

Amendment No. 1 to End User License Agreement

This **Amendment No. 1 to End User License Agreement** (the "Amendment"), effective as of the ____ day of _____, 2020 ("Amendment 1 Effective Date"), is by and between **ESi Acquisition, Inc.** ("ESi") and **San Bernardino County Fire Department Office of Emergency Services** ("Client").

WHEREAS, ESi and Client are parties to that certain End User License Agreement, dated Rev 02/23/2007 (the "Agreement"), pursuant to which ESi provides Client certain use and access to the Software and services, all as expressly provided in the Agreement. A copy of the Agreement is attached to this Amendment as Attachment A;

WHEREAS, ESi and Client now desire to amend the Agreement as expressly provided in this Amendment.

NOW, THEREFORE, in consideration of the mutual promises, covenants, and agreements made and contained herein, and intending to be legally bound hereby, the parties hereto agree as follows:

1. Amendment to Agreement. Effective as of the Amendment Effective Date, the Agreement is amended as follows:

A. Section 19(a) currently reads as follows:

(a) Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Georgia (United States of America) regardless of application of choice of law rules or principles. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. Unless otherwise elected by ESi at its option and in writing for a particular instance, the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state or United States District Court having within its jurisdiction the location of ESi's principal place of business in Augusta, Georgia. Both parties consent to the jurisdiction of such courts and agree that process may be served in any manner allowed by the laws of the State of Georgia or of the United States. If Licensee acquires this License in a country other than the United States or its territories, local law may apply.

and shall be deleted in its entirety and substituting in lieu thereof the following:

(a) Governing Law. This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of California (United States of America) regardless of application of choice of law rules or principles. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. Unless otherwise elected by ESi at its option and in writing for a particular instance, the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state or United States District Court having within its jurisdiction the location of Client's principal place in San Bernardino, California. Both parties consent to the jurisdiction of such courts and agree that process may be served in any manner allowed by the laws of the State of California or of the United States. If Licensee acquires this License in a country other than the United States or its territories, local law may apply.

2. Entire Agreement. Other than as expressly amended herein, all other terms of the Agreement shall remain in full force and effect. This Amendment and the Agreement, including, without limitation, all documents referred to herein and attached hereto, constitute the entire agreement of the parties as to the specific subject matter hereof and supersede all prior representations, understandings and agreements between the parties with respect to such subject matter. If there is a conflict between or among such documents, first this Amendment, then the Agreement shall control. Any further amendments to the Agreement must be in a writing signed by both parties.

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**San Bernardino County Fire Department
Office of Emergency Services**

ESi Acquisition, Inc.

By: _____

By: _____

Name: _____

Name: _____

Title: _____

Title: _____

Date: _____

Date: _____

/Attachment A follows

ATTACHMENT A TO THE AMENDMENT NO. 1 TO THE END USER LICENSE AGREEMENT

[intentionally blank – the End User License Agreement follows hereafter]

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IMPORTANT – READ CAREFULLY

NOTWITHSTANDING ANYTHING IN THE WRITTEN DOCUMENTATION, BY CLICKING ON THE "ACCEPT BUTTON," OR BY INSTALLING, READING, OR OTHERWISE USING THE SOFTWARE, OR BY OPENING THIS PACKAGE, YOU AGREE TO BE BOUND BY THE TERMS OF THIS AGREEMENT AND WARRANT THAT YOU HAVE THE AUTHORITY TO BIND THE LICENSEE OR USER OF THIS SOFTWARE AND SUCH LICENSEE OR USER IS CONSENTING TO BE BOUND BY, AND IS BECOMING A PARTY TO THIS AGREEMENT. IF YOU DO NOT AGREE WITH ALL THE TERMS, YOU MUST CLICK ON THE "CANCEL BUTTON", OR CANCEL THE INSTALL, IF APPLICABLE, AND YOU WILL NOT HAVE ANY LICENSE TO ANY PART OF THE SOFTWARE, OR YOU MUST RETURN THIS PRODUCT, AND ALL MANUALS AND DOCUMENTATION, TO THE PLACE YOU OBTAINED THEM WITHIN TEN (10) DAYS OF PURCHASE FOR A REFUND. WRITTEN APPROVAL IS NOT A PREREQUISITE TO THE VALIDITY OR ENFORCEABILITY OF THIS AGREEMENT. IF YOU HAVE ORDERED THIS PRODUCT, ESI's ACCEPTANCE IS EXPRESSLY CONDITIONAL ON YOUR ASSENT TO THESE TERMS TO THE EXCLUSION OF ALL OTHER TERMS (EXCEPT NON-PREPRINTED QUANTITY, PRICE, PAYMENT AND LICENSE RESTRICTION TERMS AGREED UPON BY YOU AND ESI IN WRITING); IF THESE TERMS ARE CONSIDERED AN OFFER BY ESI, ACCEPTANCE IS EXPRESSLY LIMITED TO THESE TERMS:

