



# AUTOMOTIVE LIFT INSTITUTE, INC.

P.O. Box 85 • Cortland, N.Y. 13045 • Tel: (607) 756-7775 • Fax: (607) 756-0888  
www.autolift.org • info@autolift.org



## Lifting It Right Online – Annual (Renewable) Subscription

<b>Client Name:</b> _____	<b>Effective Date:</b> _____
---------------------------	------------------------------

<b>KPA Account Name:</b> _____
--------------------------------

This agreement (the “**Agreement**”) is dated as of the Effective Date between Automotive Lift Institute, Inc. (“**ALI**”) and the client identified above (the “**Client**”) (each a “**party**,” and collectively the “**parties**”). This Agreement consists of this Cover Page and the attached General Terms and Conditions.

**Term:** This Agreement will begin on the Effective Date and continue in full force and effect for one (1) year (the “**Initial Term**”), unless earlier terminated in accordance with the Agreement. Thereafter, this Agreement will automatically renew for additional one (1) year terms unless either party gives written notice of non-renewal to the other party at least ninety (90) days prior to the expiration of the then-current term (each a “**Renewal Term**” and, together with the Initial Term, the “**Term**”).

- Pursuant to this Agreement, ALI shall provide unlimited access to the Automotive Lift Institute *Lifting It Right* Online Course to **Client** including all of its members and/or employees located at its Facility at \_\_\_\_\_.
- COST:** The annual cost for this subscription shall be \$240, which shall be payable upon the Effective Date and will automatically renew 90 days prior to its termination unless Client provides written notice to terminate.
- This subscription is non-refundable and shall not be prorated if terminated prior to the end of the Term.

By signing below each party agrees to be bound to the terms of this Agreement as of the Effective Date.

### Automotive Lift Institute, Inc.

### Client

Signature: \_\_\_\_\_

Name: Heather Almeida

Title: Administrative Manager

Date: \_\_\_\_\_

Signature: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

\*\*\*

### CREDIT CARD PAYMENT

Card Type:    American Express                       Discover                       MasterCard                       Visa

Card Number: \_\_\_\_\_ Exp Date (mm/yy): \_\_\_\_\_ Security Code: \_\_\_\_\_

Billing Address: \_\_\_\_\_ City, ST: \_\_\_\_\_ Zip code: \_\_\_\_\_

Cardholder Email Address: \_\_\_\_\_

General terms and conditions attached (2 pages)

# GENERAL TERMS AND CONDITION

## 1. ALI SERVICES

1.1 **Services.** ALI will provide to Client unlimited access to the Lifting It Right Online Course (“**Services**”), subject to Client’s payment of all fees required by this Agreement. All Services are deemed accepted upon delivery.

1.2 **Standard of Care.** ALI shall provide Services in a professional and workmanlike manner. As ALI’s sole obligation and Client’s sole and exclusive remedy for breach of this Section, ALI will re-provide defective Services at no additional cost to Client.

## 2. FEES

2.1 **Fees.** As consideration for furnishing any Services, ALI will be entitled to receive the fixed fees described in the Cover Page (“**Fees**”) and Client will pay the Fees pursuant to this Agreement. ALI will not increase the Fees during the initial Term beginning on the Effective Date and may only increase the Fees thereafter by giving Client written notice at least thirty (30) days prior to such increase.

2.2 **Payment.** Client will pay all Fees upon initial sign-up. All payments will be made in U.S. dollars. Any payment that is over thirty (30) days late will accrue interest at the rate of 18% per annum, or the highest rate allowed by applicable law, whichever is less, compounded monthly, until paid in full. Notwithstanding any other provision of this Agreement, in the event of any overdue payments, ALI may, at its sole election, suspend its provision of Services without liability to Client, until such time as Client has made all payments then due. ALI shall have the right to collect from Client its reasonable costs and expenses incurred in collecting any undisputed amounts that are due and owing by Client hereunder, including reasonable attorneys’ fees, in addition to any damages or other remedies that may be available.

