

Software and Services agreement

This agreement covers the use of the HSL Safety Climate Tool (SCT) ver1.0, which was developed by the Health and Safety Laboratory in collaboration with Snap Surveys Limited. Consequently this agreement is between:

- (i) **Health and Safety Laboratory**, an agency of the Health and Safety Executive, and an agency of the United Kingdom Government ('HSL'),
- (ii) **Snap Surveys Limited** (formerly Mercator Research Group Limited) registered in England under company number 01672722 ('Snap Surveys'), and
- (iii) the person identified as the customer on the Order Form ('You').

These terms are intended for use with customers who will use the HSL Safety Climate Tool (SCT) ver1.0 only for their own internal business use (i.e. not to be offered as a commercial tool or service) and by accepting these terms you confirm that this applies to your use.

The HSL Safety Climate Tool (SCT) ver1.0 enables customers to undertake surveys to evaluate the prevailing safety culture within their organisation and to analyse the data collected. The core program enables users to publish a survey questionnaire, either electronically or in printed format, and to analyse the survey response data. The software is supplied on CD-ROM, and customers are issued with authorisation codes to enable them to install the software on their own system.

Both HSL and Snap Surveys offer limited technical support services inclusive with this licence. Additional consultancy services are also offered (e.g. assistance with interpretation of results, implementation of next steps, etc.) and will be charged at our standard rates according to customers' requirements. Further information on these services is available on our respective websites:

<http://www.hsl.gov.uk>

and

<http://www.snapsurveys.com>

1. Interpretation and Definitions

1.1. The following words and phrases have the following meanings:

'Confidential Information': all information which: (i) one party acquires in connection with this agreement or the supply, receipt or use of the HSL Safety Climate Tool (SCT) ver1.0, (ii) which concerns the business, technology or affairs of the other, (iii) is confidential when it is acquired, and (iv) the party acquiring it ought to appreciate its confidentiality. This applies equally to information received before or after the date this agreement takes effect.

'Crown Copyright': as defined in the Copyright Designs and Patents Act 1988, the Copyright Act 1956 and the Copyright Act 1911.

'Data Protection Laws': any applicable law concerning data protection, privacy or the use of electronic communications so far as it applies to your use of the HSL Safety Climate Tool (SCT) ver1.0. This includes the Data Protection Act 1998 and the Privacy and Electronic Communications (EC Directive) Regulations 2003.

'HMSO': The Controller of Her Majesty's Stationery Office, as Queen's Printer and Queen's Printer for Scotland. The term also includes the organisation called Her Majesty's Stationery Office, which administers Crown Copyright and Crown Database rights on the Controller's behalf.

'HSL Safety Climate Tool (SCT) ver1.0': the software which HSL or Snap Surveys has agreed to supply to you, or which they have supplied to you.

'Intellectual Property Rights': all patents, copyrights, design rights, trade marks, trade secrets, know-how, database rights, rights in performances, obligations of confidence and other rights in the nature of intellectual property rights (whether registered or unregistered) and all applications for the registration of any of these anywhere in the world.

'Licence': The Licence as specified in Clause 4.

'Material': The information contained within and associated to the HSL Safety Climate Tool (SCT) ver1.0 produced by HSL. This includes the question set, algorithms, associated documentation, images, tables, logos, etc., which are subject to Crown Copyright protection.

'Order Form': a completed paper or electronic order in the form provided by HSL.

'Services': the services provided by HSL and /or Snap Surveys pursuant to this agreement.

'Software Platform': software based upon the core products of Snap Surveys to which the Material has been added to develop the HSL Safety Climate Tool (SCT) ver1.0. As an integral part of the HSL Safety Climate Tool (SCT) ver1.0 Snap Surveys has agreed to supply the Software Platform, including any updates that may be made available to you pursuant to this agreement.

'Survey Material': any materials (including data, text and images) created or acquired through your use of the HSL Safety Climate Tool (SCT) ver1.0.

'Your System': the computer system you use in connection with the HSL Safety Climate Tool (SCT) ver1.0.