1. ESi License Agreement.

This is a license agreement and not an agreement for sale. This License Agreement ("Agreement") is between the Licensee and ESI Acquisition, Inc. ("ESI"), a Delaware Corporation with its principal place of business at 823 Broad Street, Augusta, GA 30901. This Agreement gives Licensee certain limited rights to use the proprietary ESI Software, Software Updates, and Documentation including any updates thereto.

2. Definitions.

(a) "Documentation" means the WebEOC® Administrator and User Manuals and any other documents, materials, information or guidance, whether supplied as printed material or in electronic form, provided by ESI in conjunction with the purchase, training, use, maintenance or update of the Software.

(b) "ESI" means ESI Acquisition, Inc., a Delaware corporation, with its primary place of business at 823 Broad Street, Augusta, GA, USA, 30901.

(c) "License" means certain limited rights to use the proprietary ESI Software, Software Updates, online and/or hard-copy documentation and user guides as set forth in Section 4 of this Agreement.

(d) "Licensee" means the person or legal entity accepting this License to use the Software, or for whom such License was obtained.

(e) "Software," "Server Software," "Software Plug-In" and "Software Updates" collectively mean all of the WebEOC® software received from ESI with this License.

3. Ownership and Licensing Authority.

(a) Ownership of, and title to, the Software and Documentation shall be held by ESI and its licensor(s) and is protected by United States law and applicable international laws, treaties and conventions

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regarding intellectual property. ESI warrants that it has the power and authority to grant the license described herein. ESI and its licensor(s) shall retain all rights, title and ownership not granted herein to all copies of the Software and Documentation licensed under this Agreement.

(b) ESI represents and warrants that it is authorized to redistribute and license any third party software delivered with the Software and Documentation provided under this Agreement. The owner of such third party software shall have the right to enforce this Agreement to the extent permitted by applicable law.

4. Grant of License.

(a) General. ESI grants to Licensee, and Licensee accepts, subject to the following terms and conditions and payment of the applicable license fee, a perpetual, limited nonexclusive, nontransferable, and non-sublicensable right, revocable according to the terms stated herein, to use the Software and Documentation.

5. Permitted Uses.

(a) Licensee may install and use one (1) copy of the Software on one (1) Licensed Machine. As used herein, Licensed Machine means a single box, whether a laptop, personal computer or server, with a single or multiprocessing unit (CPU) that is used for any purpose other than running the software in a test environment before placing it in operational use.

(b) Licensee may install a second copy of the Software on a second machine as long as only one (1) copy of the Software is in use at any one time, except that if the second machine will be used as a redundant licensed machine with replication between primary and secondary machines, Licensee must obtain from ESI, according to the terms of the ESI standard price list, a Redundant Server License. Licensee is not required to obtain additional licenses for Software Plug-Ins installed on a redundant licensed machine. As used herein, Software Plug-In shall mean WebEOC® Resource Manager, WebEOC® Resource ManagerGIS, WebEOC® GISe, WebEOC® GISmp, WebEOC® Team Management, WebEOC® Calendar, MapTac™ and any other Software Plug-In applications ESI may release from time to time.

