



Online Training - License Agreement

This AGREEMENT by and between StateFoodSafety.com™, a division of AboveTraining Inc., (LICENSOR) and the Gila County Health Department (MO), (LICENSEE), is to be effective this 22 day of Aug. 2014.

1. **Term.** The term of this Agreement shall commence on the date hereof and shall continue, unless sooner terminated as provided herein, for a period of one (1) year and thereafter parties have the option to renew this Agreement, in writing, for additional three (3) one-year terms.
2. **Products.** Under the terms and conditions of this agreement, StateFoodSafety.com™ grants LICENSEE a non-transferable, non-exclusive, worldwide license to access and use the products described in Appendices. SFS may modify its existing course program at its discretion, and must notify AGENCY of such modifications. All rights to course content, artwork, source code, users and any other materials reside with SFS and AGENCY may not modify use or enhance any of the licensed material without permission from SFS.
3. **Obligations and Best Efforts.** StateFoodSafety.com™ shall make the technology available to maintain all student training records, process and distribute certificates to passing trainees, and perform all other tasks necessary to support the course. All client information provided by LICENSEE through its training portal is confidential and proprietary to LICENSEE, and will not be misused by StateFoodSafety.com™ for any purpose.
4. **Nonexclusive:** Nothing in this agreement shall be construed to prevent LICENSEE from continuing to offer its own food safety course and certification.
5. **Modification, Enhancement, and Compliance.** StateFoodSafety.com™ will provide access, hosting, and support for the online Safe Food Handling course as approved by the Gila County Health Department.
6. **Work Requirements.** StateFoodSafety.com™ will provide all resources required for course delivery, administration, and support no later than twenty-four (24) business days following the effective date of this agreement including StateFoodSafety.com™ obligations: (a) Customized Internet link to the courses for LICENSEE (b) Courses and tracking system log-in for LICENSEE (c) 7 a.m. to 7 p.m. MST call center/email support for all users plus 24 hour emergency support.
7. **Warranties and Disclaimers.** The services provided under this Agreement are subject to problems inherent in the delivery of products and services over the Internet. Such problems may include failures, interruptions, delays, security, viruses, and other harmful components. StateFoodSafety.com™ is not responsible for any damages resulting from such problems.
8. **Termination.** This Agreement may be terminated by either party with 60 (sixty) days written notice.
9. **Jurisdiction and Venue.** LICENSOR acknowledges that this agreement shall be construed under and in accordance with the laws of Arizona. Jurisdiction and venue of any action under this agreement shall be in the federal or state courts in Gila County, AZ.
10. **Notices.** All notices required or permitted to be given by one party to the other under this Agreement will be sufficient if sent by certified mail, return receipt requested, air express courier, or facsimile to the parties at the following addresses or to such address as designated by a party in writing:
11. **Detailed Agreement.** Details clarifying information about each section of this agreement can be found in Appendices. A ATTACHED.
12. ATTACHMENT "A", BY MENTION MADE A BINDING PART OF THIS AGREEMENT AS SET FORTH HEREIN.

StateFoodSafety.com /AboveTraining, Inc.
507 E. Technology Ave., Bldg. C
Orem, UT 84097
Office : 801.805.6785

Christie H. Lewis, Ph.D.
President, StateFoodSafety.com

Gila County Health Department
~~5515 S. Apache Avenue~~ 1400 E. ASH STREET
Globe, AZ
928.402.8820

DON E. McDANIEL, JR., COUNTY MANAGER

Print Name and Title

Appendix A

Terms of Agreement:

Overview- The Gila County Health Department offers the online StateFoodSafety.com™ Food Handler Training and the online Manager Training through their website by doing the following:

- a. **Complete the following** – The Gila County Health Department Client Worksheet as provided by StateFoodSafety.com™.
- b. **Website-** The Gila County Health Department will create a link to the agreed upon food safety training, which will transfer users to the StateFoodSafety.com™ Gila County Health Department online store.
 - i. In lieu of set-up fee, the Gila County Health Department will include information about the online food safety training on the Gila County Health Department website, will distribute flyers informing food establishments about the online food safety training, and offer the online option on any automated phone messages pertaining to food safety training. Press release to local paper is also encouraged.
 - ii. StateFoodSafety.com™ will provide the 75-minute, fully audio-visual online food handler course and test in all available languages. (English, Spanish, Mandarin, Korean, Vietnamese, Korean, Tagalog and American Sign Language).
 - iii. StateFoodSafety.com™ will provide the online Manager Food Safety training course in English and Spanish.
- c. **Pricing-**
 - i. StateFoodSafety.com™ online Food Handler course for the Gila County Health Department will be sold for a price of \$20.00. StateFoodSafety.com™ will retain \$10.00 from this purchase price. StateFoodSafety.com will collect a \$10.00 fee on behalf of the health department and remit these fees to the Gila County Health Department monthly. StateFoodSafety.com™ will pay all transaction fees.
 - ii. StateFoodSafety.com™ online Food Manager course will be sold for a price of \$58.00. StateFoodSafety.com™ will retain \$58.00 from the sale of each Food Manager course
- d. **Reporting/Tracking-** Once the individual completes the Food Handler and has passed the online assessment at the specified level of proficiency, the user name, gender, address and birth date will be added to an online report which can be accessed by the health department. User will print a Gila County Health Department Food Handler Certificate, which includes a verification number. Certificates can be verified at www.foodhandlerverification.com.