- 1.2. The terms **'data controller'** **'personal data'**, and **'process'** have the same meanings as in the Data Protection Act 1998.
- 1.3. References to You, HSL or Snap Surveys includes any permitted successors and assigns.
- 1.4. References to statutory provisions include those statutory provisions - and any subordinate legislation - as it may be amended or re-enacted from time to time.
- 1.5. The use of **'will'** denotes an obligation.
- 1.6. The use of the word **'including'** and the phrase **'in particular'** are only intended to illustrate specific examples. The use of these words and examples does not restrict the scope of any term of this agreement in any way whatsoever.
- 1.7. Where used as a reference to a contractual provision, **'term'** includes conditions, warranties and other terms of any nature whatsoever.
- 1.8. References to any gender include all genders.
- 1.9. Words in the singular include the plural and words in the plural include the singular.
- 1.10. Unless otherwise stated, any provision of this agreement is a continuing one, and notwithstanding the use of the present tense it is not limited to the time at which this agreement is made.
- 1.11. The headings in this agreement are for ease of reference only and do not affect its interpretation.

2. Your order and the effect of this agreement

- 2.1. By submitting an Order Form you are offering to acquire the HSL Safety Climate Tool (SCT) ver1.0, subject to these terms.
- 2.2. This agreement takes effect when HSL accepts your order, which only occurs when we send you an acknowledgement to that effect, or we supply any software and services you have ordered. If HSL accepts your order by supplying any software or services, we do so only in respect of the products and services supplied. HSL's acceptance of your order takes place in England, or is deemed to take place there.
- 2.3. This agreement covers all aspects of the HSL Safety Climate Tool (SCT) ver1.0, and all issues arising out of the supply, non-supply, or use.

3. Installation of the software

- 3.1. You will install the HSL Safety Climate Tool (SCT) ver1.0 on Your System after HSL sends it and the related documentation to you. HSL will provide you with any authorisation codes to enable you to install it.

4. Licence

- 4.1. Material produced by officers or servants of the Crown, including HSL employees, in the course of their duties is protected by Crown copyright. Her Majesty The Queen is the first owner of all Crown copyrights. The Controller of Her Majesty's Stationery Office (HMSO), as Queen's Printer of Acts of Parliament and Queen's Printer for Scotland, has been appointed by Her Majesty The Queen to control and administer Crown-owned copyrights and Crown database rights on Her behalf.
- 4.2. The HSL Safety Climate Tool (SCT) ver1.0, the Material incorporated within it, and any accompanying documentation, is Crown Copyright and this Licence is provided by HSL under a Delegation of Authority from the Controller of Her Majesty's Stationery Office (HMSO).
- 4.3. HSL grants you a non-exclusive Licence to install and use the HSL Safety Climate Tool (SCT) ver1.0 on Your System, for the purpose of internal business use (to assess the prevailing safety culture). This Licence is granted on and subject to the terms of this agreement and You agree to adhere to any conditions and restrictions.
- 4.4. The initial term for this Licence is 5 years from the invoice date. You should inform HSL of any change in circumstances (e.g. change of company name, address, etc.) during that time for the Licence to remain valid.

- 4.5. You may only use any associated documentation in connection with the authorised use of the HSL Safety Climate Tool (SCT) ver1.0.
- 4.6. You may not:
- (a) Make any copies of the HSL Safety Climate Tool (SCT) ver1.0 other than by way of installing and using it on Your System at your premises.
 - (b) Use the HSL Safety Climate Tool (SCT) ver1.0 anywhere other than at your premises unless the Order Form states otherwise (e.g. by permitting your staff to use it on other sites or while working for you from home).
 - (c) Use the HSL Safety Climate Tool (SCT) ver1.0 in any way, or on any computer system, which hinders or prevents the operation of any feature intended to help enforce any restriction, or which is likely to do so.
 - (d) Permit any person who is not a member of your staff (whether as an employee or a contractor) to use the HSL Safety Climate Tool (SCT) ver1.0 in any way other than for the purposes of your own internal business use. For example, you may permit third parties to enter survey replies for you or to assist in the analysis and interpretation of your own survey response data.
 - (e) Pass on any user name, password or authorisation code to any person other than a member of your staff or the other persons described in Clause (d).
 - (f) Alter, modify or decompile the HSL Safety Climate Tool (SCT) ver1.0.
 - (g) Remove, change or obscure any product identification or notices of Crown Copyright or other proprietary rights and restrictions that are present in the HSL Safety Climate Tool (SCT) ver1.0 or on any CD-ROM or packaging containing the HSL Safety Climate Tool (SCT) ver1.0.
 - (h) Combine the HSL Safety Climate Tool (SCT) ver1.0 with any other software unless you have written permission from HSL and Snap Surveys.
 - (i) Represent the HSL Safety Climate Tool (SCT) ver1.0 as your own, or as anything other than the HSL Safety Climate Tool (SCT) ver1.0.
 - (j) Re-sell or provide any commercial service derived from the use of the HSL Safety Climate Tool (SCT) ver1.0 without the written permission of HSL.