2.3 **Taxes.** Client shall be responsible for payment of all applicable sales, use, excise and other taxes and assessments relating to this Agreement, excluding any taxes based on the net income of ALI. Client will pay such taxes or provide ALI with any applicable certificate of exemption acceptable to the appropriate taxing authorities.

## 3. CLIENT RESPONSIBILITIES

3.1 **Cooperation; Provision of Information.** Client acknowledges and agrees that ALI’s provision of Services is contingent on Client’s timely cooperation and performance of its obligations under this Agreement.

3.2 **Equipment.** Client shall be solely responsible for installing and maintaining high-speed internet access and all necessary software and hardware necessary for ALI to provide the Services.

## 4. DISCLAIMERS

4.1 **WARRANTY DISCLAIMER.** EXCEPT AS EXPRESSLY PROVIDED IN THE AGREEMENT, ALI MAKES NO WARRANTIES OF ANY KIND, WHETHER EXPRESS OR IMPLIED, STATUTORY OR OTHERWISE RELATING TO THE SERVICES, INCLUDING BUT NOT LIMITED TO ANY IMPLIED WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE, NON-INFRINGEMENT, QUIET ENJOYMENT OR FROM A COURSE OF DEALING, COURSE OF PERFORMANCE OR USAGE IN TRADE. ALI DOES NOT WARRANT, AND SPECIFICALLY DISCLAIMS, THAT THE SERVICES WILL BE ACCURATE, WITHOUT INTERRUPTION OR ERROR-FREE. ALI PROVIDES THE SERVICES “AS IS,” “AS AVAILABLE,” AND WITH ALL FAULTS.

4.2 **Other Disclaimers.** Notwithstanding the generality of the foregoing, in connection with the provision of Services under this

Agreement, ALI and Client agree that: (a) ALI does not give legal or tax advice or opinions; (b) Services do not provide any assurance or warranty that employees, contractors or other third parties will not make claims against Client for personal or bodily injury or property damage or protect Client from such claims; (c) ALI’s Services do not constitute a complete program of safety compliance, but are intended to assist Client in the establishment and implementation of such a program or programs, for which Client is ultimately responsible. ALI does not warrant that Client’s business operations, products, or services will comply with applicable law; (d) ALI will not be responsible for, and Client is solely responsible for, the imposition on Client of any fines, penalties, fees or other mandatory impositions or damages imposed by governmental authorities; and (e) ALI is not responsible for, and Client is solely responsible for, correcting workplace hazards. ALI does not represent, warranty, or promise that the Services provided by it hereunder will protect Client from all claims or liabilities relating to automotive lift safety matters. This Agreement does not constitute insurance against safety risks. ALI IS NOT A PROVIDER OF LEGAL SERVICES. THE CONTENT OF THE COURSE, OR ANY PART OF IT SHOULD NOT BE CONSTRUED AS PROVIDING LEGAL ADVICE TO ANY PERSON ACCESSING THE COURSE. ALI IS NOT INTENDED TO BE AND THE CLIENT SHOULD NOT ASSUME IT TO BE AN ALL INCLUSIVE MECHANISM FOR LEGAL COMPLIANCE. THE COURSE IS INTENDED TO BE AN AUTOMATED TOOL TO ASSIST LEGAL COMPLIANCE AND SHOULD NOT BE USED AS A SUBSTITUTE FOR OBTAINING LEGAL ADVICE FROM COUNSEL.

## 5. REPRESENTATIONS AND WARRANTIES

5.1 **Of Each Party.** Each party represents and warrants to the other party that it has the power and authority to enter into this Agreement.

5.2 **Of Client.** Client represents and warrants that: (i) Client is and will be solely responsible for workplace safety.

6. **MAINTENANCE AND SUPPORT.** ALI or its partner, KPA, shall provide online support, if necessary.