(c) Licensee may also install a copy of the Software on one (1) additional licensed machine set up in a test environment for the sole purpose of testing the Software and updates locally before placing it “in production”.

(d) There is no limit to the number of individuals who may access the Software as Users. User functions are limited to those listed in the WebEOC User Manual. Users may not be granted Administrator privileges except that Licensee may grant designated Users administrator profiles exclusively to create, or edit, incidents in WebEOC and to add, or edit, maps of Graphic Interface Format files (.GIF) within MapTac™. Users that require administrator rights in excess of those identified above, or full administrator privileges, require their own license to the Software.

(e) Licensee may provide its consultant(s) or independent contractor(s) with access to the Software and Documentation, provided that the consultant(s) or independent contractor(s) is using the Software and Documentation exclusively for the benefit of the Licensee.

(f) Licensee may use the WebEOC® BoardBuilder tool to copy, modify and create WebEOC® forms and templates and Licensee may distribute, in printed form or as electronic media, such forms and templates for use by other Licensees of the Software, provided that such forms and templates are used for

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internal business purposes only. Licensee shall not sell, resell, license or otherwise transfer for value the derivative works created using the WebEOC® BoardBuilder tool, and Licensee shall not distribute such forms and templates as part of any product or service for value to any third party.

6. Payments.

The License Fee is due and payable when the Software and/or Software Plug-In is shipped to the Licensee or installed by ESI. Additional license fees are required to use the Software on more than one (1) Licensed Machine and as otherwise required by Section 5 of this Agreement. Such license fees are calculated per Licensed Machine and are due and payable prior to installation of the Software on the additional machines.

7. Protection of Software.

Licensee agrees to take all reasonable steps to protect the Software and Documentation from unauthorized copying or use. The Software source code represents and embodies trade secrets of ESI and/or its licensors. The Software source code and embodied trade secrets are not licensed to the Licensee. Licensee agrees not to disassemble, decompile or otherwise reverse engineer the Software, use reflection or other mechanism to view, interpret, translate or try to understand the structure of the Software, or otherwise attempt to discover the source code and/or the trade secrets contained in the source code, and Licensee will not allow third parties to do so. Licensee may not, nor allow third parties to, modify or alter the Software in any way.

8. Confidentiality.

The Software and Documentation contain confidential information and trade secrets of ESI. Licensee agrees to hold in confidence, not disclose and not use the Software and Documentation except as expressly provided herein, and Licensee shall ensure that there is no breach, compromise or violation of such confidentiality by Licensee's employees, consultants, or independent contractors. Licensee recognizes and agrees that there is no adequate remedy at law for a breach of this Section or of Section 7 of this Agreement, that such breach would irreparably harm ESI, that monetary damages would not be an adequate remedy, and that ESI is entitled to injunctive relief with respect to any such breach, or potential breach, in addition to any and all other remedies available at law or at equity.

9. Proprietary Interests.

The Software and Documentation, and all copies thereof, shall remain the exclusive property of ESI. All applicable rights to copyrights and trademarks shall remain vested in ESI and/or its licensors and Licensee shall not undertake to copyright or trademark the Software and Documentation. However, Licensee shall have title at all times to data input and output arising out of the use of the Software, and any computer programs developed by or for Licensee using output of the Software as input to another source, and which do not include any logic and code of the Software, and such shall remain the exclusive property of the Licensee.

10. Restrictions.

Except as expressly authorized in this Agreement, Licensee agrees not to use, rent, lease, loan, sell, sublicense, distribute, transfer, copy, reproduce, display, modify, create derivative works of, provide commercial hosting services, time share or dispose of the Software or Documentation, or any part thereof.

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Licensee may use the Software and Documentation solely for Licensee's internal business purposes. Except as noted in Section 4, Licensee may not use the Software to provide any services to third parties.