- 4.7. HSL and Snap Surveys may change any aspect of the HSL Safety Climate Tool (SCT) ver1.0 if they believe it is reasonably necessary to do so in order to avoid or reduce any infringement (or the likelihood of any infringement) of any Intellectual Property Rights of any third party. If HSL or Snap Surveys notify you of such a change, and makes the update available to you free of charge, you will use the updated version and this licence will then apply to that updated version.

5. Data Protection

- 5.1 You are the data controller for any personal data in the Survey Material and as such you will comply with all Data Protection Laws. HSL and/or Snap Surveys will only process that personal data in furtherance of this agreement or as part of any additional agreement for technical support or consultancy services.

6. Charges and payment

- 6.1 HSL will issue an invoice for any charges due (and any applicable VAT) following receipt of an Order Form.
- 6.2 You will pay HSL any charges due under this agreement so that it receives the payment in cleared funds within 30 days of the relevant invoice date.
- 6.3 If HSL does not receive payments due:
- (a). It retains the right to claim such payment as part of the price due under this agreement.
 - (b). It retains the right to charge interest on such payments from the due date until the payments have been received. Interest accrues daily at the rate of 8% above the prevailing Bank of England base rate.
 - (c). It is not obliged to fulfil any of its obligations under this agreement until it does receive all the payments due, irrespective of whether it has already fulfilled some.

7. Intellectual Property Rights

- 7.1 Intellectual Property Rights in the HSL Safety Climate Tool (SCT) ver1.0 and any associated documentation belong to HSL and are subject to Crown Copyright.
- 7.2 Intellectual Property Rights in the Software Platform belong to Snap Surveys. The HSL Safety Climate Tool (SCT) ver1.0 is built upon a Software Platform derived from and relating to the platform developed by Snap Surveys for their core product and Intellectual Property Rights for any improvements, updates or upgrades to that or other products which may also be applied or utilised by the HSL Safety Climate Tool (SCT) ver1.0 will also be retained by Snap Surveys.
- 7.3 You do not acquire any right or interest in or to any of the Rights described in Clauses 7.1 or 7.2.
- 7.4 However, You retain all your Intellectual Property Rights in the Survey Material generated as a result of your use of the HSL Safety Climate Tool (SCT) ver1.0. You authorise HSL and Snap Surveys to use the Survey Material for the purpose of performing its obligations under this agreement or acting pursuant to this agreement.

8. Limited warranty

- 8.1 By their nature, computer programs cannot be guaranteed to be free from errors and defects. There may be errors and defects in any aspect of the HSL Safety Climate Tool (SCT) ver1.0. For these purposes, the HSL Safety Climate Tool (SCT) ver1.0 is defective if, while used in accordance with this agreement, it does not function substantially as described in the relevant descriptions in the associated documentation when this agreement takes effect.
- 8.2 HSL and Snap Surveys will exercise reasonable skill and care while performing any support services.
- 8.3 Neither HSL nor Snap Surveys provides any assurance that any aspect of the HSL Safety Climate Tool (SCT) ver1.0 is designed to operate with, or be compatible with, any hardware or software other than that identified in the associated documentation.
- 8.4 Neither HSL nor Snap Surveys provides any assurance that any aspect of the HSL Safety Climate Tool (SCT) ver1.0 is of any particular quality or fit for any purpose other than that described in the associated documentation.
- 8.5 Neither HSL nor Snap Surveys provides any assurance that the use of the HSL Safety Climate Tool (SCT) ver1.0 will not infringe the rights of any third party, but Clause 9 applies in such circumstances.

- 8.6 Neither HSL nor Snap Surveys provides any assurance concerning any aspect of the HSL Safety Climate Tool (SCT) ver1.0 other than those stated in this agreement. Any terms concerning them that would otherwise be implied are excluded, whether they would be implied by virtue of any circumstances, the nature of the HSL Safety Climate Tool (SCT) ver1.0, any rule of law, any previous transactions between you and HSL or Snap Surveys, or any general commercial practices. In particular, any term which would otherwise be implied by sections 13, 14 or 15 of the Sale of Goods Act 1979 or sections 3, 4 or 5 of the Supply of Goods and Services Act 1982, and any similar term which would otherwise be implied by common law, is excluded.

