

DMEC FMLA/ADA Training for Supervisors and Managers End-User Software License Agreement

This End-User Software License Agreement (the "**EULA**") is a contract between the user of the Software, (the "**End User**"), and the Disability Management Employer Coalition (the "**Licensor**"), a California non-profit corporation with its principal place of business at 5173 Waring Road, Suite 134, San Diego, CA 92120. The Licensor and the End User together shall be referred to as the "**Parties**" and individually shall be referred to as a "**Party**."

The Parties agree as follows:

1. Definitions

- 1.1 *Definitions.* Unless otherwise provided in the main body of this EULA, capitalized terms shall have the meaning given to them in the attached *Exhibit A*, which forms part of this EULA as if set forth here.

2. License

- 2.1 *License.* Subject to the provisions of this EULA, the Licensor grants to the End User a perpetual, non-transferable, non-sub-licensable, and non-exclusive license to use, solely in the Field and solely in object code form, the Software. Title, copyright, intellectual property rights, and distribution rights of the Software remain exclusively with the Licensor; intellectual property rights include the look and feel of the Software. This EULA constitutes a license for use only and is not in any way a transfer of ownership rights to the Software.
- 2.2 *Reservation of rights.* Except for the license explicitly granted by Section 2.1, the Licensor reserves all its rights. The End User acknowledges and agrees that the End User is licensed to use the Software only in accordance with the express provisions of this EULA and not further or otherwise.
- 2.3 *No support or maintenance.* Unless otherwise agreed by the Parties in writing, the Licensor shall have no obligation to upgrade, update, bug-fix, to provide support or maintenance services, or to provide assistance or consultancy services in relation to the Software.

3. Use and Restrictions on Use

- 3.1 *Restrictions.* The End User shall not: (a) copy or reproduce the Software; (b) merge the Software with any other software; (c) translate, adapt, vary, or modify the Software; or (d) disassemble, de-compile, or reverse-engineer the Software, or otherwise attempt to derive the source code of the Software.
- 3.2 *Further restrictions.* The End User shall not: (a) provide, disclose, demonstrate, or otherwise make available the Software to any third party; or (b) use the Software to provide any services or training for any third party; or (c) sell, lease, rent, transfer, hire-out, license, sub-license, assign, distribute, publish, charge, pledge, encumber, commercially exploit, or otherwise deal with the Software, or have any software written or developed that is based on or derived from the Software.

3.3 *Obligations.* **The End User shall at all times** ensure that the Software is clearly and conspicuously labelled as the property of the Licensor. The provisions of this Section 3.3 are without prejudice to the provisions of Section 6.1.

4. Payment

4.1 *License Fee.* The End User shall pay to the Licensor the License Fee in accordance with the payment schedule set out in the attached *Exhibit A*, which forms part of this EULA as if set out here.

4.2 *Payment terms.* All payments due under this EULA:

(a) are exclusive of any applicable sales or use tax, which, where applicable, shall be paid by the End User to the Licensor for withholding purposes at the rate and in the manner prescribed by applicable law;

(b) shall be paid by the End User to the Licensor in U.S. Dollars by credit card or check.

5. Confidential Information

5.1 *Confidentiality obligations.* As between the Parties, all Confidential Information belongs to the Licensor. At all times during the term of this EULA and at all times subsequently, the End User shall: (a) maintain all Confidential Information securely and in the strictest confidence and shall respect the Licensor's rights therein; (b) not disclose or otherwise make available any Confidential Information to any third party; and (c) not use any Confidential Information for any purpose, except for the purpose of using the Software in accordance with the provisions of this EULA.

5.2 *Exceptions to obligations.* The provisions of Section 5.1 shall not apply to Confidential Information which the End User can demonstrate by reasonable, written evidence: (a) is subsequently disclosed to the End User without any obligations of confidence by a third party who has not derived it directly or indirectly from the Licensor; or (b) is or becomes generally available to the public through no act or default of the End User or its agents, employees, or affiliates.

5.3 *Disclosure to employees and others.* The End User shall ensure that all of its employees and other personnel or vendors who have access to any Confidential Information are made aware of, and are subject to, the obligations set forth in Section 5.1.

6. Acknowledgements and Disclaimers

6.1 *Acknowledgements.* The End User acknowledges and agrees that software in general is not error-free and agrees that the existence of any errors in the Software shall not constitute a breach of this EULA by the Licensor.

6.2 *Obligation to correct material errors.* If the End User discovers a material error in the functionality of the Software which substantially affects the End User's use of the Software and the End User notifies the Licensor of such material error in writing within 90 days of the Date of Initial Licensure, the Licensor shall use reasonable endeavours to correct, by patch or new release (at the Licensor's option), that part of the Software which is affected by such material error.