11. Assignment.

Licensee may not assign or otherwise transfer in whole or in part or in any manner any rights, obligations, or any interest in or under this Agreement without ESI's prior written consent and any attempted assignment will be void. A merger or other acquisition by a third party will be treated as an assignment. ESI may at any time and without Licensee's consent assign all or a portion of its rights and duties under this Agreement to a company or companies wholly owning, owned by, or in common ownership with ESI.

12. Copying.

Licensee may make as many copies of the Documentation as necessary for Licensee's internal purposes provided, that the Licensee not modify or alter the content or appearance of the Documentation, that the Licensee not modify or alter the appearance of nor eliminate any references to ESI, WebEOC or other ESI Software in the Documentation, that the Licensee reproduce and distribute the ESI copyright and notices page contained in the Documentation with all such copies, and that the Licensee maintain the confidentiality of the copies in accordance with Section 8 above.

13. Maintenance and Support.

(a) ESI will create updates to the Software from time to time. During the first year of this Agreement, Licensee shall be entitled to receive any updates created and generally released by ESI as standard product provided that the Licensee is not in violation of this Agreement. If Licensee desires to receive updates beyond the first year of this Agreement, Licensee must purchase a Software Support Plan for additional years and Licensee shall pay ESI the Software Support Plan fee in effect at the time of renewal. Payment of the Software Support Plan Fee shall entitle Licensee to receive all updates to purchased products for the number of years specified in Licensee's Software Support Plan Agreement.

(b) During the first year of this Agreement, the Licensee is entitled to receive from ESI routine telephone support, Monday through Friday, during the hours of 0800 to 1630 Eastern Standard Time (excluding holidays), and emergency telephone support at any time on any day of the week. Licensee acknowledges that certain Software Plug-Ins or software features, including but not limited to certain GIS interfaces, are provided by third party software providers and the hours of emergency telephone support for such products by those providers may vary.

(c) For the purposes of this Section 13, the "first year" of the Agreement shall commence on the first day of the month following installation, if ESI or its value-added reseller performs the Software installation, or on the first day of the month after the Software is shipped, if ESI or its value-added reseller ships the Software to the Licensee. The first year shall end on its first anniversary date.

14. Limited Warranty and Disclaimers.

(a) ESI warrants that the Software will perform in accordance with the accompanying Documentation for a period of one (1) year from the date of purchase.

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(b) If programming errors or defects do occur during this period and ESi is promptly notified in writing of the nature of the error, ESi will correct the error without charge.

(c) ESi's entire liability and Licensee's exclusive remedy shall be, at ESi's option, either (a) correction of the error or (b) return of the license fee. This limited warranty does not cover errors attributable to accident, abuse or misapplication, alteration, operation outside the parameters specified in this Agreement or the Documentation, failure to install Updates provided during the warranty period, installation, training or programming provided by anyone other than ESi or an ESi-certified technician, or other breach of this Agreement by Licensee.

(d) ESi DISCLAIMS ALL OTHER WARRANTIES, EXPRESSED OR IMPLIED, INCLUDING BUT NOT LIMITED TO, IMPLIED WARRANTIES OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, TITLE AND NON-INFRINGEMENT WITH RESPECT TO THE SOFTWARE AND/OR ACCOMPANYING DOCUMENTATION. NO ORAL OR WRITTEN ADVICE OR INFORMATION PROVIDED BY ESi OR ANY OF ITS AGENTS OR EMPLOYEES SHALL CREATE A WARRANTY, AND LICENSEE IS NOT ENTITLED TO RELY ON ANY SUCH ADVICE OR INFORMATION. ESi EXPRESSLY DISCLAIMS ANY WARRANTY THAT THE SOFTWARE WILL OPERATE UNINTERRUPTED OR FREE OF ERRORS.

(e) The software is not fault-tolerant and is not designed, manufactured, or intended for use or resale in hazardous environments that require fail-safe performance such as in the operation of nuclear facilities, aircraft navigation or communications systems, air traffic control, emergency response, terrorism prevention or response, life support or weapons systems (collectively "High Risk Activities"), the failure of which could lead to death, personal injury, or severe physical or environmental damage. ESi EXPRESSLY DISCLAIMS ANY WARRANTY OF FITNESS FOR HIGH RISK ACTIVITIES.