9. Infringement claims

- 9.1 An Infringement Claim is any claim or action brought against you by a third party and upheld by an English court (after any appeals which may be made) alleging that your use of the HSL Safety Climate Tool (SCT) ver1.0 either infringes a UK copyright or a UK registered trade mark belonging to that third party, or is a breach of confidence owed to that third party by HSL or Snap Surveys.
- 9.2 Provided you comply with the Infringement Indemnity Conditions below, HSL and /or Snap Surveys will defend or settle any Infringement Claim brought against you at their own cost and expense. If we are unable to settle such a claim so as to enable you to continue using the HSL Safety Climate Tool (SCT) ver1.0, HSL will refund a fair and reasonable part of any charges you have paid in connection with those.
- 9.3 The **Infringement Indemnity Conditions** are:
- (a) You must notify HSL of any Infringement Claim of which you are aware as soon as reasonably practicable, and in any event within 30 days.
 - (b) You must not make any admission, or offer or accept any compromise or settlement, without written permission from HSL.
 - (c) You must allow HSL and/or Snap Surveys to conduct all litigation, negotiations and settlements, either in its own name or in yours (at HSL's option).
 - (d) You must give HSL any assistance it reasonably asks for in connection with any litigation, negotiations and settlements.
- 9.4 The obligations of HSL and Snap Surveys under Clause 9.1 do not apply to the extent that the claim concerns your use or possession of anything other than the most recent version of HSL Safety Climate Tool (SCT) available to you. For these purposes, a new version is deemed to be available to you 2 days after HSL gives notice pursuant to Clause 4.7.

- 9.5 The obligations of HSL and Snap Surveys under Clause 9.1 cease, and are deemed never to have arisen, if at any time you fail to comply fully with any of the Infringement Indemnity Conditions. If this happens, you will reimburse any monies HSL has paid pursuant to that clause.

10. Restrictions of liability

- 10.1 The Directors, officers, employees and agents of HSL and Snap Surveys do not have any liability to you under this agreement, and they may each rely on and enforce this Clause 10.1.
- 10.2 Installation of this software is the responsibility of the user and neither HSL nor Snap Surveys accepts any liability for any problems arising from incorrect installation.
- 10.3 Neither HSL nor Snap Surveys is liable for any indirect or consequential loss or damage.
- 10.4 Neither HSL nor Snap Surveys is liable for any loss of revenue, profit, goodwill or reputation, or for any damage to any of these.
- 10.5 Neither HSL nor Snap Surveys is liable for any loss or corruption of any data on Your System to the extent it could have been avoided or reduced by your use of data backup procedures.
- 10.6 Except as described in Clause 9, neither HSL nor Snap Surveys is liable for any consequences of any claims or proceedings brought against you by any third party.
- 10.7 HSL's total liability for all loss, damage, expense and costs arising or incurred in connection with this agreement and any aspect of the HSL Safety Climate Tool (SCT) ver1.0 or its supply, non-supply or use is limited to the value of the original order placed for the HSL Safety Climate Tool (SCT) ver1.0. This limit applies whether HSL's liability arises because it has not been excluded or restricted under any other term, or because HSL is unable to rely on such an exclusion or restriction.

11. Termination

This Licence may be ended:

- 11.1. **By You:** You have the right to end this Licence at any time by giving 30 days notice to HSL in writing.
- 11.2. **By HSL:** after the end of the initial term (as specified in Clause 4.4) by giving You 6 calendar months notice in writing.
- 11.3. **By HSL:** at any time if You (i) are unable to pay your debts within the meaning of section 123 of the Insolvency Act 1986; (ii) are insolvent; (iii) are subject to an order or a resolution for your liquidation, administration, winding-up or dissolution otherwise than for the purposes of a solvent amalgamation or reconstruction; (iv) have an administrative or other receiver, manager, trustee, liquidator, administrator or similar officer appointed over all or any substantial part of your assets; (v) enter into, or propose, any composition or arrangement with your creditors generally; or (vi) are subject to any analogous event or proceeding in any applicable jurisdiction.
- 11.4. **By HSL:** at any time if You are in breach of this agreement and that breach cannot be remedied. Furthermore if You remain in breach of this agreement more than 30 days after being notified: (i) that You are in breach, (ii) what the breach consists of, (iii) that You are required to remedy that breach.
- 11.5. **By HSL:** at any time and by giving written notice, HSL may bring to an end all or any aspect of Your Licence if, in its reasonable opinion, that is necessary in order to avoid any infringement of a third party's Intellectual Property Rights. No minimum notice period is required. If HSL exercises its rights under this Clause, and cannot provide an alternative or new version (pursuant to Clause 4.7) it will refund a fair and reasonable part of any charges you have paid in connection with the HSL Safety Climate Tool (SCT) ver1.0.
- 11.6. If this agreement is terminated by You or by HSL under Clauses 11.1 to 11.4:
 - (a). All payments due under this agreement become payable immediately. HSL may claim any such payments due to it as part of the price due under this agreement.
 - (b). Any obligations placed upon HSL and/or Snap Surveys under the terms of this agreement will cease.
 - (c). You will cease use and will remove all copies of the HSL Safety Climate Tool (SCT) ver1.0 from Your System with immediate effect and provide evidence of destruction or return of the original CD-ROM.
 - (d). The remainder of Your obligations under the terms of this agreement continue to have full effect.