7. **CONFIDENTIAL INFORMATION.** “**Confidential Information**” means all written or oral information, disclosed by either party to the other that has been identified as confidential or that by its nature ought reasonably to be considered confidential. Information relating to Services, pricing of Services, and ALI’s documentation is the Confidential Information of ALI. During this Agreement, each party will have access to certain Confidential Information of the other. The receiving party agrees that it will not use or disclose to any third party any Confidential Information of the disclosing party, except as expressly permitted under this Agreement. Each party will maintain the confidentiality of the other party’s Confidential Information, and each party will use the same efforts to maintain such confidentiality as it uses to protect the confidentiality of its own confidential information, but in all events at least a reasonable degree of care. Each party agrees: (a) not to disclose the Confidential Information of the other to anyone except its employees, contractors and advisors (“**Representatives**”) on a strict need to know basis and subject to a written duty of confidence, (b) to use the Confidential Information strictly for the performance or receipt of this Agreement, and (c) to use commercially reasonable efforts to protect the confidentiality of the other party’s Confidential Information. This Section will not apply to Confidential Information that (i) is or becomes publicly

available through no fault of the recipient, (ii) is already in the recipient's possession at the time of its disclosure without any duty of confidence, or (iii) is independently developed by the recipient without use of the disclosing party's Confidential Information. Each party may disclose Confidential Information to the extent required to comply with a court or governmental order, or to comply with applicable law. Each party will be responsible for the acts and omissions of its Representatives related to any breach of this Section. Each party agrees that any actual or threatened breach of this Section will constitute immediate, irreparable harm to the innocent party for which monetary damages would be an inadequate remedy, and that injunctive relief is an appropriate remedy for such breach.

**8. INDEMNIFICATION.** Client will indemnify, defend and hold ALI, its affiliates, and their directors, officers, employees and agents harmless from and against any loss, liability, damage, claim, suit, cost or expense, including reasonable attorneys' fees, incurred by or brought against ALI arising out of (i) Client's acts, omission, and other activities related to the Agreement, (ii) the provision of

Services on Client's premises (except to the extent caused by ALI's gross negligence or intentional misconduct) and (iii) Client Content. The obligations of ALI hereunder are for the benefit of Client only and ALI shall have no liability or responsibility to any other person in connection with any performance or nonperformance of this Agreement.

**9. LIMITATION OF LIABILITY.** UNDER NO CIRCUMSTANCES WILL ALI OR ITS AGENTS AND AFFILIATES HAVE ANY LIABILITY RELATED TO THIS AGREEMENT ARISING OUT OF BREACH OR FAILURE OF EXPRESS OR IMPLIED WARRANTY, BREACH OF CONTRACT, MISREPRESENTATION, TORT, NEGLIGENCE, STRICT LIABILITY, IN TORT, OR OTHERWISE: (A) FOR ANY CONSEQUENTIAL, INDIRECT, SPECIAL, PUNITIVE OR INCIDENTAL DAMAGES, WHETHER FORESEEABLE OR UNFORESEEABLE, (INCLUDING, BUT NOT LIMITED TO, CLAIMS FOR LOSS OF DATA, GOODWILL, LOST PROFITS, THE COST OF PROCURING SUBSTITUTE SERVICES, STOPPAGE OF OTHER WORK OR IMPLEMENTATION OF OTHER ASSETS), OR (B) FOR AGGREGATE DAMAGES IN EXCESS OF THE TOTAL AMOUNT THAT ALI ACTUALLY RECEIVED FROM CLIENT AND THAT SPECIFIC FACILITY FOR THE SPECIFIC SERVICES OR DELIVERABLES THAT DIRECTLY CAUSED THE DAMAGE DURING THE 12 MONTH PERIOD IMMEDIATELY PRECEDING THE EVENT GIVING RISE TO THE CLAIM.