(f) To the extent permitted by law, Licensee agrees to indemnify, defend and hold ESi, its officers, directors, employees, agents, subcontractors, licensors, successors, and assigns harmless from and against any and all liability, losses, claims, expenses (including attorneys fees), demands or damages of any kind, including direct, indirect, special, punitive, incidental, or consequential damages, arising out of or in connection with the Licensee's use of the Software for High Risk Activities.

(g) Unless a Software Support Plan (Section 13) is in effect, any updates to the Software, including without limitation, any hot fixes provided to Licensee after the expiration of the One (1) year warranty period are not covered by any warranty or condition, express, implied or statutory.

15. Limited Liability.

ESi AND ITS LICENSORS' AGGREGATE LIABILITY ARISING FROM OR RELATING TO THIS AGREEMENT OR THE SOFTWARE OR DOCUMENTATION IS LIMITED TO THE TOTAL OF ALL PAYMENTS RECEIVED BY ESI FOR THE LICENSE. ESi AND ITS LICENSORS SHALL NOT IN ANY CASE BE LIABLE FOR ANY SPECIAL, INCIDENTAL, CONSEQUENTIAL (INCLUDING LOST PROFITS OR REVENUE, LOST SOFTWARE, LOSS OF DATA, COSTS OF RECREATING LOST DATA, OR THE COST OF ANY SUBSTITUTE SOFTWARE OR EQUIPMENT), INDIRECT OR PUNITIVE DAMAGES EVEN IF ESi HAS BEEN ADVISED OF THE POSSIBILITY OF SUCH DAMAGES, WHETHER UNDER THEORY OF WARRANTY, TORT, PRODUCTS LIABILITY OR OTHERWISE.

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16. License Term and Termination.

- (a) This Agreement and the License are effective upon Licensee's acceptance of the terms and conditions of this Agreement, as provided in the first paragraph above, and payment of the applicable License fees, and will remain in force until terminated.
- (b) ESI shall have the right to terminate the license granted hereunder by giving written notice of termination to Licensee if Licensee shall fail to pay the specified license fee when due or shall fail in any other material respect to comply with Licensee's obligations under this Agreement and such failure to pay or comply is not remedied to ESI's satisfaction within sixty (60) days after Licensee receives written notice thereof from ESI. Licensee acknowledges and agrees that ESI may seek equitable relief at any time to remedy a violation or threatened violation of the restrictions set forth herein regarding the use and protection of the Software and Documentation.
- (c) Upon termination, Licensee shall immediately destroy the original and all copies of the Software and Documentation, or return them to ESI.

17. Infringement of Patent and Other Proprietary Rights.

- (a) ESI represents to Licensee that it has no knowledge of any existing or potential claims that the Software or Documentation violates or infringes upon any patent, copyright, trade secret or other proprietary right of a third party.
- (b) ESI shall indemnify, defend and hold harmless Licensee and Permitted Users from and against all claims, damages, losses, liabilities and expenses, including reasonable attorneys' fees, arising out of any claim by a third party asserting that the Software, associated user documentation, services or any Permitted User's use thereof, infringes such third party's patent, copyright, trademark, trade secret, confidentiality or other right, provided that Licensee notifies ESI in writing within a reasonable time after Licensee first receives written notice of the claim and gives ESI reasonable assistance, at ESI's cost, in the defense or settlement of the claim.

18. No Disabling Codes, Timers, Counters, or Other Limitations.

The Software shall not include or contain any disabling code, timer, clock, counter or other limiting design or routine which causes the Software to be erased, inoperable or otherwise incapable of being used in the full manner for which it was designed and licensed pursuant to this Agreement after being used or copied a certain number of times, or after the lapse of a certain period of time, or after the occurrence or lapse of any similar triggering factor

19. General Conditions.

- (a) **Governing Law.** This Agreement shall be governed by, and interpreted in accordance with, the laws of the State of Georgia (United States of America) regardless of application of choice of law rules or principles. This Agreement expressly excludes the United Nations Convention on Contracts for the International Sale of Goods. Unless otherwise elected by ESI at its option and in writing for a particular instance, the sole jurisdiction and venue for actions related to the subject matter hereof shall be the state or United States District Court having within its jurisdiction the location of ESI's principal place of business in Augusta, Georgia. Both parties consent to the jurisdiction of such courts and agree that

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process may be served in any manner allowed by the laws of the State of Georgia or of the United States. If Licensee acquires this License in a country other than the United States or its territories, local law may apply.