12. Force Majeure

- 12.1. Neither HSL nor Snap Surveys are in breach of this agreement, or liable to you in any way whatsoever, for failing or being late to perform any obligation under this agreement to the extent that is due to a cause beyond its reasonable control (which includes anything which is your fault or which is within your control).

13. Confidentiality

- 13.1. Each party will keep confidential any Confidential Information it acquires and will use that information only for the purposes of concluding this agreement and in furtherance of it. However, any party may disclose any Confidential Information it acquires: (i) in accordance with any legal or regulatory requirement; (ii) in confidence to its lawyers for the purpose of obtaining legal advice; (iii) in confidence to those of its staff who are concerned with the negotiation or implementation of this agreement, but only to the extent that the individual needs to know the information and only after it has informed the individual both that the information is confidential and of its specific obligations under this clause 13.
- 13.2. A party will not record or copy any Confidential Information it acquires, nor incorporate or embody any of it in anything, without the other's permission.
- 13.3. A party may use and disclose any Confidential Information it acquires to the extent that: (i) it also acquires that particular information otherwise than in connection with this agreement or the supply, receipt or use of the HSL Safety Climate Tool (SCT) ver1.0, and it is otherwise entitled to use it; or (ii) that information has ceased to be confidential otherwise than as a consequence of that party's breach of this agreement.
- 13.4. Any use or disclosure of any Confidential Information by any member of a party's staff is deemed to be by that party.

14. General

- 14.1. Except where this agreement expressly provides otherwise, the written terms of this document record the entire agreement between You, HSL and Snap Surveys in connection with the HSL Safety Climate Tool (SCT) ver1.0 and any other matters mentioned in this agreement. None of the parties has relied on any representation that is not recorded here and all parties will refrain from claiming otherwise. This does not affect any party's liabilities or remedies for fraud.
- 14.2. An obligation to refrain from doing something (in whatever language that obligation is expressed) includes an obligation not to attempt or purport to do that thing.

- 14.3. Except where this agreement expressly provides otherwise, the remedies provided for in this agreement are in addition to the remedies provided by law or equity.
- 14.4. You will accept that HSL and/or Snap Surveys may sometimes meet their obligations by a use of a third party.
- 14.5. HSL and/or Snap Surveys may assign the benefit of this agreement to a third party without consulting you, but HSL (or whoever the benefit of this agreement has been assigned to) will notify You of such an assignment, either before or after it occurs.
- 14.6. You may not assign any right, benefit or interest in or arising out of this agreement to any person, or hold any of these in trust for any person, without written permission from HSL.
- 14.7. Except where this agreement expressly provides otherwise, it does not give anyone other than You, HSL and Snap Surveys and any permitted assignees any right to enforce any of its terms. Each party is entitled to exercise its rights (if any), to rescind, terminate or vary this agreement without the consent of any third party and without informing any third party.
- 14.8. A party does not waive or otherwise forego its right to exercise or claim any right or remedy by reason of any delay in exercising or claiming that or any other right or remedy. Nor does it vary this agreement. The other parties will not claim that such a delay or failure has such an effect.
- 14.9. If a court rules that any aspect of this agreement is illegal, void or unenforceable, the rest of it continues to have effect as if that aspect had been omitted. But if any such aspect would be lawful and enforceable if some part of it were modified, it applies with whatever modification is necessary to give effect, so far as is possible, to the commercial intention as recorded in this agreement.
- 14.10. Except where this agreement expressly provides otherwise, any amendment, waiver or variation of this agreement is not binding on any party unless it is set out in writing, is expressed to amend this agreement, and is signed on behalf of all parties.
- 14.11. This agreement is subject to the law of England, and You, HSL and Snap Surveys will submit any disputes concerning or arising out of this agreement or any aspect of the HSL Safety Climate Tool (SCT) ver1.0, its supply, non-supply or use, to the exclusive jurisdiction of the English courts. As an exception, HSL may apply to any court anywhere in the world for an order restraining your use of the HSL Safety Climate Tool (SCT) ver1.0 in breach of this agreement, or following the termination of Your Licence, and may enforce any such order.