- 6.3 *No such obligation in certain circumstances.* The Licensor's obligations under Section 6.2 shall be excluded in the following circumstances: (a) following wilful damage to the Software or negligence in its use; (b) where the Software has not been used, maintained, and/or stored in accordance with any instructions or recommendations given by the Licensor or in accordance with the provisions of this EULA; (c) where the problem arises from software not supplied by the Licensor; (d) where the Software is used other than in the correct configuration; and/or (e) following any unauthorised use of or modification to the Software.
- 6.4 *Possible charges.* Where a defect in the Software is found upon investigation not to be the Licensor's responsibility, the Licensor reserves the right to charge the End User on a time and materials basis at commercially reasonable rates for all time, costs, and expenses incurred by the Licensor in consequence of such investigation.
- 6.5 *No implied warranties.* The express undertakings and warranties given by the Licensor in this EULA are in lieu of all other warranties, conditions, terms, undertakings, and obligations, whether express or implied by statute, common law, custom, trade usage, course of dealing, or in any other way, including any implied warranty of merchantability, satisfactory quality, or fitness for any particular purpose. All of these are excluded to the fullest extent permitted by applicable law. Without limiting the scope of the preceding sentences, the Licensor gives no warranty or guarantee that the Software will meet the End User's requirements, that the use of the Software will be un-interrupted, or that any errors and/or defects in the Software can or will be corrected.
- 6.6 *Indemnification.* The End User shall indemnify the Licensor from and against any and all losses, damages, claims, demands, liabilities, costs, and expenses of any nature whatsoever that may be asserted against or suffered by the Licensor and which relate to: (a) any use by the End User of the Software; and/or (b) the development, manufacture, use, supply, or any other dealing in any products or services that were generated from the use of the Software.
- 6.7 *Limitation of liability.* The cumulative maximum liability of the Licensor to the End User under or in connection with this EULA, irrespective of the basis of the claim (whether in contract, tort, negligence, or otherwise), shall be limited in accordance with the provisions of this Section 6.9:
- (a) The Licensor does not seek to exclude or limit liability where such exclusion or limitation is precluded from applicable law, including any liability that may arise in respect of (i) death or personal injury resulting from the Licensor's negligence; or (ii) fraud.
 - (b) Subject to the rest of the provisions of this Section 6.9, the cumulative liability of the Licensor in respect of any and all claims made under or in connection with this EULA shall not exceed an amount that is equal to the License Fee.
 - (c) Subject to Section 6.9(a), the Licensor shall in no circumstances be liable for any (i) type of special, indirect, or consequential loss; (ii) loss of profit, revenue, or anticipated saving; (iii) lost, incorrect, or spoilt data; (iv) loss of use; (v) loss of contracts with third parties; (vi) loss of business; (vii) loss of goodwill; or (viii) any other business or economic disadvantage suffered by the End User, arising out of the use or failure of the Software, even if such loss was reasonably foreseeable or the Licensor had been advised of the possibility of the same arising.

7. General

- 7.1 *Amendments.* This EULA may only be amended in writing signed by duly authorized representatives of both the Licensor and the End User.
- 7.2 *Invalid clauses.* If any provision or part of this EULA is held to be invalid, amendments to this EULA may be made by the addition or deletion of wording as appropriate to remove the invalid part or provision but otherwise retain the provision and the other provisions of this EULA to the maximum extent permissible under applicable law.
- 7.3 *No agency.* Nothing in this EULA shall create, evidence, or imply any agency, partnership, or joint venture between the Parties. Neither Party shall act or describe itself as the agent of the other, nor shall it make or represent that it has authority to make any commitments on the other's behalf.
- 7.4 *Interpretation.* In this EULA:
- (a) references to persons include incorporated and unincorporated persons and references to the singular include the plural and vice versa;
 - (b) references to Sections and Exhibits mean clauses of, and exhibits to, this EULA;
 - (c) where the word "including" is used, it means "including without limitation."
- 7.5 *Governing law and venue.* The validity, construction, and performance of this EULA shall be governed by and construed in accordance with the laws of the State of California and shall be subject to the exclusive jurisdiction of the federal and state courts located in the State of California, to which the Parties hereby submit.
- 7.6 *No use of trademarks.* Neither Party shall use the names, trade names, trademarks, service marks, logos, or other marks of the other Party without that Party's prior written consent.
- 7.7 *Entire agreement.* This EULA, including the attached Exhibits, sets forth the entire agreement between the Parties relating to its subject matter and supersedes all prior oral and written agreements, arrangements, or understandings between them relating to such subject matter.

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Exhibit A

Definitions

Confidential Information	The Software, and all information, data, video and audio recordings, drawings, designs, specifications, documentation, and other items (in any form whatsoever) which the Licensor may (directly or indirectly) disclose or otherwise make available to the End User during the course of or in anticipation of this EULA.
Field	The End User's own internal business purposes, specifically, for the training of the End User's managers in the areas of employee absence and disability.
License Fee	One-time fee Unlimited number of users, member rate \$10,000; nonmember rate \$12,500.
Software	A computerized, automated, video-based training program designed for employers to use in their learning management systems or otherwise to train their managers on FMLA and ADA. It includes a video, along with related printed, electronic, and online documentation and any other files that may accompany the program.
Date of Initial Licensure	Upon receipt by Licensor of payment in full by End User.

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