(b) Entire Agreement. This Agreement sets forth the entire understanding and agreement between Licensee and ESi and may be amended only in a writing signed by both parties. This Agreement supersedes any and all other WebEOC license agreements, including without limitation, any License previously granted for any prior version of WebEOC. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of the Documentation or other licenses delivered with the Software, the terms and conditions of this Agreement shall govern and control. **NO VENDOR, DISTRIBUTOR, DEALER, RETAILER, SALES PERSON, OR OTHER PERSON IS AUTHORIZED TO MODIFY THIS AGREEMENT OR TO MAKE ANY WARRANTY, REPRESENTATION OR PROMISE WHICH IS DIFFERENT THAN, OR IN ADDITION TO, THE TERMS OF THIS AGREEMENT.**

(c) Waiver. No waiver of any right under this Agreement shall be effective unless in a writing, signed by a duly authorized representative of ESi. No waiver of any past or present right arising from any breach or failure to perform shall be deemed to be a waiver of any future right arising under this Agreement.

(d) Severability. If any provision of this Agreement is held by a court of competent jurisdiction to be void or unenforceable for any reason, that provision shall be reformed to the extent necessary to make the language enforceable. All other provisions of this Agreement shall remain in full force and effect.

20. Export Controls.

(a) Licensee acknowledges that the Software and Documentation are subject to United States export laws. Licensee shall not, nor shall Licensee authorize or permit its directors, employees, consultants, independent contractors or other persons, to export, re-export, disclose or otherwise provide the Software and/or Documentation to any country unless an appropriate license, exemption or authorization has been obtained from the U.S. Government.

(b) Licensee expressly agrees that Licensee shall not export, re-export, barter, or otherwise provide or disclose the Software and Documentation, in whole or in part, to: (a) any country covered by any United States trade embargo; (b) any person listed on the United States Department of Treasury's list of Specially Designated Nationals; (3) any person or entity listed on the United States Department of Commerce Denied Persons List; (4) any person or entity listed on the United States Department of Commerce Unverified or Entity Lists; (5) any person or entity listed on the United States Department of State Debarred List; or (6) any person or entity where such export, re-export, barter, disclosure or provision violates United State export control law or regulation. Licensee represents and warrants that neither it nor its directors, employees, consultants, nor any other persons or entities who may gain access to the Software and Documentation through the Licensee, are persons or entities subject to such U.S. export controls.

(c) Licensee agrees to defend, indemnify, and hold harmless ESi from and against any claim, loss, liability, damage or expense, including fines or legal fees incurred by ESi with respect to any of Licensee's export or re-export activities contrary to the foregoing instructions

21. U.S. Government Rights.

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(a) If Licensee is an agency, department, or other entity of the United States Government ("Government"), or funded by the United States Government, Licensee's use, duplication, reproduction, release, modification, disclosure or transfer of the Software, Documentation, technical specifications, or any related materials of any kind, including technical data, is restricted in accordance with Federal Acquisition Regulation ("FAR") 12.212 for civilian agencies, Defense Federal Acquisition Regulation Supplement ("DFARS") 227.7202 for military agencies and the equivalent regulations for the Department of Energy. The use of the Software and Documentation is further restricted in accordance with the terms of this Agreement, or any modification thereto.