#### **10. TERM AND TERMINATION**

**10.1 Termination for Cause.** Either party may terminate this Agreement at any time immediately upon written notice to the other if the other party materially breaches any provision of this Agreement and does not remedy the breach within thirty (30) days after receiving written notice of the breach requiring its remedy.

**10.2 Client Termination.** If Client terminates this Agreement during its Term, Client shall not be entitled to a refund or proration of fees paid.

**10.3 Effects of Termination.** Upon any termination or non-renewal of this Agreement for any reason (a) any amounts owed to ALI before or at such termination will become immediately due, and (b) each party will promptly destroy or return any Confidential Information of the other party that remains in its possession or controls.

**10.4 Survival.** Sections 2, 4, 7, 8, 9, 10.2, 10.3, and 11 will survive any termination or non-renewal of this Agreement.

#### **11. GENERAL**

**11.1 Entire Agreement.** This Agreement constitutes the entire agreement between the parties regarding its subject matter and supersedes all prior or contemporaneous agreements, understandings, and communication, whether written or oral. This Agreement may be amended only by a written document signed by both parties. Any waiver of any provision of this Agreement must be in writing and will not be deemed a waiver of any other provision. No waiver will be binding unless executed in writing by the party making the waiver. If any portion of this Agreement is determined to be or becomes unenforceable or illegal, then such portion will be reformed or eliminated to the minimum extent necessary for this Agreement to be enforceable and legal, and this Agreement will remain in effect in accordance with its provisions as modified by such reformation or elimination. This Agreement may be executed in counterparts, which taken together will form one legal instrument. The captions and headings of the sections and subsections of this Agreement are for convenience of reference only and are not to be used in the interpretation of this Agreement.

**11.2 Governing Law.** This Agreement will be governed by and construed in accordance with the laws of the State of New York, without reference to its conflict of law principles.

**11.3 Force Majeure.** Either party shall be excused from performance and shall not be liable for any delay in whole or in part (except for the payment of money), caused by the occurrence of any contingency beyond the reasonable control of the excused party or its subcontractors or suppliers. These contingencies include, without limitation, war, sabotage, insurrection, riot or other act of civil disobedience, act of public enemy, failure or delay in transportation, act of any government or any agency or subdivision thereof affecting the terms hereof, accident, fire, explosion, flood, severe weather or other act of God, shortage of labor, fuel, raw material or machinery or technical system failure.

**11.4 Assignment.** Neither party may assign or transfer any rights or delegate any duties under this Agreement without the other party's prior written consent, except that ALI may assign or transfer this Agreement in connection with a sale or transfer of all or substantially all of ALI's assets, stock or business by sale, merger, consolidation, or similar transaction. Any purported assignment or transfer in violation of this Section will be void. Subject to the foregoing restrictions, this Agreement will bind and benefit the parties and their successors and permitted assigns. Client agrees that ALI may subcontract certain aspects of the Solution and the Services to qualified third parties, provided, however, that any such subcontracting arrangement will not relieve ALI of any of its obligations hereunder.

**11.5 No Third-Party Beneficiaries.** Notwithstanding anything to the contrary contained herein, no party will be deemed as a third-party beneficiary to this Agreement.

**11.6 Independent Contractor.** Each party is an independent contractor with respect to the other party hereunder. This Agreement will not be construed to (i) create any employment, partnership, joint venture, or agency relationship between the parties, or (ii) authorize any party to enter into any commitment or agreement binding on the other party. As an independent contractor, ALI shall be solely responsible for determining the means and methods for performing the Services, and ALI shall have complete charge and responsibility for persons employed by ALI and engaged in the performance of the Services.

**11.7 Notices.** All notices or other written communications required by or permitted under this Agreement will be in writing and deemed validly given if delivered in person or by certified mail sent to the addresses set forth on the Subscription Page or to such other address as a party may later specify in writing and will be effective upon receipt.