Agreement Date: _____ Agreement Start Date: _____

Company Name: _____

Contact Name: _____ Title: _____

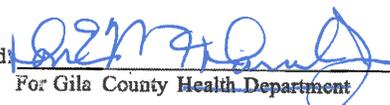
Office Phone: _____ Mobile Phone: _____

Fax Number: _____ Email Address: _____

Business Address: _____ Mailing Address: _____

Web Address: _____

Signed: 
For StateFoodSafety.com™

Signed: 
For Gila County Health Department

Title: President, StateFoodSafety.com

Name: DON E. MCDANIEL, JR.

Title: COUNTY MANAGER

StateFoodSafety.com™/AboveTraining
Accounts Payable Contact Information:

Danny Follett
507 E. Technology Ave, Building C
Orem, UT 84097
Email: dfollett@abovetraining.com
Phone: (801) 385.208.4531
Fax: (801) 494-1748

ATTACHMENT "A"

Gila County Contractor Standard Terms and Conditions Addendum

A. Addendum Applicability

Contractor and Gila County agree that the terms and conditions of this Addendum shall apply to and govern the contractual relationship between Contractor and Gila County and shall supplement any other contract or agreement entered into between the parties. In the event that the terms and conditions in this Addendum conflict with any provision of any other agreement entered into between the Contractor and Gila County (including a superiority provision similar to this provision), the terms and conditions of this Addendum shall control the contractual relationship between the parties and shall supersede any conflicting provisions found in any other contract or agreement. Contractor understands that acceptance of the terms and conditions contained in this Addendum is a condition precedent to entering into a contractual relationship with Gila County.

B. Contract Defined

As used in this Addendum, the term "Contract" shall refer to any written agreement between Gila County and a person, organization, corporation, company or other entity that provides supplies or services to Gila County regardless of the title or other name applied to that written agreement. The term includes by this reference all the terms and conditions of this Addendum.

C. Contractor Defined

As used in this Addendum, the term "Contractor" shall refer to a person, provider, organization, corporation, company or other entity providing supplies or services to Gila County pursuant to a written agreement regardless of the title or other name applied to "Contractor" in that written agreement.

D. Relationship to Parties

Contractor is an independent contractor of the County. Contractor represents that he has or will secure, at his own expense, all personnel required in performing the services under this contract. Such personnel shall not be employees of or have any contractual relationship with the County. All personnel engaged in work under this contract shall be fully qualified and shall be authorized or permitted under State and local law to perform such services. It is further agreed by Contractor that he shall obey all state and federal statutes, rules, and regulations which are applicable to provisions of the services called for herein. Neither Contractor nor any employee of the Contractor shall be deemed an officer, employee, or agent of the County.

E. Non-Appropriations Clause

Contractor acknowledges that the County is a governmental entity, and the contract validity is based upon the availability of public funding under its authority. In the event that public funds are unavailable and not appropriated for the performance of County's obligations under this contract, then this contract shall automatically expire without penalty to County after written notice to Contractor of the unavailability and non-appropriation of public funds. It is expressly agreed that the County shall only activate this non-appropriation provision as an emergency fiscal measure. The County shall not activate this non-appropriation provision for its convenience, to circumvent the requirements of this contract, or to enable the County to contract with another Contractor for the same supplies or services covered under this Addendum.

F. Hold Harmless/Indemnification Clause

Contractor shall indemnify, defend, save and hold harmless the County of Gila and its officers, officials, agents, and employees (hereinafter referred to as "Indemnitee") from and against any and all claims, actions, liabilities, damages, losses, or expenses (including court costs, attorneys' fees, and costs of claim processing, investigation and litigation) (hereinafter referred to as "Claims") for bodily injury or personal injury (including death), or loss or damage to tangible or intangible property caused, or alleged to be caused, in whole or in part, by the negligent or willful acts or omissions of Contractor or any of its owners, officers, directors, agents, employees or subcontractors. This indemnity includes any claim or amount arising out of or recovered under the Workers' Compensation Law or arising out of the failure of such Contractor to conform to any federal, state or local law, statute, ordinance, rule, regulation or court decree. It is the specific intention of the parties that the Indemnitee shall, in all instances, except for Claims arising solely from the negligent or willful acts or omissions of the Indemnitee, be indemnified by Contractor from and against any and all claims. It is agreed that the Contractor will be responsible for primary loss investigation, defense and judgment costs where this indemnification is applicable. In

consideration of the award of this contract, the Contractor agrees to waive all rights of subrogation against the County, its officers, officials, agents and employees for losses arising from the work performed by the Contractor for the County.