(b) The Software and Documentation are commercial computer software and commercial computer software documentation. Licensee shall ensure that each copy used or possessed by or for the Government is labeled with the following: "Manufacturer is ESi Acquisition, Inc., 699 Broad Street, Suite 1100, Augusta, GA 30901. ALL RIGHTS RESERVED. PROPRIETARY PRODUCTS." For the purpose of any federal, state or local law, Licensee agrees that the Software and Documentation are trade secrets and proprietary commercial products of ESi and are not subject to disclosure.



Client Agreement

This Client Agreement (the "Agreement"), effected as of the date noted in the attached Schedule A (the "Effective Date"), is by and between TargetSolutions Learning, LLC. ("TSL"), a Delaware limited liability company, and the undersigned client ("Client"), and governs the purchase and ongoing use of the services described in this Agreement (the "Services").

1. Services. TSL shall provide the following services:

1.1. Access. TSL will provide Client a non-exclusive, non-transferable, revocable, limited license to remotely access and use the Services hereunder and, unless prohibited by law, will provide access to any person designated by Client ("Users").

1.2. Availability. TSL shall use commercially reasonable efforts to display its content and coursework for access and use by Client's Users twenty-four (24) hours a day, seven (7) days a week, subject to scheduled downtime for routine maintenance, emergency maintenance, system outages and other outages beyond TSL's control.

1.3. Help Desk. TSL will assist Users as needed on issues relating to usage via e-mail, and a toll free Help Desk five (5) days per week at scheduled hours.

2. Client's Obligations.

2.1. Compliance. Client shall be responsible for Users' compliance with this Agreement, and use commercially reasonable efforts to prevent unauthorized access to or use of the Services.

2.2. Identify Users. Client shall (i) provide a listing of its designated/enrolled Users; (ii) cause each of its Users to complete a profile; (iii) maintain user database by adding and removing Users as appropriate.

2.3. Future Functionality. Client agrees that its purchases hereunder are neither contingent on the delivery of any future functionality or features nor dependent on any public comments regarding future functionality or features.

3. Fees and Payments.

3.1. Fees. Client will pay for the Services in accordance with the fee schedule in Schedule A attached to this Agreement. Fees listed in Schedule A shall be increased by 3% per year both during the term of this Agreement, as well as for any renewal terms.

3.2. Payments. All fees due under this Agreement must be paid in United States dollars or Canadian Dollars, as applicable to Client's location. Such charges will be made in advance, according to the frequency stated in Schedule A. TSL will invoice in advance, and such invoices are due net 30 days from the invoice date. All fees collected under this Agreement are fully earned when due and nonrefundable when paid.

3.3. Suspension of Service for Overdue Payments. Any fees unpaid for more than ten (10) days past the due date shall bear interest at 1.5% per month. With fifteen (15) days prior written notice, TSL shall have the right, in addition to all other rights and remedies to which TSL may be entitled, to suspend Client's Users' access to the Services until all overdue payments are paid in full.

4. Intellectual Property Rights. 4.1. Client acknowledges that TSL alone (and its licensors, where applicable) shall own all rights, title and interest in and to TSL's software, website or

technology, the course content, and the Services provided by TSL, as well as any and all suggestions, ideas, enhancement requests, feedback, recommendations or other information provided by Client, and this Agreement does not convey to Client any rights of ownership to the same. The TSL name and logo are trademarks of TSL, and no right or license is granted to Client to use them.

4.2. Except as otherwise agreed in writing or to the extent necessary for Client to use the Services in accordance with this Agreement, Client shall not: (i) copy the course content in whole or in part; (ii) display, reproduce, create derivative works from, transmit, sell, distribute, rent, lease, sublicense, transfer or in any way exploit the course content in whole or in part; (iii) embed the course content into other products; (iv) use any trademarks, service marks, domain names, logos, or other identifiers of TSL or any of its third party suppliers; or (v) reverse engineer, decompile, disassemble, or access the source code of any TSL software.

4.3. If Client chooses to participate by uploading its information to the Community Resources website Client hereby authorizes TSL to share any intellectual property owned by Client ("User Generated Content") that its Users upload to the Community Resources section of TSL's website with TSL's 3rd party customers and users that are unrelated to Client ("Other TSL Customers"); provided that TSL must provide notice to Client's users during the upload process that such User Generated Content will be shared with such Other TSL Customers.

