, transportation contingencies, interruptions in required third-party telecommunications or Internet equipment or service, or any other occurrences which are beyond such Party's control. The Party affected by the force majeure shall notify the other Party within a commercially reasonable period of time from such occurrence. The performance of this Agreement shall then be suspended for as long as any such event shall prevent the affected Party from performing its obligations under this Agreement, provided that if such suspension continues for more than thirty (30) days, the non-affected Party may terminate this Agreement immediately without cost or penalty upon notice to the other Party.

11. Notice. All notices required to be sent hereunder shall be in writing and when sent in writing shall be deemed to have been given when delivered by courier service or mailed by first class mail to the applicable address listed above, if to COMPANY to the attention of the legal department, if to APICS, to the attention of the legal department. Either Party may treat documents faxed by the other party as original documents; nevertheless, either Party may require the other to exchange original signed documents. Any notice given pursuant to this section 13 shall be effective five (5) days after the day it is mailed or upon receipt whichever is earlier.

12. Waiver/Modification. The failure by a Party to enforce any provision of this Agreement will not be deemed a waiver of future enforcement of that or any other provision. No waiver of any of the provisions of this Agreement will be deemed, or will constitute, a waiver of any other provision, whether or not similar, nor will any waiver constitute a continuing waiver. Any waiver, amendment, supplementation or other modification or supplementation of any provision of this Agreement will be effective only if it is in writing and signed by all Parties.

13. Severability. If any one or more of the provisions of this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, any such provision shall be severable from this Agreement, in which event this Agreement shall be construed as if such provision had never been contained herein.

14. Governing Law. This Agreement shall be governed by and construed under the laws of the State of Illinois, United States of America. Each Party hereto irrevocably waives any objection on the grounds of venue, forum non-conveniens or any similar grounds and irrevocably consents to service of process by

mail or in any other manner permitted by applicable law and consents to the jurisdiction of the courts of the State of Illinois as applicable. The Parties further hereby waive any right to a trial by jury with respect to any lawsuit or judicial proceeding arising or relating to this Agreement.

15. Entire Agreement. This Agreement and the NDA together constitute the entire agreement between APICS and COMPANY and supersede all other agreements and understandings, whether oral or written relation to the subject matter hereof, including without limitation, any invoice terms, click wrap or other agreements that may accompany the Courseware packaging or installation process.

16. Counterparts and Execution. This Agreement may be signed in two or more counterparts each of which together will be deemed to be an original and all of which together will constitute one and the same instrument. Signing of this Agreement and transmission by facsimile or electronic document transfer will be acceptable and binding upon the Parties hereto. This Agreement shall not be binding until fully executed by all Parties. Any handwritten changes made to this Agreement must be initialed by all Parties in order to be binding on the Parties. Notwithstanding foregoing sentence, this Agreement is binding upon the Parties and takes full force and effect as of the Effective Date regardless of any date appearing in the signature block.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement to be effective on the date set forth above.

APICS, INC.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____