G. Entire Contract Clause

The Contractor and the County have read this Contract and agree to be bound by all of its terms, and further agree that it constitutes the entire contract between the two parties and may only be modified by a written mutual contract signed by the parties. No oral provision in conflict with this Contract shall have any force or effect.

H. Non-Waiver of Enforceability

Failure of the County to enforce, at any time, any of the provisions of this Contract, or to request at any time performance by Contractor of any of the provisions hereof, shall in no way be construed to be a waiver of such provisions, nor in any way affect the validity of this contract or any part thereof, or the right of the County to enforce each and every provision.

I. Governing Law

Both parties agree that this Contract shall be governed by the laws of the state of Arizona. The parties further agree that the jurisdiction for any legal disputes arising out of this Contract shall be the Superior Court of the State of Arizona. The parties agree that even if this Contract does not specifically reference any provision required by state or federal law, those state and federally required provisions are incorporated into this Contract by this reference as though they were specifically listed herein.

J. Cancellation

Cancellation pursuant to A.R.S. §38-511. This contract is subject to the cancellation provisions of A.R.S. §38-511.

K. Legal Arizona Workers Act Compliance

Contractor hereby warrants that it will at all times during the term of this Contract comply with all federal immigration laws applicable to Contractor's employment of its employees, and with the requirements of A.R.S. § 23-214 (A) (together the "State and Federal Immigration Laws"). Contractor shall further ensure that each subcontractor who performs any work for Contractor under this contract likewise complies with the State and Federal Immigration Laws.

County shall have the right at any time to inspect the books and records of Contractor and any subcontractor in order to verify such party's compliance with the State and Federal Immigration Laws.

Any breach of Contractor's or any subcontractor's warranty of compliance with the State and Federal Immigration Laws, or of any other provision of this section, shall be deemed to be a material breach of this Contract subjecting Contractor to penalties up to and including suspension or termination of this Contract. If the breach is by a subcontractor, and the subcontract is suspended or terminated as a result, Contractor shall be required to take such steps as may be necessary to either self-perform the services that would have been provided under the subcontract or retain a replacement subcontractor as soon as possible so as not to delay project completion.

Contractor shall advise each subcontractor of County's rights, and the subcontractor's obligations, under this Article by including a provision in each subcontract substantially in the following form: "Subcontractor hereby warrants that it will at all times during the term of this contract comply with all federal immigration laws applicable to Subcontractor's employees, and with the requirements of A.R.S. § 23-214 (A). Subcontractor further agrees that County may inspect the Subcontractor's books and records to insure that Subcontractor is in compliance with these requirements. Any breach of this paragraph by Subcontractor will be deemed to be a material breach of this contract subjecting Subcontractor to penalties up to and including suspension or termination of this contract."

Any additional costs attributable directly or indirectly to remedial action under this Article shall be the responsibility of Contractor.

L. Warranty

Contractor expressly warrants that all goods or services furnished under this agreement shall conform to all specifications and appropriate standards, will be new, and will be free from defects in material or workmanship. Contractor warrants that all such goods or services will conform to any statements made on the containers or labels or advertisements for such goods, or services, and that any goods will be adequately contained, packaged, marked and labeled. Contractor warrants that all goods or services furnished hereunder will be merchantable, and will be safe and appropriate for the purpose for which goods or services of that kind are normally used. If Contractor knows or has reason to know the particular purpose for which County intends to use the goods or services, Contractor warrants that such goods or services will be fit for such particular purpose. Contractor warrants that goods or services furnished will conform in all respects to samples. Inspection, test, acceptance of use of the goods or services furnished hereunder shall not affect the Contractor's obligation under this warranty, and such warranties shall survive inspection, test, acceptance and use. Contractor's warranty shall run to County, its successors, and assigns. Contractor agrees to replace or correct, at Contractor's sole cost and expense, defects of any goods or services not conforming to the foregoing warranty, or improperly installed, as well as guarantee to the County and to the Owner, against liability, losses or damage to any or all parts of the work arising from said installation during a period of two (2) years from date of completion. All guarantees will inure to the benefit of the County and the Owner, their successors or assigns, including equipment warranties, ordinary wear and tear and unusual abuse or neglect expected.

In the event of failure of Contractor to correct defects in or replace nonconforming goods or services promptly, County, after reasonable notice to Contractor, may make such corrections or replace such goods and services and charge Contractor for the cost incurred by the County in doing so. Contractor recognizes that County's requirements may require immediate repairs in reworking of defective goods, without notice to the Contractor. In such event, Contractor shall reimburse County for those costs, delays or other damages which County has incurred.

Christie H. Lewis
StateFoodSafety.com

8.22.14
Date

CHRISTIE H. LEWIS, Ph.D.
Print Name and Title

PRESIDENT, StateFoodSafety.com