5. Term.

The term of this Agreement shall commence on the Effective Date, and will remain in full force and effect for the term indicated in Schedule A ("Term"). Upon expiration of the Initial Term, this agreement shall automatically renew for successive one (1) year periods (each, a "Renewal Term"), unless notice is given by either party of its intent to terminate the Agreement, at least sixty (60) days prior to the scheduled termination date. Upon expiration of the Initial or any Renewal Term, access to the Services may remain active for thirty (30) days solely for purpose of Company's record keeping (the "Expiration Period"). Any access to or usage of the Services following the Expiration Period shall be deemed Client's renewal of the Agreement under the same terms and conditions.

6. Mutual Warranties and Disclaimer.

6.1. Mutual Representations & Warranties. Each party represents and warrants that it has full authority to enter into this Agreement and to fully perform its obligations hereunder.

6.2. Disclaimer. EXCEPT AS EXPRESSLY PROVIDED HEREIN, NEITHER PARTY MAKES ANY WARRANTIES OF ANY KIND, WHETHER EXPRESS, IMPLIED, STATUTORY OR OTHERWISE, INCLUDING ANY WARRANTIES OF MERCHANTABILITY OR FITNESS FOR A PARTICULAR PURPOSE, TO

THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW.

6.3 WORKPLACE SAFETY IS YOUR RESPONSIBILITY. THAT DUTY CANNOT BE DELEGATED AND TSL ACCEPTS NO DELEGATION OF THAT DUTY. TSL WILL ASSIST YOU BY PROVIDING SPECIFIC SERVICES FOR WHICH YOU HAVE CONTRACTED.

7. Miscellaneous.

7.1. Limitation on Liability. Except as it relates to claims related to Section 4 or Section 7.2 of this Agreement, (a) in no event shall either party be liable to the other, whether in contract, warranty, tort (including negligence) or otherwise, for special, incidental, indirect or consequential damages (including lost profits) arising out of or in connection with this Agreement; and (b) the total liability of either party for any and all damages, including, without limitation, direct damages, shall not exceed the amount of the total fees due to, or already paid to, TSL for the preceding twelve (12) months.

7.2. Indemnification. TSL shall indemnify and hold Client harmless from any and all claims, damages, losses and expenses, including but not limited to reasonable attorney fees, arising out of or resulting from any third party claim that the Services or any component thereof infringes or violates any intellectual property right of any person.

7.3. Assignment. Neither party may assign or delegate its rights or obligations pursuant to this Agreement without the prior written consent of the other, provided that such consent shall not be unreasonably withheld. Notwithstanding the foregoing, TSL may freely assign or transfer any or all of its rights without Client consent to an affiliate, or in connection with a merger, acquisition, corporate reorganization, or sale of all or substantially all of its assets.

7.4. Force Majeure. TSL shall have no liability for any failure or delay in performing any of its obligations pursuant to this Agreement due to, or arising out of, any act not within its control, including, without limitation, acts of God, strikes, lockouts, war, riots, lightning, fire, storm, flood, explosion, interruption or delay in power supply, computer virus, governmental laws or regulations.

7.5. No Waiver. No waiver, amendment or modification of this Agreement shall be effective unless in writing and signed by the parties.

7.6. Severability. If any provision of this Agreement is found to be contrary to law by a court of competent jurisdiction, such provision shall be of no force or effect; but the remainder of this Agreement shall continue in full force and effect.

7.7. Export Regulations. All Content and Services and technical data delivered under this agreement are subject to applicable US and

Canadian laws and may be subject to export and import regulations in other countries. You agree to comply strictly with all such laws and regulations and acknowledge that you have the responsibility to obtain such licenses to export,

re-export, or import as may be required after delivery to you.

7.8. Entire Agreement. This Agreement and its exhibits represent the entire understanding and

agreement between TSL and Client, and supersedes all other negotiations, proposals, understandings and representations (written or oral) made by and between TSL and Client.